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NSW Procurement – Contracting Services is a Business Unit of the NSW  
Department of Commerce

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**NSW Procurement – Contracting Services invites this tender for and on  
behalf of the  
NSW Government State Contracts Control Board**

Request for Tender 0900369  
Reissue for the [Hire of Power Tools and  
Equipment](#)

Contract Period – [Two years with the option to  
extend by three further periods each of up to 1  
year in duration.](#)

Tender Issue Date: 16 [March 2009](#)

Closing Date: 16 April [2009](#)

Closing Time: 9:30 am Sydney Time

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part B of this RFT.

Other matters should be directed to:

Group General Manager  
NSW Procurement – Contracting Services  
NSW Department of Commerce  
McKell Building  
2-24 Rawson Place  
Sydney NSW 2000  
Tel: (02) 9372 7504  
Fax: (02) 9372 7533

## *HIRE OF POWER TOOLS AND EQUIPMENT*

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## REQUEST FOR TENDER - PART A – OVERVIEW

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### 1 Outcome

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This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the hire of Power Tools to the Department of Commerce, Heritage and Building Services under the proposed Agreement of the Services defined in the Statement of Requirements of this RFT.

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services, whilst the proposed Agreement will be executed between the Department of Commerce and the successful tenderer/s.

The key outcome of this RFT is to provide purchasing solution (through the proposed Agreement) for the required Services which meets the needs of the Department of Commerce, Heritage and Building Services

### 2 Objectives

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The objectives of the proposed Agreement in achieving the desired outcome, includes, but is not limited to the following:

- (a) Reduce the total cost of the Services;
- (b) Provide Services which are commercially competitive;
- (c) Establish a sustainable partnership between the Department of Commerce and the successful tenderer to deliver quality Services;
- (d) Best practice through continual review of delivery methods i.e value-engineering;
- (e) Effective management of risks;
- (f) Compliance with all applicable laws, standards, codes and policies.
- (g) To drive automation in procurement for greater efficiency and information management.

### 3 Required Benefits

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The required benefits to be achieved in delivering the objectives of the proposed Agreement are:

- (a) A sustainable, mutually beneficial supply chain partnership;
- (b) Savings and efficiency gains;
- (c) Reduced costs to the NSW Government by value-engineering its delivery methods;
- (d) Transparency of all transactions, including performance measurement, pricing and reporting;

### 4 Scope of RFT

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#### 4.1 Services

Heritage and Building Services (HABS), Department of Commerce, provide a contracted maintenance service to a number of Government agencies. A significant client of HABS is the Department of Education and Training (DET). This requirement primarily relates to the hire of power tools and equipment that from time to time will be hired in the Sydney area and the Lake Macquarie and Newcastle areas.

Tenderers may submit a tender for either or both of the Sydney region and Newcastle region.

Tenderers must be able to provide, either directly or through sub-contractor arrangements, the full range of goods and services in the region or regions tendered. *Tenderers are to note that Schools will require flexibility of the successful Contractor to adapt their resources to accommodate the needs of the school in terms of the day-to-day function of the facility.*

Note: work will not be allocated to successful tenderers until such time as the Work Safety Management Plan is approved by HABS.

All services performed under any eventual contract must comply with the specification for that service as provided in this RFT.

### 4.2 Contract and Duration

It is envisaged that the term of the proposed Agreement will be two (2) years, which may be extended for three (3) periods of up to one (1) year in duration, at the discretion of the Department of Commerce.

### 4.3 Current Scope and Expenditure

The current expenditure incurred by Principal for the procurement of the Services is \$300,000 per year. This amount is provided for information only and does not constitute a guarantee for future work through the proposed Agreement.

### 4.4 NSW Government requirements

The successful tenderer must comply with NSW Government codes, guidelines and Standards listed in Schedule 1 of Part D.

## 5 RFT Structure

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### 5.1 Interpretation

5.1.1 Definitions of terms used in Parts A to C are contained in clause 1 of Part B.

### 5.2 RFT Structure

This RFT comprises 6 Parts as follows:

- **Overview – Part A**

It is an executive summary of main outcomes, objectives, requirements and expectations for this proposed Agreement and the Statement of Requirements. It provides the tenderer with the essential information to make an informed decision on whether to tender or not.

- **Conditions of Tender – Part B**

It provides the terms, conditions and processes governing the tender phase of the RFT.

- **Tender Response – Part C**

These are response schedules which are required by the Board to evaluate the tenderers' offers.

- **Agreement - Part D**

This is the conditions of contract to be executed between the successful tenderer and the Principal.

- **Special Conditions – Part E**

This contains the unique conditions specific to the proposed Agreement. It will form part of the Agreement to be executed between the successful tenderer/s and the Principal.

- **Statement of Requirements – Part F**

Tenderers are to note that Part F of this RFT is a description of asset maintenance for NSW Department of Education (DET) sites, however for the purposes of this RFT the description of asset maintenance in Part F is to be applied to ALL NSW Government sites, including DET sites for the required services. This part is available on request in PDF format.

If submitting a Tender, retain Parts A, B, D, E and F. Part C, once completed, forms the Tender, and is to be submitted in accordance with Parts A, B and D.

Part D and E, if applicable, are to be executed later by the successful Tenderer(s) and the Principal to form the Agreement.

## 6 Best Price and Cost Structure

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Tenderers are encouraged to provide their best price(s) with their tender. Whilst the Board reserves the right to negotiate pre award, such negotiations may not occur and it is not the Board's preference.

It is important that tenderers realise that they may not be short-listed for further consideration, if they do not provide their best price with their initial tender.

This RFT seeks transparency in the tenderer's Cost Structure in the Tender Schedules (RFT, Part C) and is required to be fully completed by the tenderer to:

- Provide the Principal transparency of the tenderer's Cost Structure;
- Act as a basis for future Price variations, where applicable.

The Board expects the successful tenderer's to reduce its pricing during the term of the proposed Agreement by:

- (a) Continually improving delivery processes to improve efficiency;
- (b) Providing lower prices and discounts for large/bulk purchases;
- (c) Passing on the benefit of rebates received from its own suppliers to the Principal;
- (d) Matching prices as identified/recommended from the benchmarking process;
- (e) Other methods of savings identified during the term of the proposed Agreement;
- (f) Price matching as identified by the Principal.
- (g) Presenting and adopting NSW government, or any other electronic procurement systems to reduce the cost of doing business with customers.

## 7 Performance Framework

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The Board is committed to engaging contractors who are able and willing to continually improve their performance during the term of the proposed Agreement.

The performance framework within the proposed Agreement provides both incentives for good performance and sanctions for poor performance.

Performance incentives and sanctions are based on the Contractor's performance. The Special Conditions (Part E) describes the performance framework in detail and the measurement/targets of all performance indicators.

Typical incentives and sanctions that may be used by the Principal include, but are not limited to :

- (a) Additional or reduced performance reporting requirements;
- (b) Temporary suspension of all or parts of a proposed Agreement for a period not exceeding 12 months;
- (c) Scope variation ie. inclusion of additional Services/reduction;
- (d) Extensions of the proposed Agreement (if available);
- (e) Non payment of price variations.

Agreement No: 0900369 of Power Tools and Equipment

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**PART B      Conditions of Tender..... 1**

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## PART B Conditions of Tender

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### 1 Definitions

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Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below.

**“ABN”** means an Australian Business Number as provided in GST law.

**“Addendum”** means an addition to this RFT made by the Board before Closing Date and Closing Time.

**“Agreement”** means the proposed agreement to be made between the Principal and the Contractor in the form of Part D (and Part E if applicable) to this RFT.

**“Alternative Tender”** A Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the requirement.

**“Board”** The State Contracts Control Board established under the Public Sector Employment and Management Act 2002 whose responsibilities include:

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management, and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

**“Closing Date and Closing Time”** means the Closing Date and Closing Time for receipt of tenders specified in the cover sheet of this RFT.

**“Code”** means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The Code can be viewed and downloaded from: [http://www.treasury.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0015/1356/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/__data/assets/pdf_file/0015/1356/code_of_prac-curr.pdf)

**“Conforming Tender”** means a tender that conforms in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D, and Part E if applicable.
- (c) other parts of this RFT, and
- (d) is in the prescribed form.

**“Contractor”** means a tenderer who has entered into an Agreement with the Principal.

**“Cost Structure”** means the individual tenderer's cost breakdown in accordance with the number of categories specified in Part C. Such breakdown must equate to 100% of the tenderer's cost for the supply of the Services.

**“GST”** means a goods and services tax and has the same meaning as in the GST Law.

**“GST Law”** means any law imposing a GST And includes A New Tax System (Goods & Services Tax) Act 1999 (C'th) or if that Act does not exist, means any Act imposing, or relating to a GST and any regulation made under those Acts.

**“GST Free Supplies”** and **“Input Taxed Supplies”** have the same meaning as in the GST Law.

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“**HABS**” means the Heritage and Building Services Group, a division of the Dept of Commerce.

“**Non-Conforming Tender**” means a tender that does not conform in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D, and Part E if applicable;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

“**NSW Procurement - Contracting Services**” A business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“**OHS&R**” means occupational health, safety and rehabilitation.

“**Price Schedule**” means the list of Services offered by the tenderer, together with the corresponding pricing information.

“**Principal**” means the party executing the proposed Agreement with the successful tenderer.

“**RFT**” means this Request for Tender

“**Services**” means the services sought under this RFT, as detailed in the Statement of Requirements.

“**Statement of Requirements**” means the detailed description of the Services contained in Part C and Part F.

“**State Contracts Control Board**” is the Board.

“**Tender**” means the offer to supply the Services submitted in response to the RFT.

“**Tender Price**” means the price nominated in the relevant Price Schedule for that Service.

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## **2 Tender Preparation**

### **2.1 Tenderer to inform itself**

Before submitting its tender, a tenderer must:

- 2.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
- 2.1.3 Satisfy itself:
  - (a) that the tender, including the tender price is correct; and
  - (b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

### **2.2 Information Supplied in Part F**

The information contained in Part F has been provided with due care for the tenderer's guidance, but is not guaranteed as being completely accurate. The Board shall not be held liable for any errors or omissions contained in Part F.

Tenderers are to note that Part F of this RFT is a description of asset maintenance for NSW Department of Education (DET) sites, however for the purposes of this RFT the description of asset maintenance in Part F is to be applied to ALL NSW Government sites, including DET sites for the required services.

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### 3 Eligibility to Tender

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#### 3.1 Legal Entity of Tenderer

- 3.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.
- 3.1.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.

#### 3.2 Financial Capability of Tenderer

- 3.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.
- 3.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

#### 3.3 ABN Requirements

- 3.3.1 The Principal will not enter into an Agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their tender.
- 3.3.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an Agreement with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

### 4 Tender Process

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#### 4.1 Provisional RFT Program

Given below is the Board's provisional RFT program. The Board may, at its absolute discretion, amend the provisional RFT program.

Milestone	
RFT issue	16/03/09
RFT Close Date	16/04/09
Execution of Agreement	May 09
Commencement of supply of Services	May 09

#### 4.2 Contact Officer

- 4.2.1 Tenderers should refer requests for information or advice regarding this RFT to:

Name: Trevor Staffl  
Telephone: 02 9372 7617  
Facsimile: 02 9372 7633  
E-mail: trevor.staff@commerce.nsw.gov.au

- 4.2.2 and /or to:

NSW Procurement  
Client Support Centre

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P: 1800 NSW BUY (679 289)  
E: [nswbuy@commerce.nsw.gov.au](mailto:nswbuy@commerce.nsw.gov.au)  
W: <http://www.nswbuy.com.au>

- 4.2.3 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer over other tenderers.

#### **4.3 Conformity of Tenders**

- 4.3.1 The Board seeks Conforming Tenders.
- 4.3.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

#### **4.4 Alternative Tenders**

- 4.4.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

#### **4.5 Submission of Tenders**

- 4.5.1 Prices, responses and other information provided in the tender are to be in writing and in English.
- 4.5.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 4.5.3 Tenderers should notify the contact officer in writing on or before the Closing Date and Closing Time if they find any discrepancy, error or omission in this RFT.
- 4.5.4 All tenders must be either provided:

##### **Electronic: the file formats and versions below:**

- 4.5.5 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the contact officer prior to lodgment of the tender.
- 4.5.6 It is recommended that electronic files be kept as small as practical and the lodgment files below an optimum size of 7 MB, as the limitations of the Internet and communications may affect the successful transmittal and receipt of large files.

##### **Or Hard Copy**

Tenders may if they wish lodge a hard copy of their response. Hard copy tender responses must be submitted in duplicate and marked "Original" and "Copy 1".

#### **4.6 Tender Lodgement**

- 4.6.1 Tenders must be fully received by the Closing Date and Closing Time.
- 4.6.2 A Tender must be lodged into the designated secure tender box/es, and must be submitted electronically to the electronic tender box for this RFT via the NSW Department of Commerce tenders website at: <https://tenders.nsw.gov.au/commerce> (Login in as a system user, locate the web page for this RFT, and follow the on screen instructions to lodge the tender).
- 4.6.3 The lodgement can only be made by a registered system user of the NSW Government eTendering system.
- 4.6.4 Hard Copy or Facsimile Lodgement
- (a) Delivery into the Physical Tender Box at:
- Tender Box
- NSW Department of Commerce

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Level 3 McKell Building (Ground floor west)

2-24 Rawson Place Sydney NSW

- (b) The tender must be able to be lodged into the physical tender box deposit slot of 400mm by 90mm, and must be lodged during normal McKell Building opening hours of 7:30am to 6:30pm Monday to Friday (excluding Public Holidays).
- (c) No receipt can be given however written acknowledgement of delivery of a container may be given by prior arrangement. Contact Tenders Office on (02) 9372 8900.
- (d) If the tender is larger in physical size and cannot be broken down, or delivery personnel require a signature as evidence of delivery the tender must be delivered between 8:30am and 4:30pm Monday to Friday (excluding Public Holidays) and only by prior arrangement. Contact Tenders Office on (02) 9372 8900. Commerce personnel will not take delivery of containers that present an OH&S risk in terms of size or weight.
- (e) Tenders must be clearly marked with the RFT number –xxxxxx

**Or Lodgement to the Facsimile Tender Box at Ph: (02) 9372 8974**

Tenders which are sent by facsimile and which are not completely received at the specified location by the close of tenders may be excluded from consideration for acceptance even if transmission or receipt is delayed due to the receiving facsimile machine being engaged, faulty or otherwise inoperative.

If a tenderer intends to submit by facsimile it must consider the following:

The facsimile machine only allows one tender to be lodged at a time and is at its peak on the morning when tenders and tenders close. Due to the volume received on those closing dates, the State Contracts Control Board (SCCB) cannot guarantee the level or speed of access to these facilities at that time and tenderers should consider lodging in good time having regard to this

**4.7 Electronic Tenders**

- 4.7.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
- 4.7.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the conditions and rules on the NSW Department of Commerce tenders website at <https://tenders.nsw.gov.au/commerce>.
- 4.7.3 A tenderer must follow the following directions:
  - (a) A RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" link on the web pages for the RFT.
  - (b) To lodge a tender electronically, the files containing the tenderer's response must be up-loaded through the website to the NSW Government eTendering system. Access to the up-loading process is through the blue "Lodge a Response" link, then following the steps and instructions on the NSW Department of Commerce tenders website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.
- 4.7.4 A tenderer must observe the following format for lodgements:
  - (a) An electronically lodged tender must be lodged in a file format required by the RFT.
  - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (\*.exe) zip files.
  - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.

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- (d) The file/s name/s must have an extension and not have invalid characters or file names/loading path names too long for the system, as detailed on the NSW Department of Commerce tenders website.
- 4.7.5 Signatures are not required for an electronic tender. A tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person's approval of the information communicated.
- 4.7.6 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:
- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.
- (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- 4.7.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce tenders website in submitting a tender or otherwise, it is encouraged to advise the contact officer promptly in writing.
- (a) If there is an extended defect or failure of the NSW Department of Commerce tenders website or eTendering system and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
- (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.7.8 Tenderers may break down the lodgement of large tenders into smaller packages if clearly identified e.g. package 1 of 3; 2 of 3; 3 of 3.
- 4.7.9 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated unless the tenderer provides clear directions to whether the lodgement is:
- (a) an alternative tender,
- (b) supporting information
- (c) a further part of a tender that has had previous lodgement
- 4.8 Tender Validity Period**
- 4.8.1 The Tender will remain open for acceptance by the Principal for a period of six months from the Closing Date and Closing Time for tenders.
- 4.9 Late Tenders**
- 4.9.1 Late tenders should not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board.
- 4.10 Extension of Closing Date and Closing Time**
- 4.10.1 The Board may, in its discretion, extend the Closing Date and Closing Time.
- 4.11 Corruption or Unethical Conduct**
- 4.11.1 Tenderers must comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part C.
- 4.11.2 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

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- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, the Principal, or the NSW Government in connection with this RFT or the submitted Tender;
  - (b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988;
  - (c) a record or alleged record of unethical behaviour; or not complied with the requirements of Commerce Business Ethics Statement available at: <http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>;

this may result in the tender not receiving further consideration.

- 4.11.3 The Board may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.
- 4.11.4 If the Board and/or the Principal becomes aware of improper conflict of interests by a successful tenderer after an Agreement has been executed, then the Principal reserves the right to terminate the Agreement.

#### **4.12 Code of Practice for Procurement**

- 4.12.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.
- 4.12.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

#### **4.13 Prescribed Form of Tender**

- 4.13.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.
- 4.13.2 The Tender will be taken to be for the provision of the Services on the terms and conditions stated in Part D (and Part E if applicable) except to the extent that these are amended by the Tender and agreed by the Principal.

#### **4.14 Addenda to RFT**

- 4.14.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an Addendum will be issued.
- 4.14.2 In each case, an Addendum becomes part of the RFT.
- 4.14.3 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to closing date, even if a tender has already been submitted.
- 4.14.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

#### **4.15 Tenderer's Costs**

The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

#### **4.16 Custody of Tenders after Receipt**

- 4.16.1 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000*.
- 4.16.2 On receipt of tenders lodged electronically to the NSW Government eTendering system, tenders are encrypted and stored in a secure "electronic tender box."
- 4.16.3 For reasons of probity and security, the Board and its agent are prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.



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- 4.16.4 The e-mail receipt that is sent to system user lodging the tender after successfully lodging the tender electronically to the NSW Government eTendering system is the only evidence of tender lodgement provided.

**4.17 Ownership of Tenders**

- 4.17.1 All tenders become the property of the Board on submission.
- 4.17.2 The Board may make copies of the tenders for any purpose related to this RFT.

**4.18 Discontinuance of Tender Process**

- 4.18.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

**4.19 Variations to Tenders**

- 4.19.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.19.2, vary its tenders:
- (a) by providing the Board with further information by way of explanation or clarification;
  - (b) by correcting a mistake or anomaly; or
  - (c) by documenting agreed changes to the tender negotiated under clause 5.5 of this Part B.
- 4.19.2 Such a variation may be made either:
- (a) at the request of the Board, or
  - (b) with the consent of the Board at the request of the tenderer; but only if,
    - (i) in the case of variation requested by the tenderer under clause 4.19.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
    - (ii) in the case of variation under clause 4.19.1(c) the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 4.19.3 If a tender is varied in accordance with clause 4.19.1(a) or (b), the Board will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.
- 4.19.4 A variation of a tender under clause 4.19.1 will not be permitted if in the Board's view:
- (a) it would substantially alter the original tender; or
  - (b) in the case of variation under clause 4.19.1(a) or (b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

## **5 Evaluation Process**

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- 5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or be given equal weight.
- 5.1.2 The evaluation criteria for this RFT that do not relate to price will account for 40% of the total evaluation score. The evaluation for this RFT that relate to price will account for 60% of the total evaluation score.
- 5.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the evaluation criteria listed in this RFT.



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5.1.4 Tenders that do not include a fully completed Part C, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.

5.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

## **5.2 Evaluation Criteria**

The evaluation criteria for this RFT (which include but are not limited to) are:

- (a) Tendered Price;
- (b) Previous experience and performance on similar agreements for the products and services covered in this RFT
- (c) Tenderer's capacity, resources, qualifications, skills and experience including suitability of sub-contractors and financial stability;
- (d) Compliance with tender requirements including contract terms and conditions
- (e) OHS&R consideration including compliance and previous record
- (f) Compliance with NSW Government procurement policy and other applicable NSW Government policies
- (g) Compliance with relevant legislation and standards.
- (h) Compliance with the Statement of Requirements.

## **5.3 Presentations/Site Inspections**

5.3.1 The Board, may during the evaluation of tenders, undertake site inspections of tenderer's or their subcontractor's proposed premises.

5.3.2 The Board, may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender. The tenderer shall make any presentations at its own cost.

5.3.3 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.

5.3.4 All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.

## **5.4 Acceptance or Rejection of Tenders**

5.4.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.

5.4.2 The Board expressly reserves the right to accept, in its discretion, either or both of the following:

- (a) Any Alternative Tender or part of an Alternative Tender, when submitted with a Conforming Tender; and
- (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.

5.4.3 The Board is not bound to accept the lowest tender.

5.4.4 If the Board rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).

## **5.5 Post Tender Negotiations**

5.5.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiations with preferred

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tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes.

- 5.5.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D and Part E if applicable.
- 5.5.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.
- 5.5.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 5.5.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

## **5.6 Exchange of Information between Government Agencies**

- 5.6.1 Lodgement of a tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 5.6.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within *section 30 of the Defamation Act 2005 (NSW)*, and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication
- 5.6.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 5.6.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the Privacy and Personal Information Protection Act 1998. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause 5.6.
- 5.6.5 The tenderer's attention is drawn to the Freedom of Information Act 1989 which obliges disclosure of the contract documents resulting from the tender and may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies, including tenders held by the Board. A summary of the provisions is contained in the Annexure 1 to Part B (Disclosure Information).

## **6 Method of Acceptance**

- 6.1.1 Acceptance of a tender or part tender will be subject to the execution of a formal Deed of Agreement in the terms of Part D and Part E if applicable. Until the Principal and the successful tenderer(s) execute a formal Agreement there will be no legally enforceable agreement concluded between them.

## **7 Disclosure Information**

- 7.1.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.

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- 7.1.2 Details of tenderers and the outcome of the tender process will be disclosed in accordance with the Freedom of Information Act 1989 and the NSW Government Tendering Guidelines, available at:  
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>
- 7.1.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

## **8 Complaints Procedure**

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It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part D and/or Part E, or the Statement of Requirements in Part F, it is invited to write to:

Chairperson  
State Contracts Control Board  
Level 22, McKell Building  
2-24 Rawson Place  
Sydney NSW 2000

## ANNEXURE 1 TO PART B (Disclosure of Information)

### Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	<p>As a minimum:</p> <ul style="list-style-type: none"> <li>a concise description of the proposed works, goods or services the subject of the tender call;</li> <li>the date responses to the tender call close and where responses are lodged; and</li> <li>location of the tender call documents.</li> </ul> <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure within 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
<p><b>Class 1 contracts</b></p> <p>All government contracts with estimated value \$150,000 or above).</p>	<p>a) The name and business address of the contractor;</p> <p>b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract;</p> <p>c) The date on which the contract became effective and the duration of the contract;</p> <p>d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract;</p> <p>e) The estimated amount payable to the contractor under the contract;</p> <p>f) A description of any provisions under which the amount payable to the contractor may be varied;</p> <p>g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed;</p>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	<p>and</p> <p>i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</p>	
<p><b>Class 2 contracts</b> Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> <li>- result from a direct negotiation where there has not been a tender process; or</li> <li>- have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or</li> <li>- involve operation or maintenance obligations for 10 years or longer; or</li> <li>- involve a privately financed project as defined by relevant Treasury guidelines; or</li> <li>- involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency.</li> </ul>	<p>The information required for class 1 contracts and</p> <ul style="list-style-type: none"> <li>a) Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer;</li> <li>b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</li> <li>c) The results of any cost-benefit analysis of the contract conducted by the agency;</li> <li>d) The components and quantum of the public sector comparator if used;</li> <li>e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</li> <li>f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</li> <li>g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</li> <li>h) Particulars of any other key elements of the contract.</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p><b>Class 3 contracts</b> Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>The information for class 1 and 2 contracts and the complete contract, less confidential information.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose:</p> <ul style="list-style-type: none"> <li>• the reasons for not publishing the contract or provisions;</li> <li>• a statement as to whether the contract or provisions will be published and, if so, when; and</li> <li>• where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published.</li> </ul>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

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### 3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information for class 1 or class 2 contracts, or for a copy of a contract where it is a class 3 contract, which is not required to be routinely disclosed under section 15A of the Freedom of Information Act 1989. ("FOI Act") The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing some provisions or all of the contract;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

### 4. Disclosure of amendments or variations to contract information under the FOI Act

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

### 5. Confidential information

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in section 15A (14) of the FOI Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the FOI Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the Freedom of Information Act. This will enable a person seeking the information to challenge that decision under the Freedom of Information Act.

6. Tenderers are invited to nominate items they consider are confidential and why.

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**Dated: <Insert Date>**

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<Insert Principal Name>

and

<Insert Contractor name>

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*AGREEMENT (REQUEST FOR TENDER, PART D) FOR*

*Hire of Power Tools and Equipment*

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THIS AGREEMENT executed by DEED is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**BETWEEN**

- 1 The Crown in right of the State of New South Wales, acting through the State Contracts Control Board of McKell Building, 2-24 Rawson Place, Sydney in the State of New South Wales” ;**

**AND**

- 2. .... [insert name of contractor] of  
..... [insert address] in the State of  
..... ("the Contractor")**

**BACKGROUND**

- A. The Principal issued the Request for Tender for the supply of the Deliverables.
- B. The Contractor submitted a tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter into an Agreement for the supply of the Deliverables in the form of this Agreement.

**NOW THE PARTIES AGREE:**

**1 Interpretation**

**1.1 Definitions**

“**Agreement**” means this Deed of Agreement including the Schedules and Part E, Special Conditions of Agreement, where applicable.

“**Applicable Discount**” means an applicable discount in Schedule 3 Pricing, as varied from time to time in accordance with this Agreement, or any other Applicable Discount which may be offered by the Contractor from time to time.

“**Approved Sub-Contractors**” means the sub-contractors approved by the Principal and indicated in Schedule 4.

“**Category**” means generic categories of Deliverables comprising of multiple Products inclusive of the associated services for their supply.

“**Change in Control**” means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

“**Circumstances Beyond the Control of the Contractor**” includes:

- (a) acts of God;
- (b) fire, flood, or earthquake;
- (c) national emergency (including terrorist acts) or war; or a serious industrial dispute.

**“Client’s Representative”** means a representative of the Site Owner/Facility Manager (Site Contact).

**“Confidential Information”** means, in relation to a Party, information that:

- (a) is by its nature confidential;
- (b) is designated by that Party as confidential; or
- (c) the other Party knows or ought to know is confidential.

**“Consequential Loss”** means any loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

**“Contract Material”** means New Contract Material and Existing Contract Material.

**“Contract Price”** means the total amount payable by the Principal to the Contractor for the Deliverables ordered under this Agreement and calculated in accordance with clause 5.2.

**“Contractor”** means the contractor under this agreement and includes its subcontractors, re-sellers and distributors.

**“Contractor’s Cost Structure”** means the Contractor’s overall cost structure comprising of individual cost components for each Product listed in Schedule 3.

**“Contractor’s Delegate”** means the individual or the position title nominated by the Contractor in its Tender.

**“Contractor Information”** means the information provided by the Contractor in Schedule 1 and includes information on Approved Subcontractors.

**“Contractor Performance Report (CPR)”** means a report on the Contractors performance relating to this Contract.

**“Contractor’s Insolvency”** means any of the following events occurring in connection with the Contractor:

- (a) insolvency;
- (b) the Contractor indicates that it does not have the resources to perform the Agreement;
- (c) an application for winding up is made and not stayed within 14 days;
- (d) a winding up order is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed;
- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

**“Customer Contract”** means the contract that is made between the Contractor and the Principal under clause 3.4 of this Agreement.

**“Deed”** means a form in which a contract can be recorded which requires execution under the parties’ seal.

**“Deliverables”** means the goods and associated services, Works to be supplied by the Contractor and itemised in Schedule 2.

**“Existing Contract Material”** means any material which is existing at the date of this Agreement and which may be incorporated in to the New Contract Material.

**“Expert Determination”** means the process set out in clause 14.5.

**“Guaranteed Delivery Time”** means the guaranteed time for the supply of the Deliverables as specified in Schedule 2 of this Agreement, or such earlier time as may be agreed by the Principal and the Contractor in respect of a particular Customer Contract.

**“Information”** includes information in the form of data, text or images.

**“Intellectual Property”** includes copyright, patent, trademark, design, semi-conductor or circuit layout rights, trade, business or company names, or other proprietary rights, or any rights to registration of such rights existing in Australia, whether created before or after the date of this Agreement.

**“Key Performance Indicators”** means performance indicators in respect of the Contractor's performance of this Agreement.

**“Key Personnel”** means the personnel of the Contractor specified in Schedule 1 item 4.

**“Minimum Order Quantity”** means the minimum quantity of each Deliverable ordered by the Principal, given in Order Units.

**“New Contract Material”** means any material brought into existence as part of, or for the purpose of providing the Deliverables including records, documents and Information stored by any means.

**“Order”** means a written request by the Principal for the provision of Services under the Contract.

**“Ordering Officer”** means a representative of the Principal, who from time to time places orders under this contract.

**“Parties”** means the Principal and the Contractor.

**“Personal Information”** has the same meaning as in Privacy and Personal Information Protection Act 1998 (NSW). (Guide Note: If Personal Information is within the meaning of the Health Records and Information Privacy Act, then add 'Health Records and Information Privacy Act 2002 (NSW)').

**“Personnel”** of a Party means;

- (a) the officers, employees, agents and contractors of that Party,
- (b) in the case of the Contractor, includes subcontractors, and the Key Personnel in Schedule 1 item 4.

**“Price”** means the price payable for a Deliverable as set out in Schedule 3 and, where relevant, means the price inclusive of any Applicable Discount specified in Schedule 3.

**“Price Schedule”** means Schedule 3 to this Agreement and/or variations made to it in accordance with this Agreement.

**“Principal's Material”** means any material, document, or Information supplied by the Principal to the Contractor by whatever means.

**“Principal's Delegate”** means the Principal's employee named in Schedule 1 item 6 responsible for the overall administration of this Agreement on behalf of the Principal.

**“Product”** means an individual line item within a generic Category of products inclusive of associated services for its supply and delivery.

**“Public Service”** has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

**“Public Sector Service”** has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

**“Relationship Manager”** means the Contractor’s employee named in Schedule 1 item 4.

**“Request for Tender”** means the request for tender issued by the Principal, consequent to which this Agreement was awarded to the Contractor for the supply of the Deliverables.

**“Schedule”** means a schedule to this Agreement.

**“Service Levels”** means the service levels which need to be met by the Contractor under this Agreement in accordance with Part E.

**“Statement of Requirements”** means the detailed description of the Deliverables to be provided under this Agreement in Schedule 2.

**“Standards”** means Australian Standards, where such exist and are applicable to the Deliverables, and includes international standards in the event of the lack of an applicable Australian Standard.

**“State Contracts Control Board”** and **“the Board”** means the State Contracts Control Board established by the *Public Sector Employment and Management Act 2002* and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

**“State of New South Wales”** means the Crown in right of the State of New South Wales.

**“Statutory Requirements”** means the laws relating to the performance of this Agreement or the lawful requirements of any authority with respect to the performance of this Agreement.

**“Substantial Breach”** means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes but is not limited to, any breach of the following clauses:
  - (i) clauses 5.1 to 5.7 (Pricing),
  - (ii) clause 8.1 (Punctual Delivery) without being granted an extension of time under clause 8.2,
  - (iii) clause 9 (Confidentiality),
  - (iv) clause 11.5 (Minimum Insurance Requirements),
  - (v) clause 12.1 (Service Levels),
  - (vi) clause 16.1 (No Assignment or Novation); and
  - (vii) clause 16.2 (Conflicts of Interests).

**“Term”** means the period of this Agreement, set out in item 2 Schedule 1 and any extension of the Term in accordance with clause 2.2.

**“Warranty Period”** means, in relation to a particular Product, the period of warranty of that Product specified in Schedule 2.

**“Works”** means the whole of the work to be carried out and materials and services to be provided under the Agreement and includes the Deliverables.

## **1.2 Rules for interpreting this Agreement**

- 1.2.1 Headings are for convenience only, and do not affect the interpretation of this Agreement. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (b) software, document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
  - (d) any thing (including a right, obligation or concept) includes each part of it.
- 1.2.3 Where:
- (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
  - (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.
- 1.2.4 A singular word includes the plural, and vice versa.
- 1.2.5 A word which suggests one gender includes the other genders.
- 1.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.
- 1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- 1.2.8 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:
- (a) Part E, Special Conditions to this Agreement, if applicable;
  - (b) The terms and conditions of this Agreement;
  - (c) Schedules 1 and 2 to this Agreement;
  - (d) Any other Schedules to this Agreement;
  - (e) The Customer Contract.

## **2 Term**

### **2.1 Duration**

- 2.1.1 This Agreement commences on the commencement date specified in item 2 of Schedule 1 and expires on the expiry date specified in the same item 2, unless sooner terminated in accordance with this Agreement.

### **2.2 Extension**

- 2.2.1 The Principal may in its sole discretion extend this Agreement for the period or periods specified in item 2 of Schedule 1.

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### **3 Formation**

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#### **3.1 Nature of the Agreement between the Principal and the Contractor**

- 3.1.1 This Agreement describes the terms and conditions between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Deliverables.
- 3.1.2 This Agreement together with Part E, Special Conditions constitutes the entire Agreement between the Parties. Any prior arrangements, Agreements, representations or undertakings are superseded.

#### **3.2 Principal's Delegate**

- 3.2.1 The Principal's Delegate is responsible for administering this Agreement.
- 3.2.2 The Contractor must comply with any reasonable direction given by the Principal's Delegate in connection with the performance of work under this Agreement.
- 3.2.3 Unless this Agreement provides otherwise, and subject to the Principal's direction, the Principal's Delegate may exercise rights and discharge obligations conferred or imposed on the Principal under this Agreement.
- 3.2.4 The Principal's Delegate is not authorised to waive or vary any provision of this Agreement, release the Contractor from any obligation under this Agreement, or terminate this Agreement without the Principal's approval.

#### **3.3 No Assurance of Volumes and Non-Exclusive Supply**

- 3.3.1 This Agreement does not:
- (a) imply that the Contractor will receive any specific volume of orders for the Deliverables,
  - (b) imply that the Contractor is the exclusive provider of the Deliverables to the Principal; or
  - (c) oblige the Principal to place Customer Contracts for the Deliverables with the Contractor.
- 3.3.2 The Contractor acknowledges that the Principal may, from time to time, in its discretion, appoint other suppliers under an agreement to supply the Deliverables and that the Contractor will make no objection to such appointment.

#### **3.4 Customer Contract**

- 3.4.1 The Contractor agrees that each time the Principal places an order, a separate Customer Contract is formed. The terms and conditions of the Customer Contract are those appearing in:
- (a) This Agreement, any variations thereto, including any Schedules; and
  - (b) The order.

#### **3.5 Provisions of Agreement to apply to the Customer Contract**

- 3.5.1 The provisions of this Agreement apply to the Customer Contract as if they were repeated in the Customer Contract, provided that in respect of the Customer Contract, "Agreement" and "Principal" wherever appearing in this Agreement shall be read as "Customer Contract" and "Customer" respectively.

### **3.6 Approved Sub-Contractors**

- 3.6.1 The Contractor may with the written consent of the Principal, sub-contract any part of this Agreement to an Approved Sub-Contractor in Schedule 7.
- 3.6.2 The Contractor must make the Approved Sub-contractor aware of the terms and conditions of this Agreement and this clause;
- 3.6.3 The terms and conditions of the sub-contract must be consistent with this Agreement.
- 3.6.4 The Contractor will continue to be bound by, and responsible for performance of this Agreement notwithstanding that part or all of it may have been sub-contracted.
- 3.6.5 The Principal may, without incurring liability, withdraw its approval of an Approved Sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of this Agreement. The Principal will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 3.6.6 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:
  - (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
  - (b) the Contractor will indemnify and release the Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.

## **4 The Deliverables**

### **4.1 Customer Quotation**

- 4.1.1 Prior to the placement of a Customer Contract under this Agreement the Ordering Officer will require the Contractor to prepare a quotation for the completion of the Deliverables. This quotation is to be based on the schedule of rates as detailed in the Price Schedule. The Principal reserves the right to obtain quotations from more than one Contractor.

### **4.2 Customer Contracts**

- 4.2.1 The Contractor must not supply the Deliverables unless the Principal issues a Customer Contract. Such Customer Contracts may be made by:
  - (a) Written request to the Contractor by facsimile, email or by hand, containing the details outlined in clause 4.2.2;
  - (b) Electronic issue in accordance with the Customer's and/or the Contractor's ordering system and this Agreement;
  - (c) Any other method required by the Principal which is in keeping with the NSW Government's financial and audit policies.
- 4.2.2 A Customer Contract in whichever form it is issued, must provide the following details:
  - (a) a description of the Deliverables;
  - (b) the Price for the Deliverables;
  - (c) this Agreement reference number;
  - (d) delivery date;
  - (e) delivery site;
  - (f) name of officer placing the Customer Contract; and

(g) address to which the Contractor's invoice is to be sent for payment.

4.2.3 If the Customer Contract is issued in incomplete form, the Contractor must notify the officer placing the Customer Contract of the details required under clause 8.1.2 that have not been provided prior to supply of the Deliverables which are the subject of the Customer Contract.

#### **4.3 Contractor to Fulfil all Customer Contracts**

4.3.1 The Contractor must fulfil all Customer Contracts placed by the Principal during the Term in accordance with this Agreement and the Customer Contract.

4.3.2 The Principal may place a single Customer Contract for the Deliverables to be supplied in a single delivery, or a single Customer Contract to be supplied in multiple deliveries, ie. "Blanket Orders".

#### **4.4 List of Products and Categories**

4.4.1 The Deliverables are the Products and overall Categories to be supplied by the Contractor under this Agreement and listed in Schedule 3.

#### **4.5 Variation of Product Description**

4.5.1 The Contractor must notify the Principal in writing as soon as practicable of any variation to the description of a Product offered in Schedule 3.

4.5.2 A variation under clause 4.5.1 may include a variation to the description of the number or name of the Product but excludes a variation:

- (a) to the Price of the Product;
- (b) that modifies or upgrades the Product; or
- (c) that introduces a new Product to the Price Schedule.

4.5.3 The Principal will notify the Contractor of its acceptance or rejection of the variation to the description of a Product. If the variation is accepted, it shall be taken to be incorporated into Schedule 3.

#### **4.6 Improvements to Products**

4.6.1 If during the Term the Contractor makes available on a general commercial basis Products that:

- (a) are modified versions or upgrades of a Product; or
- (b) have a function or purpose similar to that performed by a Product; or
- (c) have a new function or purpose consistent with the nature of the Product,

then the Contractor must offer the Principal the same Product under this Agreement within 30 days of such Product being available on a general commercial basis.

4.6.2 The Product offered by the Contractor under clause 4.6.1 will form part of Schedule 3 when the Principal notifies its acceptance of the offer. Prior to accepting or rejecting the Contractor's offer, the Principal may request the Contractor to provide any further data reasonably required within 14 days to enable the making of an informed decision on the offer, and the Contractor must supply the same.

4.6.3 In the event that the Principal has not notified the Contractor of its acceptance of the Contractor's offer within 30 days, the offer will be deemed not to have been accepted by the Principal.

### **5 Pricing**

#### **5.1 Contractor's Obligations**

5.1.1 The Contractor must supply the Products on the basis of the Prices in Schedule 3, except where provided in this Agreement.



## 5.2 Calculating the Contract Price

- 5.2.1 The Pricing for the Products in Schedule 3, which are fixed for the periods indicated therein, includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads and profits, any Applicable Discounts as well as all costs and expenses that the Contractor incurs in their supply, but is exclusive of GST.

## 5.3 Price Variation

- 5.3.1 The Contractor may not seek to vary the Price of a Product and/or Category listed in Schedule 3 except in accordance with the frequencies and methodology indicated in Schedules 3. Subject to the Contractor having provided the Principal with sufficient documentation to justify the application, and subject to clause 12.1.2(a), the Principal may in writing, approve the application within 30 days of lodgement.
- 5.3.2 Where the Price variation is accepted, Schedule 3 will be updated to include the varied Price. The varied Price becomes the basis from which any future applications for Price variations will be calculated.
- 5.3.3 The Principal reserves the right to delete a Product and/or Category from Schedule 3 if it considers a Price variation application to be unreasonable.
- 5.3.4 Notwithstanding any other provision in this Agreement, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.

## 5.4 Rebates

- 5.4.1 The Contractor warrants that if at any time during the Term of this Agreement, it receives any rebate, discount, commission or other subsidy on any Product that it purchases from its subcontractors or other third party suppliers, the benefit of such rebate, discount, commission or subsidy will be directly passed on to the Principal under this Agreement.

## 5.5 Continuous Best Price

- 5.5.1 Notwithstanding any other clause in this Agreement, where the Principal has been able to confirm that the external market pricing for any Product or Category in Schedule 3 is consistently more competitive than under this Agreement, the Principal will provide the Contractor with reasonable evidence of such market situation and request the Contractor vary its Prices to align with the market.
- 5.5.2 Where the Contractor offers more favourable prices to any other purchaser of similar Deliverables in NSW purchased in similar circumstances, including volumes (where Price is volume dependent), timing and terms and conditions where they have a substantial impact on price, it must promptly make the more favourable price available to the Principal under this Agreement.

## 5.6 Goods and Services Tax

- 5.6.1 In this clause and Agreement:
- “**Consideration**”, “**Tax Invoice**”, “**Taxable Supply**” and “**Supply**” have the same meaning as provided for in the GST Law.
- “**GST**” is a goods and services tax and has the same meaning as in the GST Law.
- “**GST Law**” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.
- 5.6.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 5.6.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice is received.

- 5.6.4 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.
- 5.6.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 5.9.4.

## **6 Payment**

### **6.1 Payment of Contract Price**

- 6.1.1 In consideration of the Contractor providing the Deliverables under this Agreement, the Principal shall, subject to the terms and conditions of this Agreement, pay the Contractor the Contract Price.
- 6.1.2 Failure by the Principal to pay the Contract Price at the due time will not be grounds to avoid performance of this Agreement.

### **6.2 Invoices and Time for Payment**

- 6.2.1 All claims for payment made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Principal, including consolidated monthly invoicing on behalf of its branches/business units.
- 6.2.2 Claims for each completed Order, are to be submitted within 30 days from the completion date to the Ordering Officer for assessment and payment.
- 6.2.3 With each claim for payment, the Contractor must give the Principal a completed Statutory Declaration in accordance with Part E Schedule 4. An amount will not become payable to the Contractor in response to a payment claim unless the required statutory declaration is submitted
- 6.2.4 The Contractor shall submit with its claim the schedule rate item, the unit rate, the number of units and total line item cost. All claims shall be GST inclusive
- 6.2.5 Subject to this clause 6.2, the Principal shall make payment within 30 days from the end of the month after receipt of a valid Tax Invoice and documents necessary to evidence delivery to the Principal. However for larger projects progress payments may be negotiated.
- 6.2.6 The parties agree the making of a payment is not intended to be an acknowledgement that the Deliverables have been supplied in accordance with this Agreement.
- 6.2.7 If the Principal disputes an invoice amount the Principal shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with this Agreement.
- 6.2.8 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by the Principal of money becoming due for the supply of the Deliverables.

### **6.3 Set-Off/Money Recoverable by the Principal**

- 6.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Deliverables.
- 6.3.2 Without limiting clause 6.3.1, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of this Agreement may be deducted from money then due to the Contractor. If that money

is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be:

- (a) set off against any other money due to the Contractor by the Principal under this or any other Agreement between the Principal and the Contractor; or
- (b) recovered from the Contractor by the Principal in an appropriate court.

#### **6.4 Suspension of Payments**

Should the Contractor refuse or neglect to carry out the instructions or requirements of the Principal in regard to any matter connected with this Agreement, the Principal may, suspend all payments to the Contractor until such instructions or requirements have been complied with by the Contractor.

### **7 Variations**

#### **7.1 Variations to Agreement**

- 7.1.1 This Agreement may not be varied except in writing signed by both the Principal and the Contractor.

### **8 Delivery**

#### **8.1 Punctual Delivery**

- 8.1.1 The Contractor must deliver the Deliverables within the specified Guaranteed Delivery Times in Schedule 2, or by the delivery times specified in the Agreement.
- 8.1.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Principal in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay, and whether the Contractor will be requesting a reasonable extension of time in accordance with clause 8.2.

#### **8.2 Extension of Time**

- 8.2.1 Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:
  - (a) within 3 days of becoming aware of the possibility of such a delay, notify the Principal, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
  - (b) request a reasonable extension of time.
- 8.2.2 The Principal may consent to a request for extension of time under this clause 8.2.2 provided that:
  - (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
  - (b) where appropriate, the Contractor provides the Principal with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond the Control of the Contractor.
- 8.2.3 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

#### **8.3 Delivery and Acceptance**

- 8.3.1 The Contractor must deliver the Deliverables to the place or places and within the Guaranteed Delivery Time and shall obtain a receipt of their delivery.
- 8.3.2 Delivery and receipt of the Deliverables shall not be taken to be an acceptance of the Deliverables by the Principal.

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- 8.3.3 The Principal may reject Deliverables which are not in accordance with this Agreement.
- 8.3.4 If the Contractor is unable to provide the Deliverables for any reason, the Contractor must arrange for the supply of equivalent items from an alternative supplier within the Guaranteed Delivery Time. The Contractor is to liaise with the Principal to ensure that the alternative item is acceptable and meets the Principal's needs. Any additional cost in arranging an alternative supply is to be borne by the Contractor.
- 8.3.5 The Contractor will replace Deliverables at no cost (including freight and handling charges) where stocks are delivered with unreasonably short use-by dates.

#### **8.4 Rejection of Deliverables**

- 8.4.1 The Principal may direct the Contractor to correct Deliverables that are not in accordance with the Contract, and the Contractor must correct that work within the time specified by the Principal. If the Contractor does not correct the rejected Deliverables within the time specified, the Principal might have the Work corrected by others. The Principal will assess the reasonable costs of having the rejected Deliverables corrected by others and the Contractor must pay the Principal those costs
- 8.4.2 The Principal may accept Deliverables that are not in accordance with any order. The resulting reasonable increase or decrease in the value to the Principal of the Deliverables and any other reasonable loss or detriment suffered by the Principal is to be assessed by the Principal and the amount paid to or deducted from the Contractor.

#### **8.5 Risk and Title**

- 8.5.1 Title in the Deliverables shall pass to the Principal on satisfactory delivery to the Principal, as evidenced by the signature on the delivery docket of a duly authorised representative of the Principal. Such signature is not an acknowledgement of the acceptability of the Deliverables. Notwithstanding that the Principal has taken delivery, the Contractor will remain liable for any loss or damage to the Deliverables, which may have occurred prior to delivery, and for any non-compliance of the Deliverables with the Customer Contract.

### **9 Confidentiality**

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#### **9.1 Obligations of Parties**

- 9.1.1 Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party gives its prior written consent.
- 9.1.2 Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- 9.1.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement.
- 9.1.4 This clause will survive the termination of this Agreement.

### **10 Intellectual Property**

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#### **10.1 Ownership**

- 10.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Contractor upon their creation.

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- 10.1.2 The Contractor irrevocably grants to the Principal an exclusive royalty free transferable licence to use the Intellectual Property in the New Contract Material for so long as the Principal may require.
- 10.1.3 The Parties acknowledge and agree that the Parties or, where applicable, particular third parties, are the sole owners of their Intellectual Property rights in or in relation to the Existing Contract Material.
- 10.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Deliverables.
- 10.1.5 Upon completion of the Agreement, or at such other time as the Agreement or the Principal may require, the Contractor must fully and promptly disclose to the Principal all New Contract Material created or developed under or in connection with this Agreement.

## **11 Specific Obligations of Contractor**

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### **11.1 Licences and Approvals**

- 11.1.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement.

### **11.2 Compliance with Laws and Standards**

- 11.2.1 The Contractor must, in carrying out this Agreement, comply with:
- (a) all applicable Statutory Requirements;
  - (b) the NSW Government codes, policies, guidelines and Standards listed in item 3 of Schedule 1 or any other codes, policies, guidelines and Standards specified in writing by the Principal to the Contractor, as revised, amended, supplemented, altered or reissued from time to time; and
  - (c) any particular Standard which has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.
  - (d) the obligations imposed on the Principal by the Privacy and Personal Information Protection Act 1998 (NSW) in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with the Contract. The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Principal by the Privacy and Personal Information Protection Act as though the Contractor were, as far as reasonably practicable, the Principal in relation to any such Personal Information. The Contractor will comply with any request of the Principal in relation to Personal Information and will not do anything that would cause the Principal to be in breach of its obligations under the Privacy and Personal Information Protection Act.

### **11.3 Minimum Insurance Requirements**

- 11.3.1 The Contractor must hold and maintain, and must ensure that all subcontractors who is not taken to be a worker employed by the Contractor in accordance with the Workplace Injury Management and Workers Compensation Act 1998, are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in item 5 of Schedule 1 in respect of each claim; and

- (b) products liability insurance for at least the amount specified in item 5) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover; and
  - (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
  - (d) such other insurances as are specified in Schedule 1 item 75 of the Agreement Details.
- 11.3.2 Sole trader Contractors and sub-Contractors must hold Death and Personal Injury Insurance if they are not required by law to hold Workers' Compensation Insurance.
- 11.3.3 All policies of insurance must be effected with an insurer rated A – or better by AM Best or an equivalent rating organisation.
- 11.3.4 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Principal.
- 11.3.5 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 11.3.6 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained".
- 11.3.7 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 11.3.8 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

#### **11.4 General Indemnity**

- 11.4.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and their officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement.
- 11.4.2 The Contractor's liability in respect of, and indemnity given in, clause 11.4.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

#### **11.5 Contractor's Warranties for the Deliverables**

- 11.5.1 In relation to the Deliverables, the Contractor warrants that:
  - (a) at the time title to a Deliverable passes to the Principal, the Deliverable will be free from any charge or liability;
  - (b) during the Warranty Period, each Deliverable:
    - (i) shall be new and shall conform with the Statement of Requirements;
    - (ii) shall conform to the description, and sample (if any) approved by the Principal in Schedules 2 (except that if a sample is inconsistent with the Statement of Requirements, the latter must prevail);
    - (iii) shall be free from defects; and

- (c) it will provide the associated services in accordance with the requirements of Schedule 2 and with due care and skill.

## **11.6 Contractor's Warranties (General)**

The Contractor warrants:

- (a) that the Deliverables do not infringe the Intellectual Property rights of a third party; and
- (b) the Deliverables shall conform to any legally applicable Australian Standards;
- (c) it has capacity to enter into this Agreement and perform the obligations imposed on the Contractor; and
- (d) the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of this Agreement by the Contractor.

## **11.7 Warranty Period**

- 11.7.1 The Contractor shall rectify any error or defect in a warranted Deliverable that has been notified to it by the Principal during the Warranty Period in Schedule 2 at the Contractor's sole cost and expense.
- 11.7.2 If the Contractor fails to rectify an error or defect in a Deliverable within 30 days after notification by the Principal, the Principal may arrange for performance of the necessary remedial work by a third party at the Contractor's expense.

## **11.8 Third Party Warranties**

- 11.8.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor agrees to assign to the Principal, to the extent permitted by law, the benefits of any warranties given by the third parties.
- 11.8.2 The parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

## **11.9 Mistakes in Information**

- 11.9.1 The Contractor must pay for any additional costs incurred by the Principal by errors or omissions in material or other Information supplied by it, even though that material or Information may have been approved by the Principal.

## **11.10 Notification of Change in Control or Transfer of Ownership**

- 11.10.1 During the Term, the Contractor must immediately notify the Principal under this Agreement in writing of any Change in Control or other action to reconstruct or amalgamate itself.

## **11.11 Notification of Contractor's Insolvency**

- 11.11.1 The Contractor must immediately notify the Principal in writing of the Contractor's Insolvency and disclose the details of any:
  - (a) Action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement;
  - (b) Existing orders which the Contractor has entered into under this Agreement.

## **12 Performance Management**

### **12.1 Service Levels**

- 12.1.1 The Contractor must meet the specified Service Levels in Part E during the Term of this Agreement. Performance against the Service Levels must be tracked by the

Contractor and reported to the Principal's Delegate in accordance with the frequencies and formats in Part E.

12.1.2 Where the Contractor does not meet the Service Levels in Part E, the Principal may, at its discretion, take one or more of the following actions in relation to the Contractor:

- (a) refuse to agree to all or a portion of the price variation requested by the Contractor under clause 5.3.1,
- (b) temporarily suspend the use of all or parts of this Agreement by the Principal, for a period not exceeding 12 months; and
- (c) require the Contractor to undertake more frequent performance reporting in addition to those specified in Part E, to ensure performance is improved;

until such time as the Contractor has demonstrated its ability to meet the Service Levels in accordance with Part E.

12.1.3 The remedies in clause 12.1.2 are in addition to any other provisions available to the Principal to deal with the inability of the Contractor to meet its Service Level obligations under this Agreement and at law.

12.1.4 The measurements and tolerances in the Service Levels specified in Part E may be amended, added to, or deleted by the Principal and the Contractor in writing during the Term of this Agreement.

## **12.2 Principal's Delegate**

12.2.1 The Principal has nominated the Principal's Delegate in Schedule 1 item 6 to oversee the performance of this Agreement. The Principal may, by notice in writing to the Contractor, nominate a replacement Principal's Delegate.

## **12.3 Contractor's Relationship Manager**

12.3.1 For the purpose of ensuring an efficient relationship with the Principal the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 4. The Relationship Manager must:

- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
- (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
- (c) have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement;
- (d) meet with the Principal's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement, with particular reference to the Service Levels in clause 12.1.1; and
- (e) answer the Principal's queries and work with the Principal to address issues relating to matters deemed urgent by the Principal arising out of this Agreement.

12.3.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Principal's Delegate to meet with the Principal's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement.

12.3.3 The Relationship Manager must be supported by the Key Personnel in Schedule 1 item 4 in respect of the Principal. The Relationship Manager and/or the Key Personnel named in Schedule 1 item 4 must be available to attend periodic meetings as required by the Principal or the Principal's Delegate.



## **12.4 Exchange of Information Between Government Agencies**

- 12.4.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 12.4.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 12.4.3 The Principal regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 12.4.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

## **13 Personnel**

### **13.1 The Contractor's Personnel**

- 13.1.1 The Contractor warrants that all Personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel nominated in Schedule 1 item 4.
- 13.1.2 The Contractor must:
- (a) employ only such persons as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables; and
  - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 13.1.3 The Principal may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour. Such named personnel so removed may not be re-employed by the Contractor under this Agreement.
- 13.1.4 Any replacement Key Personnel provided by the Contractor must be approved by the Principal.

## **14 Conduct and Dispute Management**

### **14.1 Co-operation**

- 14.1.1 The Parties must do all they reasonably can to co-operate in matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the Parties agree in writing to vary them.

### **14.2 Duty not to Hinder Performance**

- 14.2.1 Each Party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

### **14.3 General**

14.3.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below is to be followed:

- (a) Amicable Resolution (clause 14.4.);
- (b) Expert Determination (clause 14.5)

### **14.4 Amicable Resolution**

14.4.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.

14.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative, which in the case of the Principal is the Principal's Delegate, and in the case of the Contractor is the Relationship Manager.

14.4.3 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.

14.4.4 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.

14.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.

14.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").

14.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal and the Board.

14.4.8 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.

14.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

### **14.5 Expert Determination**

14.5.1 If a Referral Notice is given under clause 14.4, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.

14.5.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:

- (a) an employee of the parties;
- (b) a person who has been connected with the Agreement; or
- (c) a person who the Parties have been unable to agree on.

14.5.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:

- (a) the issue referred to the expert for determination;
- (b) the expert's fees;
- (c) the procedure for determination set out in Schedule 5;
- (d) any other matter which is relevant to the engagement.

- 14.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 14.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Schedule 1 item 7 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 14.5.6 Unless a party has a right to commence litigation under clause 14.5.5:
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

## **15 Termination by the Principal**

### **15.1 Termination for Cause**

- 15.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
- (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;
  - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
  - (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
  - (d) Poor Performance;
  - (e) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
  - (f) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts Agreement except in accordance with this Agreement;
  - (g) in the case of the Contractor's Insolvency;
  - (h) if in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

### **15.2 Effect of Termination for Cause**

- 15.2.1 If the Principal terminates this Agreement for cause the Principal may:
- (a) contract with any other person to complete the provision of the Deliverables including but not limited to any order remaining to be filled;
  - (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Principal Contract from any money due, or which may become due to the Contractor from the Financial Security (if any); and
  - (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

### **15.3 Termination for the Principal's Convenience**

- 15.3.1 The Principal may terminate this Agreement in whole or in part for its convenience by giving 14 days written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.

### **15.4 Effect of Termination for Convenience**

- 15.4.1 The Principal's termination under clause 15.3 will not affect any outstanding Customer Contracts under this Agreement unless the context requires it.
- 15.4.2 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination under clause 15.3 provided that any claim by the Contractor:
- (a) must be supported by written evidence of the costs claimed;
  - (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.
- 15.4.3 The Principal shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Principal under clause 15.3.

## **16 General**

### **16.1 No Assignment or Novation**

- 16.1.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal as applicable, which consent may be withheld in the Principal's absolute discretion.
- 16.1.2 The Contractor acknowledges that the Principal may make financial checks and due diligence checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

### **16.2 Conflicts of Interest**

- 16.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.
- 16.2.2 The Contractor must:
- (a) notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
  - (b) comply with any direction given by the Principal in relation to those circumstances designed to manage that conflict of interest.
- 16.2.3 For the purposes of this clause, a "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.
- 16.2.4 The principal will introduce Contractors to its clients for the purposes of completing works under the Contract. **Contractors shall not solicit for direct engagement from any of the Principal's clients.**
- 16.2.5 Contractors who solicit and as a result accept engagement directly from the principal's client may be in breach. The Principal may, in writing, specify the breach and ask the Contractor to give reasons why the Principal should not take further action.
- 16.2.6 If the Contractor either fails to give a written response within 7 days of receiving the Principal's notice, or fails to give reasons satisfactory to the Principal, then the Principal may immediately terminate the Contract by notice in writing to the Contractor, in which case the respective rights and liabilities of the parties shall be

the same as they would be at common law if the Contractor had wrongfully repudiated the Contract

### **16.3 Records and Access to Records**

16.3.1 The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.

16.3.2 During the Term, the Contractor must, within a reasonable time of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that the Principal reasonably requires.

### **16.4 Waiver**

16.4.1 A waiver in respect of a breach of a term of this Agreement by the other Party shall not be taken to be a waiver in respect of any other breach. The failure of either Party to enforce a term of this Agreement will not be interpreted as a waiver of that term.

### **16.5 Severability**

16.5.1 If any part of this Agreement is void or voidable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

### **16.6 Notices**

16.6.1 Notices must be sent to the other Party at the address shown in Schedule 1 items 10 and 11, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.

16.6.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.

16.6.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

### **16.7 Counterparts**

16.7.1 If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

### **16.8 Applicable Law**

16.8.1 This Agreement is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.

### **16.9 No agency/no employment/no partnership**

16.9.1 The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Principal.

### **16.10 Disengagement Period**

16.10.1 For 6 months following the expiry or termination of this Agreement (or part thereof) the Contractor will provide such assistance as is reasonably requested by the Principal for the supply of the Deliverables to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider to the Principal. Such assistance includes (without limitation):

- (a) providing reasonable co-operation with a third party supplier nominated by the Principal, and
- (b) providing the Principal's data, information and materials that may be required to enable transacting with a new provider as requested by the Principal.

### **16.11 Pricing Information**

The Contractor agrees that, subject to clause 9 (Confidentiality), product pricing information (including discounts, commissions and rebates as appropriate) may be

disclosed to any person by the Board at its sole discretion in the form of a User Guide or in any medium of communication it deems appropriate.

### Executed as a Deed

**SIGNED, SEALED AND DELIVERED** )  
 )  
 by [***name and position of person signing***] ) \_\_\_\_\_  
 for and on behalf of the Principal )  
 for and on behalf of the Crown in right of )  
 the State of New South Wales but not so )  
 as to incur any personal liability in the )  
 presence of: )  
 \_\_\_\_\_  
 [insert name of Witness] ) (signature of Witness)

**SIGNED, SEALED AND DELIVERED** )  
 )  
 by \_\_\_\_\_ )  
 [insert name of Contractor] ) (signature of Contractor)  
 )  
 in the presence of \_\_\_\_\_ )  
 [insert name of Witness] ) (signature of Witness)

## Schedule 1 Agreement Details

Item 1	<b>Contractor's Name</b>
Item 2	<b>Term:</b> (clause 2.1.1) Contract Term: Two years commencing on 1/5/09 <b>Period of extended term</b> Three further periods each of up to one year in duration (clause 2.2.1)
Item 3	<b>Codes and Standards</b> <ol style="list-style-type: none"> <li>1. Code of Practice for Procurement</li> <li>2. Implementation Guidelines NSW Government Procurement 1999</li> <li>3. Environmental Management Systems Guidelines</li> <li>4. Occupational Health and Safety Management Systems Guidelines</li> <li>5. Code of Behaviour (for the protection of children and other vulnerable people)</li> </ol>
Item 4	<b>Contractor Key Personnel</b>  <b>Relationship Manager</b>  <b>Name:</b>  <b>Address:</b>  <b>Position:</b>  <b>Telephone:</b> <b>Facsimile</b>
Item 5	<b>Insurances</b> <ol style="list-style-type: none"> <li>a) Public and Product Liability Insurance Limit of Indemnity: \$AU\$20,000,000 for any single occurrence.</li> <li>b) "Dial Before You Dig" An additional insurance excess of \$200,000, payable by the contractor applies to damage to underground existing services where the contractor cannot show it has used "Dial Before You Dig" information services.</li> </ol>
Item 6	Principal's Delegate  <b>Name:</b> NSW Department of Commerce, Heritage and Building Services (HABS).  <b>Address:</b>  <b>Position:</b>  <b>Telephone:</b> <b>Facsimile:</b>
Item 7	<b>Expert Determination Amount:</b>  <b>AUD:\$100,000</b>

<b>Item 8</b>	<b>Notices to:)</b>  <b>The Contractor's contact name and address:</b>  <b>Name:</b>  <b>Address:</b>  <b>Position:</b>  <b>Telephone:</b> <b>Facsimile:</b>
<b>Item 9</b>	<b>The Principal's contact name and address:</b>  <b>Name:</b>  <b>Address:</b>  <b>Telephone:</b> <b>Facsimile:</b>



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## **Schedule 2      Statement of Requirements**

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## **Schedule 3                      Pricing, Price Variation Mechanism, and List of Products**

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Pricing and List of Products

Price Variation Mechanism

Contract prices are firm for the first twelve (12) months of the Contract. Thereafter, Contract rates shall be subject to annual adjustment of 3% on the anniversary of this Agreement.

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## **Schedule 4      List of Approved Sub-Contractors**

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## **Schedule 5      Expert Determination Procedure**

### **1.      Questions to be determined by the Expert**

- 1.1      The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
  - 1.1.1      Is there an event, act or omission which gives the claimant a right to compensation:  
under the Agreement:
    - (a)      for damages for breach of the Agreement, or
    - (b)      otherwise in law?
  - 1.1.2      If so:  
what is the event, act or omission?
    - (a)      on what date did the event, act or omission occur?
    - (b)      what is the legal right which gives rise to the liability to compensation?
    - (c)      is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
  - 1.1.3      In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
    - (a)      What compensation, if any, is due from one Party to the other and when did it fall due?
    - (b)      What interest, if any, is due when the expert determines that compensation?
- 1.2      The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

### **2.      Submissions**

- 2.1      The procedure for submissions to the expert is as follows:
- 2.2      The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 15.5.3 of the Agreement.
- 2.3      The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4      The Party referred to in clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- 2.5      The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6      The expert must ignore any submission, response, reply, or comment not made within the time given in clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7      The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.

- 
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.

**3. Conference**

- 3.1 The expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 3.2 The Parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

**4. Role of Expert**

- 4.1 The Expert:
- 4.1.1 acts as an expert and not as an arbitrator;
  - 4.1.2 must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
  - 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 15.5.3 of the Agreement.
  - 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

***Hire of Power Tools and Equipment***

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## **1. Trade Qualifications**

All work shall be carried out by persons or tradespersons fully qualified and trained for the particular trade work or service required.

Apprentices, trade assistance and labourers are to be under the supervision of a qualified tradesperson, where appropriate.

## **2 Occupational Health and Safety**

2.1 The Contractor must comply with the following OH&S requirements in the performance of any contract awarded:

- (a) The *Occupational Health and Safety Act 2000* (NSW) and any regulation made under this Act, including the OHS Regulation 2001,
- (b) Codes of Practice, approved and issued pursuant to the above Act and or Regulations made under the Act, and
- (c) the NSW Government *Occupational Health and Safety Management Systems Guidelines 4<sup>th</sup> Edition* (OHSM Guidelines), and

2.2 The Contractor must ensure that the Contractor's Sub-Contractors comply with the OH&S requirements listed in clause 2.1 in the performance of any contract awarded.

## **3 Contract and Statutory Requirements**

### **3.1 Appointment as Principal Contractor**

Unless instructed otherwise at time of order, the Contractor, having responsibility for the construction work at all times until the work is completed on a site, is appointed principal contractor and controller of the premises for the construction work under Clause 210 of the *Occupational Health and Safety Regulation 2001* (NSW), and is authorised to exercise such authority of the owner as is necessary to enable it to discharge the responsibilities of principal contractor and controller of premises imposed by the *Occupational Health and Safety Act 2000* (NSW) and Chapter 8 of the *Occupational Health and Safety Regulation 2001* (NSW).

### **3.2 Site-specific Safety Management Plan**

Develop and implement a Site-specific Safety Management Plan for the contract that complies with the *OHSM Guidelines*.

Submit the Site-specific Safety Management Plan for the contract when requested by the Principal. The Contractor will not be allocated any work by the Principal until a complying Site-specific Safety Management Plan has been submitted.

Failure to obtain the Principal's approval to the Site-specific Safety Management Plan and Safe Work Method Statements within three (3) months of commencement of the contract will result in termination of the contract.

When requested by the Principal, submit a Site-specific Safety Management Plan for a specific site no later than 7 days before work commences. Do not start work before a complying Site-specific Safety Management Plan has been submitted.

### **3.3 Safe Work Method Statements**

Prepare and implement Safe Work Method Statements that comply with the *OHSM Guidelines* for all work activities under the contract.

Prepare Safe Work Method Statements for works at each site and submit to the Principal prior to commencing work. Work on site is not to proceed without authorisation by the Principal.

### 3.4 Site Safety Rules

Develop site safety rules that are equal to or better than the following minimum set of site safety rules, include them in the Site-specific Safety Management Plans and ensure implementation.

Site safety rules must make it a condition of entry to the applicable work site that all employees and visitors comply with their provisions, including:

- **Construction OHS Induction.** All persons must display evidence of completing OHS Induction training prior to being inducted to commence work on the Site.
- **Site Induction.** All persons working on the Site must attend a Site Induction prior to entering it. Visitors may enter a work site if, either, they first attend a Site Induction, or if they are accompanied by a person who has attended a Site Induction. All persons each day must sign in and out on the Site Register.
- **Safe Work Method Statements.** Safe Work Method Statements must be prepared and used for all work activities assessed as having a safety risk.
- **Toolbox Talks.** Weekly or more regular discussions must be held with workers to consult on site safety matters.
- **Safety Helmets, Safety Footwear and Safety Vests.** Safety helmets and steel-capped safety footwear must be worn by all supervisors, employees, and visitors in the construction area at all times. The footwear must comply with AS 2210. Safety vests must be worn when moving plant is present or work is undertaken near traffic.
- **Personal Protective Equipment (PPE).** PPE, such as safety eye protection, hearing protection, safety gloves and masks and the like, must be worn when welding, drilling and with all other tasks with similar risks.
- **Accidents and Incidents.** Accidents, incidents and injuries must be reported immediately to the Contractor's and applicable subcontractor's site representative in charge.
- **Alcohol and Drugs.** The consumption of, or being under the influence of, alcohol and illegal drugs on the Site is prohibited.
- **Amenities.** Access to clean toilets and meal facilities, cool, clean drinking water, and the other requirements of the WorkCover [Code of practice: Amenities for construction work](#) must be provided for all persons.
- **Electrical.** All electrical work and electrical plant must comply with the WorkCover [Code of practice: Electrical practices for construction work](#).
- **Emergency evacuation.** Arrangements must be included in the Site Induction and clearly identified.
- **Excavations.** Barricading and signage for all excavations must be provided, with excavations 1.5 metres or more deep also to be benched, battered or shored. See the WorkCover [Code of practice: Excavation](#).
- **Fire Prevention.** Fire prevention must be used by all persons on the Site. An appropriate fire extinguisher must be on hand for all welding sets and oxy acetylene work.
- **First Aid.** All persons requiring first aid treatment must contact the first aid officer who will administer the treatment and record the injury in the WorkCover Register of Injuries, including the person's name and the nature of the injury.
- **Hazardous Substances.** Chemicals and hazardous substances must be used and stored in compliance with up to date Material Safety Data Sheets (MSDS) and details recorded in the Register of Hazardous Substances.

- **Housekeeping.** Work areas must be kept clean and tidy, with rubbish and other safety hazards cleaned up promptly. All protruding nails must be removed immediately from timber.
- **Leads and Power Tools.** All leads, power tools and electrical equipment must be inspected and tagged by a qualified person prior to their use and then at monthly intervals. See the WorkCover [Code of practice: Electrical practices for construction work](#).
- **Mobile Plant.** Every owner of plant must ensure plant is registered with WorkCover when required and operators are appropriately qualified. Plant must be fitted with working hazard lights/reversing lights and beepers. See the WorkCover [Code of Practice for Moving Plant on Construction Sites](#).
- **Overhead Power Lines.** The requirements of the WorkCover [Code of Practice – Work near Overhead Power Lines](#) must be complied with.
- **Site Security and Public Access.** Security measures, including perimeter fencing, must be used to prevent unauthorised access to construction areas and ensure safe access and passage for all those on and adjacent to the Site. Security must comply with Clause 235 of the OHS Regulation 2001 and the WorkCover [Position paper: The requirements for fencing](#).
- **Underground Services.** Prior to any underground work being carried out, services must be located using Dial Before You Dig, a services locator, potholing and the other precautions identified in the WorkCover [Work Near Underground Assets Guideline](#).
- **Working at Height.** Working at heights must be in accordance with WorkCover requirements, including certification of formwork and scaffolding. See the WorkCover [Guide to Safe Working at Heights](#).

### 3.5 OHS Management Monthly Report

The Principal may request the Contractor to provide an OHS Management Monthly Report, detailing *Inspection, testing and servicing activities, Internal reviews and Incident management and corrective action*, and including the information listed below, as evidence of the implementation of the Site-specific Safety Management Plan during the previous month. Such reports are to be provided no later than the seventh (7<sup>th</sup>) day of each month,

#### Contract Details

- Contract
- Contractor
- Contractor's representative
- Signature and Date
- Period Covered

#### Implementation of **Risk management** (OHSM Guidelines Section 5, element 1)

Summary of OHS inspections and reviews carried out to identify risks and hazards and ensure risk management controls are being implemented for:

- plant and equipment
- incoming products
- work site conditions
- adherence to and completeness of Risk Assessments, Safe Work Method Statements and Site Safety Rules
- work site access and exits
- personal protective equipment

#### Implementation of **OHS training** (OHSM Guidelines Section 5, element 3)

An up to date copy of the Induction Register and details of OHS training carried out.

#### Implementation of **Incident management** (OHSM Guidelines Section 5, element 4)

Details of:

- any OHS incidents or OHS issues, including non-compliance with OHS procedures and near misses
- implementation of incident management
- implementation of corrective action
- OHS statistics for entire the Contract including:

**This Month**

**Total Cumulative**

Number of Lost Time Injuries

*Number of Hours Worked*

*Number of Hours Lost Due to Injury*

*Lost Time Injury Frequency Rate LTIFR*

*Number of OHS Management Audits*

*Number of OHS Inspections*

**Implementation of *Safe Work Method Statements* (OHSM Guidelines Section 5, element 6)**

An up to date copy of the register of Safe Work Method Statements, including confirmation that the principal contractor has ensured that all Safe Work Method Statements comply with the *OHS Regulation 2001* and that their implementation is being monitored.

**3.6 Incident Reports**

Ensure compliance with the notification and other requirements of *OHS Regulation 2001* Clauses 341 and 344 for accidents, incidents and non-disturbance occurrences, including immediate notification of WorkCover where required.

Immediately notify the Principal of any accident or incident defined in *OHS Regulation 2001* Clauses 341 and 344.

Provide a written report to the Principal within twenty-four hours of the incident, giving details of the incident and evidence that notification requirements have been met.

When requested, provide an incident investigation report, including identification of the cause of the incident and corrective actions taken, in the form directed.

**3.7 Prohibition and Improvement Notices and On-The-Spot Fines**

Immediately notify the Principal of any Prohibition and Improvement Notice (PIN) or on-the-spot fine issued by WorkCover. Provide the Principal with a copy of the PIN or fine notice and written details of the corrective action taken by the Contractor and/or the applicable subcontractor to rectify the breach and to prevent recurrence.

**3.8 Electrical work on electrical installations**

In compliance with section 207 of the *OHS Regulation 2001*, ensure that electrical work on an electrical installation is not carried out while the circuits and apparatus of the part of the installation that is being worked on are energised, unless it is necessary to do so in the interests of safety and the risk of harm would be greater if the circuits and apparatus were de-energised before work commenced.

### **3.9 Independent Certification of Formwork**

In this clause, the terms “qualified engineer” and “formwork” have the meanings given in Clause 209 of the *OHS Regulation 2001*. “Related Entities” means businesses, one of which is owned wholly or in part by the other or that have proprietors, directors, officers, shareholders or employees in common.

Inspection and certification of formwork, if required by Clause 233 of the *OHS Regulation 2001*, must be carried out by a qualified engineer who is not a proprietor, director, officer, or employee either of the entity carrying out the formwork erection or a Related Entity to that entity. In addition, if the Contractor carries out the design of the formwork, then the qualified engineer must not be a proprietor, director, officer or employee either of the Contractor or a Related Entity to the Contractor.

If such inspection and certification are required, the Contractor and any subcontractors involved must include the inspection and certification as actions in Safe Work Method Statements for the erection and use of formwork, and they must be hold points in the Contractor's and subcontractors' Inspection and Test Plans.

Submit formwork certification before commencing the use of the formwork. Do not use the formwork before this certification is submitted.

### **3.10 Failure to Comply**

If at any time the Contractor has not carried out its obligations under the Contract in relation to occupational health and safety management, then notwithstanding any other provisions of the Contract, no payment will be due to the Contractor until the 7<sup>th</sup> day after the required action has been carried out.

## **4 Hazardous Substances**

### **4.1 Definition**

Hazardous Substance means a substance that is listed in the document entitled *List of Designated Hazardous Substances* published by Worksafe Australia; or a substance that fits the criteria for a hazardous substance set out in the document entitled *Approved Criteria for Classifying Hazardous Substances* published by Worksafe Australia.

Asbestos, material containing asbestos, polychlorinated biphenyl (PCB) and lead based paints are recognised as hazardous substances. Other substances in certain situations are also considered hazardous and therefore require controlled handling. Examples are glues, solvents, cleaning agents, paints, and water treatment chemicals.

Work involving stone, rock, concrete, masonry and such materials containing silica, is work under the Contract whether explicitly identified in the Specification or not. The Contractor is responsible for the control of any hazard which may arise from the presence of silica.

### **4.2 Response to Unexpected Discovery**

If any hazardous substance not specified in work under the Contract is discovered on the Site the Contractor must suspend all work which may result in exposure to such hazardous substance and notify the Principal's Representative immediately of the type of substance and its location.

With the initial notification, or as soon as practicable thereafter, submit details, including:

- the additional work and additional resources the Contractor estimates to be necessary to deal with the substance so that work and subsequent use of the Works may proceed safely and without risk to health
- the time the Contractor anticipates will be required to deal with the substance and the expected delay in achieving Completion;
- the Contractor's estimate of the cost of the measures necessary to deal with the substance; and
- other details reasonably required by the Principal's Representative

The Contractor must, in planning and carrying out any work dealing with the substance take all reasonable steps:

- to carry out the work concurrently with other work wherever possible; and
- to otherwise minimise effects of the work on the Contractual Completion Date.

#### **4.3 Responsibility For Decontamination**

Control and decontamination of any hazardous substances is the responsibility of:

- the Principal, in respect of any such substances not identified in the Contract Documents, which are discovered on the Site; and
- the Contractor, in respect of any such substances identified in the Contract Documents.

#### **4.4 Decontamination By Principal**

Where the Principal is responsible for the control and decontamination of any hazardous substances, the Principal's Representative may suspend the whole or any part of the Works until the hazardous substances are isolated or removed.

#### **4.5 Decontamination By Contractor**

Where the Contractor is responsible for the control and decontamination of the Site following the discovery of hazardous substances, handle, use, isolate, remove and dispose of such substances in accordance with statutory requirements.

The Environment Protection Authority or Waste Service NSW may advise of suitable disposal sites.

#### **4.6 Working Hours**

When the Contractor is required to decontaminate hazardous substances on occupied Sites, all such decontamination shall be carried out outside normal hours of occupation, unless otherwise approved in writing by the Principal's Representative.

### **5 Asbestos Removal**

#### **5.1 Requirement**

Where the Contractor is responsible for asbestos removal work, comply with the relevant statutory requirements, standards, codes and guidelines, including but not limited to the:

- Occupational Health and Safety Act 2000 (NSW)
- Occupational Health and Safety Regulation 2001 (NSW)
- WorkCover Authority of NSW requirements
- Australian Safety and Compensation Council Code of Practice for the Safe Removal of Asbestos 2<sup>nd</sup> Edition (2005)

- Australian Safety and Compensation Council Code of Practice for the Management and Control of Asbestos in Workplaces (2005)
- Australian Safety and Compensation Council Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Fibres 2<sup>nd</sup> Edition (2005)
- Environmentally Hazardous Chemicals Act 1985 (NSW)
- Waste Avoidance and Resource Recovery Act 2001 (NSW)

## **5.2 Notification and Permit**

Not less than seven days prior to commencing any asbestos removal work, notify the local office of WorkCover and the Principal of the intention to carry out that work.

Where the regulations require a licence for asbestos removal work, before the work commences, submit a copy of the current licence held by the entity that will undertake the work and a copy of any WorkCover permit required for the work.

## **5.3 Monitoring**

Provide air monitoring by an independent testing authority on each day during asbestos removal and on completion of each area where removal has been undertaken.

## **5.4 Clearance Certificate**

Submit to the Principal a clearance certificate from an independent testing authority at the completion of the asbestos removal work.

## **6. Licences**

Where required under the legislation, all persons performing The Works under this Contract are required to hold a current licence. Details of licences, permits or certificates, as may be required to carry out any portion of the works, are to be clearly shown on the Safe Work method Statement.

## **7. Site and Possession**

The Principal is to give the Contractor possession of the site by the time stated in the Order.

The Principal is to give the Contractor sufficient possession to allow the Contractor to perform the Works but is not required to give the Contractor sole or uninterrupted possession of or access to the site.

The Contractor is to begin work on the site as soon as practicable after being given possession of the site by the Principal

The Contractor is to give the Ordering Officer, agents and contractors reasonable access to the site for any purpose

## **8 Care of people and Property**

From and including the date the site is made available to the Contractor to the date of completion of the Works, the Contractor is responsible for the care of the Works, construction plant and things entrusted to the Contractor by the Principal for the purpose of the works.

The Contractor is to make good at the Contractor's expense any damage which occurs to the Site and Works while the contractor is responsible for their care.

The Contractor is also liable for damage caused by the Contractor during the Defects Liability Period.

The Contractor must indemnify and keep the Principal indemnified against any loss or damage to the property of the Principal (including existing property in, about, or adjacent to the Works) and against any legal liability for injury, death or damage to property of others arising from the performance of the Works.

## **10 Tools or Plant Required to Complete the Works**

The schedule of rates detailed in the Price Schedule include the provision of all normal trade tools, plant and normal access equipment necessary to complete the Works.

## **11. Materials, Specialist Subcontract or Special Hire Costs Mark Up**

The Principal will pay the accepted percentage mark up on the cost of Materials, Specialist Subcontracts (not included in the Contractor's Contract) or the cost of approved Hiring special tools or plant used for the Works.

Personnel associated with the wet hire, erection, relocation, removal or any other activities associated with the hire are to be included in hire costs. If required by the Ordering Officer all personnel on site are to be noted on the Service Report(s) for that job. Copies of supplier's invoices to substantiate the costs of Material used in the Works, are to be provided to Ordering Officer for all individual items where costs exceed \$100, and under \$100 when requested.

Copies of supplier's invoices to substantiate the costs of Sub-Contractors or Hire costs of equipment used in the Works are to be provided to Ordering Officer for all individual items

## **12 Environmental Management**

### **12.1 Requirement**

The Contractor must comply with the NSW Government *Environmental Management Systems Guidelines* available on the Internet at:

[www.managingprocurement.commerce.nsw.gov.au/system/index\\_procurement\\_guideline\\_documents.doc](http://www.managingprocurement.commerce.nsw.gov.au/system/index_procurement_guideline_documents.doc)

### **12.2 Environmental Management Plan**

When requested by the Principal, develop and implement an Environmental Management Plan that complies with the *EMS* Guidelines.

The Contractor may elect to complete Schedule 5 Part E - **Environmental Management Plan**, adding objectives and actions as required to suit the risks/hazards associated with the work under the Contract, and implement the completed version as the Environmental Management Plan.

Submit the Environmental Management Plan no later than 7 days before construction work commences when requested by the Principal. Do not start construction work before a complying Environmental Management Plan has been submitted.

### **12.3 Incident reports**

Ensure compliance with the notification and other requirements of the *Protection of the Environment Operations Act 1997 (POEO Act)*.

Immediately notify the Principal of any pollution incident that may cause material harm to the environment, providing evidence that notification requirements of the POEO Act have been met, where applicable.

Report immediately the details of any waste removed from the Site and not disposed of at a lawful facility. When requested, provide an incident investigation report, including identification of the cause of the incident and corrective actions taken, in the form directed.

### **12.4 Failure to comply**

If at any time the Contractor has not carried out its environmental management obligations under the Contract, then notwithstanding any other provisions of the Contract, no payment is due to the Contractor until the 7<sup>th</sup> day after the required action has been carried out.

## **13 Ecologically Sustainable Development**



### 13.1 Requirement

Apply strategies to maximise the achievement of ecologically sustainable development in the design, construction and operation of the Works, including reducing pollutants, greenhouse gas emissions and demand on non-renewable resources such as energy sources and water.

### 13.2 Restricted timbers

Do not use the following timbers or their products for work under the Contract:

- rainforest timbers, unless certification is provided that they are plantation grown;
- timber from Australian high conservation forests.

## 14 Waste Management

### 14.1 Requirement

Implement waste minimisation and management measures, including:

- recycling and diverting from landfill surplus soil, rock, and other excavated or demolition materials, wherever practical;
- separately collecting and streaming quantities of waste concrete, bricks, blocks, timber, metals, plasterboard, paper and packaging, glass and plastics, and offering them for recycling where practical.

Ensure that no waste from the Site is conveyed to or deposited at any place that cannot lawfully be used as a waste facility for that waste.

### 14.2 Monitoring

Monitor and record the volumes of waste and the methods and locations of disposal.

Submit a progress report and a summary report when requested by the Principal, on the implementation of waste management measures, including the total quantity of material purchased, the quantity purchased with recycled content, the total quantity of waste generated, the total quantity recycled, the total quantity disposed of and the method and location of disposal in the form of a *Waste Recycling and Purchasing Report* available on the Internet at:

[www.managingprocurement.commerce.nsw.gov.au/contract\\_management/cm\\_sf\\_waste\\_recycling\\_and\\_purchasing\\_report.doc](http://www.managingprocurement.commerce.nsw.gov.au/contract_management/cm_sf_waste_recycling_and_purchasing_report.doc)

With the *Waste Recycling and Purchasing Report*, submit waste disposal certificates and/or company certification confirming appropriate, lawful disposal of waste.

## 15 Pest Control

Do not use any chemical pesticides or termiticides for new construction work. Use preventive treatment by physical means to minimise the risk of pest infestations.

Chemical treatments may be used in existing buildings only as a last resort for the eradication of pest and termite infestations. Chemical pesticides used for this purpose must be registered by the National Registration Authority for Agricultural and Veterinary Chemicals and applied by a Pest Control Operator licensed by WorkCover.

Pest preventive methods must comply with AS 3660.1-2000 Protection of Buildings from Subterranean Termites (except for references to chemical soil barriers), as well as supplementary standards for existing buildings.

## **16 Standards**

Where the Contract requires compliance with a standard or Code, unless otherwise specified that Standard or Code shall be the one current at the closing date for tenders, except for the Building Code of Australia, which shall be the one current at the date of completion of the Works.

## **17 Prohibition on Smoking**

The Contractor shall not permit its employees to take animals, alcohol or illegal drugs on site. Smoking is not permitted on any site.

## **18 Protection of Existing Flora**

Protect from all damage all trees and other plants that are shown or specified to be retained, or which are beyond the limits allowed to the Contractor or which need not be removed or damaged for maintenance or construction operations. All grassed areas to be fully restored to levels and growth as existing.

## **19 Register of Contractor's Personnel**

The Contractor is to maintain a register of all personnel who will carry out any part of the Works.

The Contractor is responsible for submitting the register to the Ordering Officer within 28 days of the time of acceptance.

The register is to be maintained regularly to keep it up to date and is to be submitted for inspection by the Ordering Officer at three (3) monthly intervals as advised by the Principal.

The names and identification numbers of each employee are to be included on the service reports when submitted to the Ordering Officer.

The register is to include but not be limited to:

- All details about the employee ID Card etc
- Date when persons were issued with photo identification cards.
- Date identification cards returned.
- Date Induction Session (in accordance with clause 20) was conducted and lists those in attendance.
- Material presented at the induction session
- Specific job training undertaken during the term of the contract

Dates and certificates awarded at all induction courses attended as required by Statutory Regulations or site-specific requirements (e.g. Code of Conduct when working in facilities used by children).

## **20 Induction of Contractor's Personnel**

The Contractor is to induct all personnel involved in the Works in all aspects of the Contract.

The induction of personnel is to include but not be limited to;

- Operation of the Contract
- Occupational Health and Safety and site evacuations/emergency procedures
- Site Access and Responsibilities, site risks, hazards, access and responsibilities
- Code of Conduct when working in facilities used by children
- Wearing of Identification Cards

## **21 Protection of Children and Other Vulnerable Persons**

The Contractor must not employ or permit to be employed on work under the Contract at the site or sites a person where the Principal advises the Contractor that, in the opinion of the Principal, that person poses unacceptable risks to children or other vulnerable people cared for at that site. The Contractor must not employ or permit to be employed on work under the Contract at the site or sites a person who has been convicted of a serious sex offence and is prohibited person under the Child Protection (Prohibited Employment) Act 1998.

The Contractor must obtain completed and signed Prohibited Employment Declaration and Consent to Screening forms from all employees and Sub-Contractors. The Contractor must also sight the originals of identity documents. The Contractor shall submit these documents to the Principal in accordance with Section E Clause 22.

A listing of employees and Sub-Contractors to be screened shall be forwarded to the Employment Screening Unit (ESU) of the Department of Education and Training by the Principal.

The results will be advised to the Contractor for its records and/or actions.

The Contractor must not employ a person or permit a person to be employed on work under the Contract at the site or sites unless the Contractor has provided the personal particulars and a consent to employment screening in the form instructed by the Principal.

## **22 Photographic Identification on Cards**

The Contractor is to provide all staff, employees and Sub-Contractors' staff attending all sites with an identification card as authorisation to carry out work on the Contractor's behalf.

This must take the form of a Heritage and Building Services Identification (ID) Card including the authorised person's name and photograph.

All Contractors' staff must wear their ID Card in a prominent easily seen position on their person at all times.

Contractors' staff must present this card on request from the principal, the Client's Representative, School Staff, Police or Security Patrol Officers.

By obtaining this card the Contractor is declaring that the cardholder has completed an induction into the Code for working on or near facilities used by Children.

Refer Schedule 1 FORM A at Part E – DEPARTMENT OF COMMERCE CODE FOR WORKING ON OR NEAR DET, DOCS, JUVENILE JUSTICE, SPORT & RECREATION AND OTHER FACILITIES OCCUPIED OR USED BY CHILDREN.

Schedule 1 at Part E outlines the requirements for obtaining an ID Card from the Principal. The cards can be obtained at a nominal cost per employee/subcontractor. In addition, it is a requirement that the following forms are fully completed by each employee/Sub-Contractor of the Contractor:

- Department of Commerce Code for Working On or Near DET, DOCS, Juvenile Justice, Sport & Recreation and other Facilities Occupied or Used by Children (Part E, Schedule 1, Form A)
- Prohibited Employment Declaration (Part E, Schedule 1, Form B)
- Working with Children Background Check Consent (Part E, Schedule 1, Form C)
- Photo ID Application Form (Part E, Schedule 1, Form D)

The Contractor shall ensure all Identification Cards are registered and monitored and that cards for persons no longer authorised are returned to the Principal immediately. The Contractor shall submit a copy of the register to the Principal when requested.

Cards issued will expire at the nominated completion of the Contract period.

**NOTE** – No payment will be made for persons attending site that are not in possession of, or recorded as having been issued ID cards.

## **23 Temporary Services Required by the Principal**

The Principal will provide no temporary services to the Contractor.

The Contractor may use, free of charge, water and electricity from the existing outlets within the premises, subject to the use of those services not disrupting the normal operation of the premises in any way, not causing any associated problems such as overloading and not being abused or misused. Generally, only single-phase power is available.

Liaise with the Client's Representative before connecting to any such service to ensure that no disruption occurs and to ensure that access to them does not adversely impact on other aspects of the premises such as safety, security, free movement of staff etc.

The Contractor must satisfy himself that the existing water and electrical services meet it's needs and, where required, supplement them from other sources.

## **24 Interruption to Services**

Where there is a possibility of interruption to any service, the Ordering Officer is to be notified of the time and likely duration of the disruption to normal services.

## **25 Site Access and Limitations**

### **General**

The Contractor is responsible for providing and maintaining access to the Works.

As far as practicable, use existing roads and tracks. If access is gained from an adjacent property, obtain the written permission of the owner.

Install temporary barricades fences, gates, signs, temporary access bridges, lighting, etc. necessary for the safety of workers, staff, occupants of the premises and the general public at all times. Maintain such devices for the full duration of the Works.

### **Compliance with Department of Commerce Code when Working in Facilities Occupied or Used by Children is mandatory.**

Contractors and Subcontractors are to abide by the Department of Commerce Code for Working on or near DET, DOCS, Juvenile Justice, Sport & Recreation and other Facilities Occupied or Used by Children – refer Schedule 1.

The Code states "All persons must read and certify that they have read and understood the code before commencing work and/or entering premises used by children."

The Contractor is to ensure all persons who are performing duties under this Contract have read the code and certified their understanding of the requirements contained in the code and have agreed to abide by the code.

## **26 Sites with Heritage Significance**

Contractors should be aware that sites can have heritage significance that can extend to and include fences, walls, trees, paving, etc, NOT JUST BUILDINGS.

The Contractor must ensure that all of their staff and Subcontractor's staff are aware that some sites or parts of sites have been identified as having heritage significance. In such circumstances, take care to preserve the heritage.

It is critical when carrying out work on sites that have a heritage significance that the following is adhered to: -

- When components, sub-assemblies or minimum replacement sections are to be replaced, they must be exact replicas of the original (matching profile of timber, matching roof or floor tiles, etc). If difficulties are experienced obtaining exact replicas, advise the Ordering Officer.
- Stonework, especially sandstone, often has heritage significance. Care should be taken in matching mortar and materials.
- Cleaning of masonry to reveal deterioration or to remove harmful substances or graffiti should be done with care using low-pressure water jets with soft bristle brushes. Abrasive blasting and the use of power tools to clean joints are not permitted.

## **27 Advertising Signs and Sign Boards**

The Contractor shall not display or erect any advertising signs at any site without the written approval of the Ordering Officer.

## **28 Quality of Work**

The Contractor must supply materials (which are new, free from defects and suitable for the purpose and generally like for like unless directed otherwise) and use standards of workmanship and work methods which comply with the Contract, the Building Code of Australia, relevant Australian Standards and Commonwealth and State legislation and subordinate regulations, ordinances, by-laws, orders and proclamations.

## **29 Nominated Defects Liability Period**

The Nominated defects liability period is 26 weeks from the time of completion of the job.

## **30 “Dial Before You Dig”**

### **30.1: Location of Existing Services – Dial Before You Dig**

The Contractor is responsible for locating existing services.

Before commencing excavation the Contractor must obtain, from the Dial Before You Dig information service or all relevant public authorities or owners of underground services, written confirmation of the exact position of underground services at and around the Site, and verify and prominently mark the location of all underground services at the Site.

### **30.2: Dealing with Existing Services**

Existing services (such as drains, watercourses, public utility, telecommunications, and other services) obstructing the Works or if damaged in the course of the Contract, must be dealt with as follows:

- a) if the service is to be continued: repair, divert, relocate as required;
- b) if the service is to be abandoned: cut and seal or disconnect and make safe as required

### **30.3: Resulting Cost and Delay**

Where an existing service obstructs the Works and requires diversion or relocation, the Contractor must notify the Principal immediately with a description of work and estimated cost to carry out the diversion or relocation. When approved, an approval number will be given (refer Part E Clause 13).

Where the Contractor for any reason whatsoever damages an existing service, the Contractor shall bear all costs and any delays for repairing or disconnecting the service.

### **30.4: Notification**

The Contractor is to notify the Principal immediately upon the discovery of services obstructing the Works not shown in the Principal's Documents. Attention is drawn to General Conditions of Contract clause "Site Conditions".

### **31 Contractor Performance Reporting**

The Contractors performance will be reviewed from time to time or where breaches have occurred relating to the Contract.

#### **Objective of Contractor Performance Reporting**

*The objective is to obtain a measure of the Contractor's performance under the contract. This will in turn assist both the Principal and the Contractor in reaching an understanding of the expectations of both parties in areas that the Contractor is excelling and areas that need improvement. It could also affect the contractors' opportunities to undertake work for the Principal.*

A Contractor Performance Report (CPR) will be issued evaluating the Contractors performance on the following criteria:

#### **Time Management**

- ability to achieve milestones and completion of the works
- timely allocation of appropriate resources management of delays due to inclement weather management of industrial conditions
- fair consideration of delays caused by the Principal or other parties, outside the Contractor's control

#### **Standard of Work**

- standard of work as measured against the specification.
- remedial work required
- conformance with specified performance criteria compliance with specified tolerances and finishes
- rectification of defects

#### **Personnel/Sub-Contractors**

- adequacy of the number of site personnel engaged by the Contractor in terms of efficient use of resources for the work
- control of personnel
- payment of workers of all monies due in respect of their employment
- establishment of site protocols
- effective coordination and flow of trades on site
- observance of site rules and procedures
- compliance with NSW Government Security of Payment provisions
- suitability of workers including compliance with the requirements set out in the NSW Government *for Code of Practice Procurement* including management, administrative, scientific or industry skills and overall experience relevant to the tasks undertaken.
- compliance with contractual and legal obligations with respect to subcontractors, consultants and suppliers
- payment to all subcontractors, consultants and suppliers in accordance with contract conditions

#### **Contract Administration**

- adequacy of documentation in meeting the requirements of the contract
- timeliness of the provision of information such as quotations, drawings, reports or other documentation
- timeliness of submission of claims for payment including the adequacy of supporting evidence and provision of statutory declarations required by the contract accuracy of details in claims for payment including rates charged, variations

#### **Co-Operative Relations**

- co-operation in all matters relating to the contract and facility staff and occupants.
- promptly informing of anything which is likely to affect the timing, cost or quality of the works.

- commitment to a co-operative non-adversarial approach through open and effective communication with litigation reserved as a last resort
- evidence of a co-operative culture

#### **OH&S/Environmental Management**

- compliance with requirements in the NSW Government's *OHS Management Systems Guidelines*
- compliance with Project OH&S and Environmental Management Plan or Site-specific Safety Management Plan.
- compliance with safety issues specifically nominated in the contract and/or the Contractor's OH&S Management System/plan for the contract
- quality of and compliance with Safe Work Method Statements
- risk identification, assessment and management
- the number of infringement notices and directions issued to the Contractor concerning safety or environmental management
- results of audits
- fulfilling the Contractor's obligations for subcontractor OH&S management
- compliance with WorkCover Codes of Practice
- accidents and/or serious incidents
- evidence of a safety and environmentally aware culture
- compliance with environmental obligations

Consistent unsatisfactory Contractor Performance Reviews may result in the action outlined in Part E Conditions of Contract Clause 15 (Termination).

### **32 Additional Requirements**

Each Order placed under the Standing Offer Contract may include additional clauses relating specifically to that Order.

Such additional clauses may relate to site or Works requirements, special access provisions, specific requirements or any other matter.

These additional requirements will be conveyed to the Contractor at the time of requesting a quotation and will form a part of the Contract for that Order.

### **33 Special Requirements**

Schedules 1 to 5 hereto describe requirements specific to individual Departments. These requirements form part of any Order placed with the Contractor for that Department.

## SCHEDULES TO THE SPECIAL CONDITIONS OF CONTRACT

### SCHEDULE 1 PROCEDURES FOR OBTAINING A HERITAGE AND BUILDING SERVICES CONTRACTOR PHOTO ID CARD

**When seeking Photo ID's for yourself and/or your employees/subcontractors the steps listed below must be followed, which include completion of the following four (4) documents by each person:**

- Code for working on or near facilities occupied or used by children (FORM A)
  - Prohibited Employment Declaration form (FORM B)
  - Working with Children Background Check Consent form (FORM C)
  - Application for Contractor Photo ID Card (FORM D)
- A photo ID Card application form shall be filled out for each person (FORM D), with a passport-sized photograph attached. Alternatively, arrangements can be made to have photos taken by the principal's staff at our Doonside office upon submission of all required documents (contact Ph. 9672 5158). JPG files of photos will also be accepted by email at [Vena.McGrath@commerce.nsw.gov.au](mailto:Vena.McGrath@commerce.nsw.gov.au).
  - Ensure that **all** of the information requested is supplied.
  - **Include** a payment of \$15.00 (GST inclusive) for each ID in one of the suggested forms (ie Cheque or Money Order).
  - It is essential to ensure that the applicant has been inducted in the Department of Commerce Code for working on or near facilities occupied or used by children. They must sign the acknowledgement on the ID Card application form and complete the bottom of the copy of the code/form provided (FORM A).
  - It is essential that each applicant meets the Industry OH&S Induction requirements of WorkCover and provides the required documentation as evidence of that Induction (attach copy of Construction Industry OHS Induction card – card number must start with "CGI").
  - The employer must sight the original forms of identification noted on the application form ie. Passport, licence, etc and check that the passport photo supplied is that of the applicant. Proof of identification must add to a minimum of 100 points as required by the 100 point check under the *Financial Transaction Reports Act 1988 (Details attached)*. The Employer must sight original documents and certify copies and provide these certified copies with the application.
  - The applicant and the employer must sign the forms.
  - Each person (applicant) shall complete the Prohibited Employment Declaration Form (FORM B) and return with application.
  - Each person (applicant) shall complete the Working with Children Background Check Consent Form (FORM C).
  - Photo ID's will expire at the completion of the contract during which they were issued.
  - If the information required is not supplied or if the forms are not signed, the ID Card will not be printed.
  - Submit the completed forms, payment and supporting documentation to the address noted below (the card will be manufactured and posted once Screening Unit approval of the applicant is received. Photo will not be returned).
  - When received the card must be worn on site at all times or access to the site may be refused.
  - If an employee leaves your organisation, return the card to the following address:

Department of Commerce  
Heritage and Building Services  
PO Box 285,  
Doonside NSW 2767



**FORM A      DEPARTMENT OF COMMERCE - Code for Working on or near DET, DOCS, Juvenile Justice, Sport & Recreation And other Facilities Occupied or Used by Children**

- This Code applies to all Department of Commerce staff and all contractors (and their subcontractors), suppliers and consultants, including but not limited to:
  - building and maintenance workers;
  - cleaners
  - suppliers of materials and similar
- All persons must read and certify that they have read and understood this Code before commencing work and/or entering school premises.
- Any breach of the Code is a serious offence and will lead to disciplinary and/or contractual action.
- All persons must gain permission to enter the school or other facility before commencing work and they may only enter approved areas.
- Generally, the following arrangements will apply, unless the senior person at the school or other facility gives written authority to use alternative arrangements:
  - (i) all cleaners must sign on the school register before commencing work;
  - (ii) all Department of Commerce staff, suppliers and contractors must either sign the Site Register at the Construction Site Office and/or visit the school or facility office and gain the senior person's approval.
- All persons must follow all the following rules:
  - No talking with, touching or interacting with any children or residents except in a serious emergency or safety situation.
  - No use of toilets or amenities - toilets, bubblers, bike-racks, showers, canteens or other facilities at the school/centre. Only approved separate toilets and other facilities are to be used and these must be kept separate from any area used by children.
  - The work area must not be able to be used/accessed by children. Clear signs and barricades (wherever possible) must be used to prevent any inadvertent and/or unauthorised access.
  - Where maintenance and/or cleaning of toilets and similar facilities is necessary, two persons must always be present. Wherever possible, at least one male should be present when male toilets are being maintained/repainted/cleaned and at least one female should be present when similar work is being done on female toilets.
  - Any concerns about children's behaviour must be immediately reported to a senior client representative, such as School Principal or similar person at DOCS and Juvenile Justice and other facilities.
  - An identity card must be kept at all times when on or near the site.
  - Tidy clothing must be worn at all times, including a shirt, shorts or trousers, and must be in good condition.

*I acknowledge that I have read the above Department of Commerce Code for Working on or near DET, DOCS, Juvenile Justice, Sport and Recreation and other Facilities Occupied or Used by Children and agree to abide by the conditions therein.*

EMPLOYER'S COMPANY /  
ORGANISATION NAME:

\_\_\_\_\_

(in block letters)

NAME OF APPLICANT:

\_\_\_\_\_

(in block letters)

SIGNATURE OF APPLICANT:

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**FORM B****PROHIBITED EMPLOYMENT DECLARATION**

The *Commission for Children and Young People Act 1998* makes it an offence for a prohibited person (a person convicted of a serious sex offence, the murder of a child or a child-related personal violence offence, as well as a Registrable person under the *Child Protection (Offenders Registration) Act 2000*) to apply for or otherwise attempt to obtain, undertake or remain in, child-related employment. It does not apply if an order from the Industrial Relations Commission, Administrative Decisions Tribunal or Commission for Children and Young People, declares that the Act does not apply to a person in respect of a specific offence.

For further information on what is child-related employment see the *Working With Children Employer Guidelines*.

**Section 33B of the *Commission for Children and Young People Act 1998* defines a serious sex offence as:**

- an offence, involving sexual activity or acts of indecency, committed in New South Wales and that was punishable by penal servitude or imprisonment for 12 months or more; or
- an offence, involving sexual activity or acts of indecency, committed elsewhere and that would have been punishable by penal servitude or imprisonment for 12 months or more, if it had been committed in New South Wales; or
- an offence under section 80D or 80E (sexual servitude) of the *Crimes Act 1900*, committed against a child; or
- an offence under Sections 91D-91G (child prostitution, other than if committed by a child prostitute) of the *Crimes Act 1900* or a similar offence under a law other than a law of New South Wales; or
- an offence under Section 91H, 578B or 578C (2A) (child pornography) of the *Crimes Act 1900* or a similar offence under a law other than a law of New South Wales; or
- an offence of attempting, or of conspiracy or incitement, to commit an offence referred to in the preceding paragraphs; or
- any other offence, whether under the law of New South Wales or elsewhere, prescribed by the regulations.

**NOTE: A conviction for carnal knowledge is classified as a serious sex offence under this legislation.**

Section 33B of the *Commission for Children and Young People Act 1998* defines a child-related personal violence offence as an offence committed by an adult:

- involving intentionally wounding or causing grievous bodily harm to a child; or
- of attempting, or of conspiracy or incitement, to commit such an offence.

**Under *Commission for Children and Young People Act 1998*:**

- it is an offence for a prohibited person to apply for or otherwise attempt to obtain, undertake or remain in child related employment;
- employers must ask existing employees, both paid and unpaid, and preferred applicants for child-related employment to declare if they are a prohibited person or not;
- all people in child-related employment must inform their employers if they are a prohibited person or remove themselves from child-related employment; and
- penalties are imposed for non compliance.

**I am aware that I am ineligible to apply for or otherwise attempt to obtain, undertake or remain in, child-related employment if I have been convicted of a serious sex offence or child-related personal violence offence as defined in the *Commission for Children and Young People Act 1998*, or if I am a Registrable Person under the *Child Protection (Offenders Registration) Act 2000*.**

**I have read and understood the above information in relation to the *Commission for Children and Young People Act 1998*. I am aware that it is an offence to make a false statement on this form.**

**I consent to a check of my relevant criminal records, to verify the statements I have made here, being undertaken by the NSW Commission for Children and Young People for monitoring and auditing purposes in accordance with Section 36 (1)(f) of the *Commission for Children and Young People Act 1998*.**

**I declare that I am not a person prohibited by the Act from seeking, obtaining, undertaking or remaining in child related employment.**

**I understand that this information may be referred to the Commission for Children and Young People and/or to NSW Police for law enforcement purposes and for monitoring and auditing compliance with the procedures and standards for the Working With Children Check in accordance with Section 36 (1)(f) of the *Commission for Children and Young People Act 1998*.**

All fields must be completed. Please use block letters.

Name: \_\_\_\_\_

Aliases (previous/other names): \_\_\_\_\_

Date of birth: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Contact telephone number: \_\_\_\_\_ Contact Email: \_\_\_\_\_

**NOTE: Seek legal advice if you are unsure of your status as a prohibited person  
This form should be returned to Heritage and Building Services, PO Box 285 Doonside 2767.**

# FORM C

## WORKING WITH CHILDREN BACKGROUND CHECK CONSENT



This form is to be completed by persons whose names are to be submitted for employment screening as part of the Working With Children Check.

**No background checks can be completed on a person without this consent being provided.**

**Employers are required to sight applicant's original identifying documents.**

**All fields must be completed. Please use block letters.**

Surname:		Given name(s):	
Previous names/aliases:		Date of birth:	
Place of birth (city, state, country):		Gender: (Please tick) <input type="checkbox"/> Male <input type="checkbox"/> Female	
Identification type (eg. Driver's licence/passport):		Identification number:	
Address:			
Suburb/Town:		State: Postcode:	
Contact telephone number:		Contact Email:	
Title of position (eg. Carpenter):		Type of position: (Please tick) <input type="checkbox"/> Paid employee	

I certify that the above information is accurate and understand that if I have provided false or misleading information it may result in a decision not to employ me, or, if already employed, may lead to my dismissal.

I am aware that if considered for child-related employment, several checks will be undertaken to ascertain my suitability, including:

- a national criminal record check for charges and/or convictions (including spent convictions) for:
  - any sexual offence (including but not limited to, sexual assault, acts of indecency, child pornography, child prostitution and carnal knowledge);
  - any child-related personal violence offence;
  - any assault, ill treatment or neglect of, or psychological harm to a child and any registrable offence;
 punishable by imprisonment for 12 months or more.

I understand that this check includes convictions or charges that:

- may have not been heard or finalised by a court; or
  - are proven but have not led to a conviction; or
  - have been dismissed, withdrawn, or discharged by a court.
- a check for relevant Apprehended Violence Orders taken out by a police officer or other public official for the protection of a child/ren;
  - a check for relevant employment proceedings involving an act of violence committed in the course of employment and in the presence of children or reportable conduct. Reportable conduct means any sexual offence, or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence), any child-related personal violence offence, or any assault, ill treatment or neglect of a child, or any behaviour that causes psychological harm to a child.

I understand that a conviction for a serious sex offence (including, but not limited to, sexual assault, acts of indecency, child pornography, child prostitution and carnal knowledge) or child-related personal violence offence (including but not limited to, intentionally wounding or causing grievance bodily harm to a child) will automatically prohibit me from child-related employment. This includes a charge that is proven in court but does not proceed to a conviction. I am aware that if I am a Registrable person under the *Child Protection (Registrable Offenders) Act 2000*, I am prohibited from child-related employment.

I consent to these checks being conducted and am aware that if any relevant record is identified, additional information relating to that record may be sought by an Approved Screening Agency from sources such as courts, police, prosecutors and past employers to enable a full and informed estimate of risk.

I acknowledge that:

- the above information and any information obtained during the Working With Children background check may be collected and used by and/or disclosed to the Commission for Children and Young People or any Approved Screening Agency for the purposes of the Working With Children Check;
- the Commission for Children and Young People or any Approved Screening Agency may share the information obtained during the Working With Children background check with each other to support further estimates of risk arising from additional Working With Children background checks;
- the outcome of an estimate of risk conducted with information obtained through the Working with Children Check by the Approved Screening Agency may be provided to my current or prospective employers or an employer-related body (where applicable) only for background checking purposes;
- details of my relevant records will not be released to my current or prospective employers;
- any information obtained as part of this process may be used by Australian Police Services for law enforcement purposes, including the investigation of any outstanding criminal offences; and
- the information provided may be referred to the Commission for Children and Young People and/or to NSW Police for law enforcement purposes and for monitoring and auditing compliance with the procedures and standards for the Working With Children Check in accordance with Section 36 (1) (f) of the *Commission for Children and Young People Act 1998*.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ATTACH CERTIFIED COPIES OF FORMS OF IDENTIFICATION AS PER 100 POINT CHECK REQUIREMENTS**

**FORM D****Application for****Heritage and Building Services****Contractor Photo ID Card**

All information requested on the form to be inserted in the spaces provided.

Please also note that the Principal / Director / Owner of the contracting organisation making the application is to sight original proof of ID supplied by the applicant and certify copies prior to forwarding the application form and copies/attachments.

**(Expiry Date: 30/06/2011)**

**Paste photo in above box.** Photo must be an original and have a light coloured background.

**Note: Do not staple**

***Applicant's Details (Please print)***

First Name: _____	Surname: _____
Address: _____	
Suburb: _____	Postcode: _____
Trade Classification: _____	Birth Date: ____ / ____ / ____
Type of ID: _____	
(note: proof of identification must add to a minimum of 100 points as required by the 100 point check specified in attached page. The Employer must sight original documents and certify copies and provide these certified copies with this application form)	
Construction Industry OH&S Induction	CGI _____ Date of Issue: ____ / ____ / ____
No. (Enter Card number & attach <u>copy</u> )	

**I acknowledge that I have read the Department of Commerce Code for Working on or near DET, DOCS, Juvenile Justice, Sport and Recreation and other Facilities Occupied or Used by Children and agree to abide by the conditions therein.**

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

***Employer's Details (Please print)***

Employer: _____	
Address: _____	
Suburb: _____	Postcode: _____
Phone: _____	Facsimile: _____

*I have sighted the required original proof of ID and all the above information is correct. The attached photo is that of the applicant.*

Name: \_\_\_\_\_ Company Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**FORM D cont.....**

**Method of Payment:** Payment of \$15.00 (GST inc.) per person is required with application.

- ☐ Cheque payable to: NSW Department of Commerce
- ☐ Money Order payable to: NSW Department of Commerce

**FORWARD COMPLETED FORM  
WITH PAYMENT &  
ATTACHMENTS TO:**  
Department of Commerce  
Heritage & Building Services  
PO Box 285 Doonside NSW 2767

**PLEASE ATTACH COPY OF INDUSTRY INDUCTION CARD****Proof of Identification – 100 Point Check****Identifying the preferred applicant accurately**

Before you request a Photo Identification Card and Working With Children background check you must ask preferred applicants to provide documents to support their identity. This must include original documents adding up to a minimum of 100 points as required by the 100 Point Check under the *Financial Transaction Reports Act 1988*. A copy of these original documents shall be certified by the Employer and provided with the application.

The following lists set out the value of each document according to the 100 Point Check.

**70 points**

Name of preferred applicant verified from one of the following (more than one document from this list cannot be counted):

- Birth Certificate
- Birth Card issued by the NSW Registry of Births, Deaths and Marriages
- Citizenship Certificate
- Current Australian passport
- Expired Australian passport which has not been cancelled and was current within the preceding 2 years
- Current passport from another country or diplomatic documents.

For a preferred applicant under 18 years, one document from the above list, or the following, is sufficient:

- Identity of the applicant verified by an educational institution, either on a student card or a letter signed by the principal, deputy principal, head teacher, deputy head teacher or enrolment officer, confirming that the applicant currently attends the institution.

**40 points**

Name and photograph/signature of preferred applicant verified from one of the following (more than one document can be counted):

- Current driver photo licence issued by an Australian state or territory
- Identification card issued to a public employee
- Identification card issued by the Australian or any state government as evidence of a person's entitlement to a financial benefit
- Identification card issued to a student at a tertiary education institution.

**35 points**

Name and address of preferred applicant verified from any of the following (more than one document can be counted):

- Document held by a cash dealer giving security over property
- A mortgage or other instrument of security held by a financial body
- Council rates notice
- Document from current employer or previous employer within the last two years
- Land Titles Office record
- Document from the Credit Reference Association of Australia.

**25 points**

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Name of preferred applicant verified from any of the following (more than one document can be counted):

- Current credit card or account card from a bank, building society or credit union
- Local council rates notices
- Current telephone, water, gas or electricity bill
- Foreign driver's licence
- Medicare Card
- Electoral roll compiled by the Australian Electoral Commission
- Lease/rent agreement
- Current rent receipt from a licensed real estate agent
- Records of a primary, secondary, or tertiary educational institution attended by the applicant within the last 10 years
- Records of a professional or trade association of which the applicant is a member.

**SCHEDULE 2 ADDITIONAL REQUIREMENTS WHEN WORKING IN SCHOOLS**

All personnel when attending work in schools must at all times wear their photographic identity card in a prominent easily seen position on their person in addition to any site specific identity symbol.

All personnel must report to the school's administration office on arrival and before departure, to record their visit at the school and to sign the School Maintenance Site Visit Log-book.

Access to Sensitive Areas:

When working in sensitive areas, the Contractor is to erect appropriate signs advising that work is in progress and directing users elsewhere to the closest facilities available.

Special care must be taken when accessing or carrying out work in change rooms, bathrooms, toilets, showers etc. and generally work in such areas in schools is to be undertaken outside normal school hours.

The work may be performed during normal school hours only where alternative facilities are available and with the written approval of the School Principal.

The Ordering Officer is to be advised when alternative facilities are not available and that the work required will need be performed at the "outside normal hours" schedule rate

Note: Normal school hours will vary, depending on the school's timetable. Work may be able to be programmed with the School Principal for early morning, late afternoon or on sports afternoon to enable the works to be completed quickly and without the additional cost of performing the work at the "out of normal hours" rate. The hours of operation for attending may be clarified with the Ordering Officer, when accepting the Work Order.

### SCHEDULE 3 SITE-SPECIFIC SAFETY MANAGEMENT PLAN

In accordance with Conditions of Contract clause - **Occupational Health and Safety**, the Contractor must develop and implement a Site-specific Safety Management Plan that complies with the NSW Government **Occupational Health & Safety Management Systems Guidelines 2004**. Please refer to **How to prepare Site-Specific Safety Management Plans and Safe Work Method Statements** (June 2004). Both documents are available from: [www.managingprocurement.commerce.nsw.gov.au/system/index\\_procurement\\_guideline\\_documents.doc](http://www.managingprocurement.commerce.nsw.gov.au/system/index_procurement_guideline_documents.doc)

#### The Contractor's Site-specific Safety Management Plan

For this contract the Contractor's Site-specific Safety Management Plan must:

- ☐ be on the Contractor's letterhead, and
- ☐ signed and dated by a senior manager, and
- ☐ **must cover:**
  - ☐ **Statement of responsibilities** – names and positions of people on site who will be responsible for OHS management, with a description of those responsibilities.
  - ☐ **Risk Management** – identified hazards associated with each work activity, with the risks assessed and actions proposed to eliminate or minimise the risks and methods for monitoring the risk controls documented. Include OHS risks identified by the Principal.
  - ☐ **OHS Training** – arrangements for OHS training, including Induction training and toolbox meetings.
  - ☐ **Incident and Emergency Management** – arrangements for managing accidents and near misses, with the name(s) of responsible persons and their contact details, including after-hours contact.
  - ☐ **Site Safety Rules** – a copy of the rules, which must also be displayed on the site and make it a condition of entry to the site that all employees and visitors comply with their provisions, and which must include as a minimum:
    - **Construction OHS Induction.** All persons must display evidence of completing OHS Induction training prior to being inducted to commence work on the site.
    - **Site Induction.** All persons working on the site must attend a Site Induction prior to entering it. Visitors may enter the site if, either, they first attend a Site Induction, or they are accompanied by a person who has attended a Site Induction. All persons each day must sign in and out on the Site Register.
    - **Safe Work Method Statements.** Safe Work Method Statements must be prepared and used for all work activities assessed as having a safety risk.
    - **Toolbox Talks.** Weekly or more regular discussions must be held with workers to consult on site safety matters.
    - **Safety Helmets, Safety Footwear and Safety Vests.** Safety helmets and steel-capped safety footwear must be worn by all supervisors, employees, and visitors in the construction area at all times. The footwear must comply with AS 2210. Safety vests must be worn when moving plant is present or work is undertaken near traffic.
    - **Personal Protective Equipment (PPE).** PPE, such as safety eye protection, hearing protection, safety gloves and masks and the like, must be worn when welding, drilling and with all other tasks with similar risks.
    - **Accidents and Incidents.** Accidents, incidents and injuries must be reported immediately to the Contractor's and applicable subcontractor's site representative in charge.
    - **Alcohol and Drugs.** The consumption of, or being under the influence of, alcohol and illegal drugs on the site is prohibited.
    - **Amenities.** Access to clean toilets and meal facilities, cool, clean drinking water, and the other requirements of the WorkCover **Code of practice: Amenities for construction work**, must be provided for all persons.
    - **Electrical.** All electrical work and electrical plant must comply with the WorkCover **Code of practice: Electrical practices for construction work**.
    - **Emergency evacuation.** Arrangements must be included in the Site Induction and clearly identified.
    - **Excavations.** Barricading and signage for all excavations must be provided, with excavations 1.5 metres or more deep also to be benched, battered or shored. See the WorkCover **Code of practice: Excavation**.
    - **Fire Prevention.** Fire prevention must be used by all persons on the site. An appropriate fire extinguisher must be on hand for all welding sets and oxy acetylene work.
    - **First Aid.** All persons requiring first aid treatment must contact the first aid officer who will administer the treatment and record the injury in the WorkCover Register of Injuries, including the person's name and the nature of the injury.



- **Hazardous Substances.** Chemicals and hazardous substances must be used and stored in compliance with up to date Material Safety Data Sheets (MSDS) and details recorded in the Register of Hazardous Substances.
  - **Housekeeping.** Work areas must be kept clean and tidy, with rubbish and other safety hazards cleaned up promptly. All protruding nails must be removed immediately from timber.
  - **Leads and Power Tools.** All leads, power tools and electrical equipment must be inspected and tagged by a qualified person prior to their use and then at monthly intervals. See the WorkCover [Code of practice: Electrical practices for construction work](#).
  - **Mobile Plant.** Every owner of plant must ensure plant is registered with WorkCover when required and operators are appropriately qualified. Plant must be fitted with working hazard lights/reversing lights and beepers. See the WorkCover [Code of Practice for Moving Plant on Construction Sites](#).
  - **Overhead Power Lines.** The requirements of the WorkCover [Code of Practice – Work near Overhead Power Lines](#) must be complied with.
  - **Site Security and Public Access.** Security measures, including perimeter fencing, must be used to prevent unauthorised access to construction areas and ensure safe access and passage for all those on and adjacent to the site. Security must comply with Clause 235 of the OHS Regulation 2001 and the WorkCover [Position paper: The requirements for fencing](#).
  - **Underground Services.** Prior to any underground work being carried out, services must be located using Dial Before You Dig, a services locator, potholing and the other precautions identified in the WorkCover [Work Near Underground Assets Guideline](#).
  - **Working at Height.** Working at heights must be in accordance with WorkCover requirements, including certification of formwork and scaffolding. See the WorkCover [Guide to Safe Working at Heights](#).
- ❑ **Safe Work Method Statements** - for activities identified as having an OHS risk, which must:
- be on the letterhead of the organisation carrying out the work, showing the name and registered office address of the organisation;
  - be signed as authorised by a senior manager, and dated; and
  - **must describe:**
    - ❑ work activities to be undertaken, including the step-by-step sequence involved in doing the work
    - ❑ potential hazards and health and safety risks associated with each step of the work activity
    - ❑ safety controls that will be in place to minimise these hazards and risks
    - ❑ all health and safety instructions to be given to persons involved with the work activity
    - ❑ safety legislation, codes or standards applicable to the work activity and where these are kept
    - ❑ names and qualifications of those who will supervise the work activity and inspect and approve for use work areas, work methods, protective measures, plant, equipment and power tools
    - ❑ the training required, and when it was or will be given each person involved with the work activity
    - ❑ names of all those involved with the work activity and those who have been or will be or have been relevantly trained, and the names and qualifications of those responsible for training them
    - ❑ plant and equipment that will most likely be used in the work activity (eg. ladders, scaffolds, grinders, electrical leads, welding machines, fire extinguishers and the like)
    - ❑ any WorkCover permits required to complete the work activity
    - ❑ the inspection and maintenance checks that have been or will be carried out on the equipment listed prior to its use.

<b>SCHEDULE 4 STATUTORY DECLARATION</b>
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	Definitions	Oaths Act (NSW) Ninth Schedule
<i>The Principal is</i>	.....	
<i>The Contractor is</i>	.....	
	ACN/ABN.....	
<i>The Contract is</i>	Contract No. ....	
	Contract Title.....	
	Dated .....(Date of Contract) between the party identified as the Principal and the party identified as the Contractor.	

	<i>Declaration</i>
<i>Full name</i>	I, .....
<i>Address</i>	of .....
	.....

do hereby solemnly declare and affirm that:

- |   |   |  |
|---|---|--|
| <i>Insert position title of the Declarant</i> | 1 | I am the representative of the Contractor in the Office Bearer capacity of .....   |
|   | 2 | I am in a position to make this statutory declaration about the facts attested to. |

**REMUNERATION OF CONTRACTOR'S EMPLOYEES ENGAGED TO CARRY OUT WORK IN CONNECTION WITH THE CONTRACT**

- |   |   |
|---|---|
| 3 | All remuneration payable to the Contractor's relevant employees for work done in connection with the Contract to the date of this statutory declaration has been paid and the Contractor has made provision for all other benefits accrued in respect of the employees. |
|---|---|

Relevant employees are those engaged in carrying out the work done in connection with the Contract.

Remuneration means remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees [s127 (6) of the Industrial Relations Act 1996].

**REMUNERATION OF THE EMPLOYEES OF SUBCONTRACTORS ENGAGED TO CARRY OUT WORK IN CONNECTION WITH THE CONTRACT**

- |   |   |
|---|---|
| 4 | The Contractor <i>is/is not</i> a principal Contractor for the work done in connection with the Contract, as defined in section 127 of the Industrial Relations Act 1996. (Delete the words <i>in italics</i> that are not applicable.)   |
| 5 | Where the Contractor is also a principal Contractor for work done in connection with the Contract, the Contractor has been given a written statement in its capacity of principal Contractor under section 127(2) of the Industrial Relations Act 1996 by each subContractor in connection with that work stating that all remuneration payable by each subContractor to the subContractor's relevant employees for work done in connection with the Contract to the date of this declaration has been paid, and each subContractor has made provision for all other benefits accrued in respect of each subContractor's employees. |
| 6 | I am aware that the Industrial Relations Act 1996 requires any written statement provided by subContractors must be retained for at least 6 years after it was given and declare that the Contractor has accordingly made arrangements for the secure retention of the written  |

statements.

### **WORKERS COMPENSATION INSURANCE OF THE CONTRACTOR'S WORKERS**

- 7 All workers compensation insurance premiums payable by the Contractor to the date of this statutory declaration in respect of the work done in connection with the Contract have been paid. This statutory declaration is accompanied by a copy of any relevant certificate of currency in respect of that insurance.

### **WORKERS COMPENSATION INSURANCE FOR WORKERS OF SUBCONTRACTORS**

- 8 The Contractor *is / is not* a principal Contractor for work done in connection with the Contract, as defined in section 175B of the Workers Compensation Act 1987.  
(Delete the words *in italics* that are not applicable.)
- 9 Where the Contractor is also a principal Contractor for work done in connection with the Contract, the Contractor has been given a written statement under section 175B of the Workers Compensation Act 1987 in the capacity of principal Contractor in connection with that work to the intent that all workers compensation insurance premiums payable by each subContractor in respect of that work done to the date of this statutory declaration have been paid, accompanied by a copy of any relevant certificate of currency in respect of that insurance.
- 10 I am aware that the Workers Compensation Act 1987 requires any written statement provided by subContractors and any related certificate of currency must be retained for at least 7 years after it was given and declare that the Contractor has accordingly made arrangements for the secure retention of the written statements.

### **EMPLOYER UNDER THE PAY-ROLL TAX ACT**

- 11 The Contractor *is registered as / is not required to be registered as* an employer under the Pay-roll Tax Act 1971.  
(Delete the words *in italics* that are not applicable.)
- 12 All pay-roll tax payable by the Contractor in respect of wages paid or payable to the relevant employees for work done in connection with the Contract to the date of this statutory declaration has been paid.
- 13 The Contractor *is / is not* a principal Contractor for work done in connection with the Contract, as defined in section 31G of the Pay-roll Tax Act 1971.  
(Delete the words *in italics* that are not applicable.)
- 14 Where the Contractor is also a principal Contractor for work done in connection with the Contract, the Contractor has been given a written statement under section 31H of the Pay-roll Tax Act 1971 in the capacity of principal Contractor in connection with that work to the intent that all pay-roll tax payable by each subContractor in respect of the wages paid or payable to the relevant employees for that work done to the date of this statutory declaration has been paid.
- 15 I am aware that the Pay-roll Tax Act requires any written statement provided by subContractors must be retained for at least 5 years after it was given and declare that the Contractor has accordingly made arrangements for the secure retention of the written statements.

**PAYMENTS TO SUBCONTRACTORS**

- 16 The Contractor has paid every SubContractor, Supplier and Consultant all amounts payable to each of them by the Contractor as at the date of this statutory declaration with respect to engagement of each of them for the performance of work or the supply of materials for or in connection with the Contract.
- 17 The provisions of clause “SECURITY OF PAYMENT”, if included in the Contract, have been complied with by the Contractor.
- 18 The Contractor has been informed by each SubContractor and Consultant to the Contractor (except for SubContracts and agreements not exceeding \$25,000 at their commencement) by written statement in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):
1. *that their subContracts with their subContractors, consultants and suppliers comply with the requirements of clause “SECURITY OF PAYMENT”, if included in the Contract, as they apply to them; and*
  2. *that all of their employees, subContractors, consultants and suppliers, as at the date of the making of such a statement have been paid all remuneration and benefits due and payable to them by, and had accrued to their account all benefits to which they are entitled from, the SubContractor or Consultant of the Contractor or from any other of their subContractors or consultants (except for their subContracts and agreements not exceeding \$25,000 at their commencement) in respect of any work for or in connection with the Contract.*
- 19 I am not aware of anything to the contrary of any statutory declaration referred to in paragraph 18 of this declaration and on the basis of the statements provided, I believe the matters set out in paragraph 18 to be true.
- 20 And I make this solemn declaration, as to the matters aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

*Signature of Declarant* .....

declared at

*Place* .....

*Date* on.....

before me

*Signature of legally authorised person\* before whom the declaration is made* .....

*Name and title of person\* before whom the declaration is made* .....

.....

**Notes:**

## 1. In this declaration:

1. the words “principal”, “Contractor”, “employee”, “employees” and “relevant employees” have the meanings applicable under the relevant Acts;
2. the word “subContractor” in paragraphs 5, 6, 9, 10, 14 and 15 has the meaning applicable under the relevant Act; and
3. otherwise the words “Contractor”, “SubContractor”, “Supplier”, “Consultant”, “subContractor”, “supplier” and “consultant” have the meanings given in or applicable under the Contract.

## 2. \* the declaration must be made before one of the following persons:

- (a) where the declaration is sworn within the State of New South Wales:

- (ii) a justice of the peace of the State of New South Wales;
  - (iii) a solicitor of the Supreme Court of New South Wales with a current practising certificate;
  - (iv) a notary public; or
  - (v) another prescribed person legally authorised to administer an oath under the Oaths Act (NSW); or
- (b) where the declaration is sworn in a place outside the State of New South Wales:
- (i) a notary public; or
  - (II) any person having authority to administer an oath in that place.

## SCHEDULE 5 ENVIRONMENTAL MANAGEMENT PLAN

In accordance with the *Environmental Management* clause, the Contractor must develop and implement an acceptable site-specific Environmental Management Plan in the following form, incorporating additional objectives and actions applicable to the risks and opportunities associated with this contract.

The environmental risk management objectives	The environmental risk management measures:
<b>1. CONSERVATION OF PLANTS &amp; WILDLIFE</b>	
Protection of trees, plants and animals	<input type="checkbox"/> Protect existing trees and plants at and around the Site from damage and do not remove flora without approval from the Principal <input type="checkbox"/> Protect birds, fish and animals at and around the Site from harm and do not remove fauna from the Site without approval from the Principal <input type="checkbox"/> Ensure that animals and plants are not brought onto the Site without the written agreement of the Principal <input type="checkbox"/> Minimise the use of pesticides and herbicides and ensure minimal impact on the environment <input type="checkbox"/> Use site roads or approved access routes for vehicular and equipment access <input type="checkbox"/> Park all vehicles and equipment in designated or approved areas <input type="checkbox"/> Use approved access routes for all pedestrian and goods movements to vehicles, equipment, facilities and construction sites <input type="checkbox"/> The Contractor nominates the following additional measures:    <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:   
<b>2. CONSERVATION OF RESOURCES</b>	
Manage Materials used under contract to minimise: 1. resource use 2. ozone depleting effects 3. detrimental effects on air, water, quality.	<input type="checkbox"/> Minimise the use of imported topsoil <input type="checkbox"/> Reuse all topsoil on site <input type="checkbox"/> Use only timber from sustainable managed sources <input type="checkbox"/> Maximise the use of materials from a sustainable source, that are, and/or can be, recycled <input type="checkbox"/> Use low energy usage construction, fittings and appliances (including heating/cooling and lighting) <input type="checkbox"/> Use low potable water demand fittings and appliances (dual flush toilets, water conserving shower roses and taps) <input type="checkbox"/> Ensure packaging is minimised and recycled <input type="checkbox"/> Minimise the use of solvents, glues, paints and other materials which release odours or vapour <input type="checkbox"/> The Contractor nominates the following additional measures:    <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:   
<b>3. POLLUTION CONTROL</b>	
Vehicles and plant	<input type="checkbox"/> Do not use vehicles or plant producing excessive emissions <input type="checkbox"/> Do not bring vehicles or plant with fuel or oil leaks to the Site <input type="checkbox"/> Wash down vehicles only in areas approved by the Principal.

The environmental risk management objectives	The environmental risk management measures:
	<input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Stormwater is not polluted by cleaning activities and plants/grass are not adversely affected	<input type="checkbox"/> Use only water based, non-toxic paints <input type="checkbox"/> Use only water to clean brushes and rollers <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Soil Erosion controlled	<input type="checkbox"/> Install the following sediment control devices prior to commencement of construction:  <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Soil contamination is not disturbed or released to the environment	<input type="checkbox"/> Establish, in consultation with the Principal, if contaminated soil is present at the site prior to commencing work at the site <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Charging and/or disposal of refrigerants meet statutory requirements, eg. for licensing and disposal	<input type="checkbox"/> Ensure procedures are used to meet statutory obligations for the charging and disposal of refrigerants <input type="checkbox"/> Use appropriately trained employees <input type="checkbox"/> Document disposal and retain documentation <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Noise impact on neighbours, occupants or users of facility minimised	<input type="checkbox"/> Keep within EPA and Council noise limits <input type="checkbox"/> Use equipment in good repair and condition <input type="checkbox"/> Use noise suppression equipment (eg. silencers on compressors) <input type="checkbox"/> Do not expose workers and visitors to excessive noise

The environmental risk management objectives	The environmental risk management measures:
	<input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Trade Waste Licence conditions applicable to the facility are not breached.	<input type="checkbox"/> Ensure procedures are in place to avoid breaches of the trade Waste Conditions (May apply to discharges from cooling water systems, condenser water systems, heating water systems, cooking facilities, engine discharges etc where water is treated with chemicals or where large sediment loads exist) <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Air Pollution from dust and emissions minimised	<input type="checkbox"/> Minimise areas of exposed earth <input type="checkbox"/> Use water sprays and/or other means to control dust <input type="checkbox"/> Keep emissions within statutory or required limits <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  
Disposal of waste, including - <ul style="list-style-type: none"> <li>• Packaging materials</li> <li>• Replaced or redundant parts or materials.</li> <li>• Chemicals</li> <li>• Oils and greases from machinery and cooking processes</li> <li>• Paints and solvents including the cleaning of equipment, tools and brushes</li> <li>• Cleaning materials and rags</li> <li>• Other waste,</li> </ul> in accordance with statutory requirements	<input type="checkbox"/> Ensure appropriate procedures are used for the disposal of all waste items.  EITHER <input type="checkbox"/> Provide valid disposal certificates for each applicable item.  OR <input type="checkbox"/> Provide company certification of appropriate disposal of the following:  <input type="checkbox"/> The Contractor nominates the following additional measures:  <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures:  



The environmental risk management objectives	The environmental risk management measures:
<b>Emergencies</b> Incidents and spills are contained, and damage to the environment is minimised and rectified with appropriate and approved emergency response procedures	<input type="checkbox"/> Ensure emergency procedures are used to manage all reasonably foreseeable harm, including spills and other environmental emergencies <input type="checkbox"/> Agree with the Principal to procedures for handling oil and chemicals before placing on the Site <input type="checkbox"/> Document key contacts <input type="checkbox"/> The Contractor nominates the following additional measures: ..... <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures: .....
<b>Compliance Audit</b> Compliance with Principal environmental requirements and, where breaches are detected, rectification of defects within the time period set in the audit process	<input type="checkbox"/> Inspect the Site daily to ensure the appropriate environmental controls are in place and are operating effectively, and to ensure all environmental management requirements are being met <input type="checkbox"/> Cooperate with environmental audits by others <input type="checkbox"/> Rectify any environmental breaches identified within the time frame specified in an audit or by the Principal <input type="checkbox"/> The Contractor nominates the following additional measures: ..... <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures: .....
<b>4. RECORDS AND REPORTING</b>	
<b>Records</b> Sufficient documentation to demonstrate: <ul style="list-style-type: none"> <li>• Approved management plans</li> <li>• Training records</li> <li>• Valid disposal certificates and/or company certification of appropriate disposal as applicable</li> <li>• Correspondence with regulators including evidence that the cause of non-compliances has been fixed</li> </ul>	<input type="checkbox"/> Update the contract specific EMP <input type="checkbox"/> Report on the implementation of the contract specific EMP <input type="checkbox"/> Submit Incident reports to the Principal and to regulators where required <input type="checkbox"/> Submit waste disposal certificates or certification of appropriate disposal to the Principal where applicable <input type="checkbox"/> Keep training records for inspection <input type="checkbox"/> The Contractor nominates the following additional measures: ..... <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures: .....
<b>Incident Reporting</b> All environmental incidents are immediately reported to Principal	<input type="checkbox"/> Immediately report all environmental incidents to the Principal <input type="checkbox"/> The Contractor nominates the following additional measures: ..... <input type="checkbox"/> The Contractor identifies the following person who will be responsible for managing the above measures: .....