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

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

**Request for Tender
RFT Id: 0800374**

**Provision of Workers Compensation Wage Audit
Services for WorkCover Authority of New South
Wales and the Workers Compensation Nominal
Insurer**

1 July 2009 to 30 June 2012

RFT Issue Date: Monday 2 February 2009

Closing Date: Wednesday 18 March 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, Contracting Services
NSW Procurement
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: 1800 679 289
NSWBUY@commerce.nsw.gov.au

Provision of Workers Compensation Wage Audit Services for NSW WorkCover Authority

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REQUEST FOR TENDER - PART A – OVERVIEW

1 Introduction

This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the provision of Wage Audit Services on behalf of the WorkCover Authority of New South Wales (WorkCover) and the Workers Compensation Nominal Insurer (Nominal Insurer) under the proposed Contract Agreement detailed at Part D to this RFT.

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services, whilst the proposed Contract Agreement will be executed between WorkCover Authority of New South Wales, the Workers Compensation Nominal Insurer and the successful tenderers.

2 Objectives

The objectives of the proposed Contract Agreement in achieving the desired outcome, include, but are not limited to the following:

- (a) Establishment of a panel of between 10 and 12 Wage Auditors;
- (b) Providing Services which are commercially competitive;
- (c) Establishing a sustainable partnership between WorkCover and the Nominal Insurer and the successful tenderers to deliver quality Services;
- (d) Best practice through continual review of delivery methods, i.e value-engineering;
- (e) Effective management of risks; and
- (f) Compliance with all applicable laws, standards, codes and policies.

3 Required Benefits

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

- (a) A sustainable, mutually beneficial supply chain partnership;
- (b) Savings and efficiency gains through more effective and efficient use of resources;
- (c) Reduced costs to the NSW Government by value-engineering its delivery methods;
- (d) Consistent high quality performance;
- (e) Transparency of all transactions, including performance measurement, pricing and reporting;
- (f) Fair and equitable allocation of Wage Audits;
- (g) Improved customer service delivery to Employers through reduced turnaround times and consistency of approach; and
- (h) Improved communication between WorkCover, the Nominal Insurer and Contractors.

4 Scope of RFT

4.1 Background

- 4.1.1 The WorkCover Authority of New South Wales (WorkCover) manages and regulates the State's workplace safety, injury management and workers compensation systems, and is responsible for ensuring compliance with workers compensation and occupational health and safety legislation.

- 4.1.2 This RFT seeks offers from suitably capable organisations to provide Wage Audit Services to WorkCover and the Nominal Insurer. **Wage auditors must** hold formal qualifications in accounting or related discipline (commerce/finance) sufficient to gain membership to the Australian Society of Certified Practising Accountants or Institute of Chartered Accountants.
- 4.1.3 WorkCover and/or the Nominal Insurer initiates wage audits to examine the wage records of NSW employers with the aim of ensuring employer compliance with the law regarding the calculation and payment of workers compensation insurance premiums.
- 4.1.4 The following Wage Audit Services are covered under the proposed Contract Agreement:
- Conducting Wage Audits
 - Production of Reports
 - Maintenance of Files
 - Training and Development of WorkCover staff
 - Transition-out Services
 - Fraud and Prosecutions Support.
- The eventual Contractors will also be required to attend Quarterly Wage Auditor Panel Forums at no additional charge to either WorkCover or the Nominal Insurer
- 4.1.5 A detailed description of the required Services is provided in the Contract Agreement at Part D to this RFT.

4.2 Audit Objectives

- 4.2.1 The main purpose of the Wage Audit program is to ensure that Employers are complying with the law relating to Workers Compensation and that correct premiums are charged. Each Wage Audit will encompass the following sub-objectives:
- (a) Determine the correct wages amount to be adopted for the calculation of premium;
 - (b) Gather and assess information to allow Scheme Agents/Insurers to verify industry classification;
 - (c) Identify any predecessor employers in accordance with the provisions of the Insurance Premiums Order;
 - (d) Ensure that those claimants against the policy are shown in the wages records at the date of injury;
 - (e) Confirm that the insured's details are correct including verifying the legal identity of the insured and confirming that other information, such as the insured's address for example, matches that held by the Scheme Agent/Insurer;
 - (f) Provide the employer, where appropriate, with information which will assist the employer in the correct determination of wages paid and the nature and type of records which the insured is required to generate and keep; and
 - (g) Identify related entities as per the Insurance Premiums Order.

4.3 Key Audit Guidelines

- 4.3.1 All Wage Audits are to be conducted in accordance with the following:
- (a) Workers Compensation Act 1987;
 - (b) Workplace Injury Management and Workers Compensation Act 1998;
 - (c) Regulations made under the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998;
 - (d) Insurance Premiums Orders governing each policy year;

- (e) WorkCover Wages Definition Manual as amended from time to time; and
- (f) WorkCover and/or Nominal Insurer guidelines as issued and amended from time to time.

4.3.2 All Auditors must be thoroughly conversant with the above matters.

4.4 Contract and Duration

It is envisaged that the term of the proposed Contract Agreement will be of 3 years. The Contract Agreement may be extended by two (2) additional periods, each of up to one (1) year in duration at the discretion of WorkCover and the Nominal Insurer.

4.5 Current Scope and Expenditure

The current expenditure incurred by WorkCover and the Nominal Insurer for the procurement of the Services is \$6.5 million/year. This amount is provided for information only and does not constitute a guarantee for future work through the proposed Contract Agreement.

5 RFT Structure

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 4 Parts as follows:

Overview – Part A

It is an executive summary of main outcomes, objectives, requirements and expectations for this proposed Contract Agreement. 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.

Contract Agreement - Part D

This is the conditions of contract to be executed between WorkCover Authority of New South Wales, the Workers Compensation Nominal Insurer and the successful tenderers.

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

6 Best Price

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.

RFT Id: 0800374 – Part B

Provision of Workers Compensation Wage Audit
Services for NSW WorkCover Authority

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REQUEST FOR TENDER PART B Conditions of Tender

1 Definitions

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.

“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

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

- i. the Statement of Requirements;
- ii. the terms and conditions of Part D;
- iii. other parts of this RFT; and
- iv. is in the prescribed form.

“Contract Agreement” means the proposed agreement to be made between WorkCover and the Nominal Insurer and the Contractor in the form of Part D to this RFT.

“Contractor” means a tenderer who has entered into a Contract Agreement with WorkCover and the Nominal Insurer.

“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.

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

- i. the Statement of Requirements;
- ii. the terms and conditions of Part D;
- iii. other Parts of this RFT;
- iv. 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.

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

“Specification of Services” means the detailed description of the Services contained in the Third Schedule to Part D.

“State Contracts Control Board” is the Board.

“Tender” means an offer to supply the Services submitted in response to this RFT;

2 Tender Preparation

2.1 Tenderer to inform itself

Before submitting its Tender, a tenderer must:

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

3 Eligibility to Tender

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. WorkCover and the Nominal Insurer will only enter into a Contract 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 WorkCover and the Nominal Insurer will not enter into a Contract 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 a Contract Agreement with WorkCover and the Nominal Insurer. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender response.

4 Tender Process

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	Date
RFT issue	2 February 2009
Tenderer briefing	17 February 2009
RFT Close Date	18 March 2009
Execution of Contract Agreement	26 June 2009
Commencement of supply of Services	1 July 2009

4.2 Tenderer Briefing

- 4.2.1 A tenderer briefing will be held on the date, time, and place, indicated below. The contact officer/s of NSW Procurement – will be available at that time to answer any queries regarding this RFT and the tender process generally. Names of persons attending the tenderer briefing must be provided to the Contact Officer 3 working days prior to the date. There is a limit of two (2) representatives per tenderer.

Location: Meeting Room 3.5
92 - 100 Donnison Street
Gosford, NSW 2250

Note : you will need to Register at Reception on Level 2 to gain entry

Date: 17 February 2009»
Time: 10.00 am to 11.30am»

4.3 Contact Officer

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

NSW Procurement Support Centre
P: 1800 NSW BUY
E: nswbuy@commerce.nsw.gov.au
Please quote RFT Id: 0800374, and name of Contact Officer: Matthew Chalder

- 4.3.2 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.

4.4 Conformity of Tenders

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

4.5 Alternative Tenders

- 4.5.1 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".

4.6 Submission of Tenders

- 4.6.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 4.6.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 4.6.3 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.
- 4.6.4 Electronic Tenders

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.

It is recommended that electronic files be kept as small as practical and the lodgement 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.

- 4.6.5 Hard Copy Tenders

If a Tender is not submitted electronically, the tenderer must submit the original Tender, plus three (3) copies of the Tender. Tenders are to be marked "**Original**", "**Copy 1**", "**Copy 2**" accordingly. **Note: Tenders should not be bound**

4.7 Tender Lodgement

- 4.7.1 Tenders must be fully received by the Closing Date and Closing Time.
- 4.7.2 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 web site 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).

- 4.7.3 The electronic lodgement can only be made by a registered system user of the NSW Government eTendering system. Registration may be made prior to lodgment.
- 4.7.4 Alternative Hard Copy Lodgement

- a) Delivery into the Physical Tender Box at:

Tender Box

NSW Department of Commerce, 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 – “0800374”.

4.8 Electronic Tenders

- 4.8.1 A Tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
- 4.8.2 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 web site at <https://tenders.nsw.gov.au/commerce>
- 4.8.3 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.
- 4.8.4 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.
 - 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.
- 4.8.5 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.
- 4.8.6 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.

- 4.8.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce tenders web site, it is encouraged to advise the Contact Officer promptly in writing.

Tenders must be fully received by the Closing Date and Closing Time.

- 4.8.8 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.

- 4.8.9 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.

4.9 Tender Validity Period

- 4.9.1 The Tender will remain open for acceptance by WorkCover and the Nominal Insurer for a period of six (6) months from the Closing Date and Closing Time for tenders.

4.10 Late Tenders

- 4.10.1 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.

4.11 Extension of Closing Date and Closing Time

- 4.11.1 The Board may, in its discretion, extend the Closing Date and Closing Time.

4.12 Corruption or Unethical Conduct

- 4.12.1 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.

- 4.12.2 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:

- a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, the WorkCover and the Nominal Insurer, 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.

- 4.12.3 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.

- 4.12.4 If the Board and/or WorkCover and the Nominal Insurer become/s aware of improper conflict of interests by a successful tenderer after a Contract Agreement has been executed, then WorkCover and the Nominal Insurer reserve the right to terminate the Contract Agreement.

4.13 Code of Practice for Procurement

- 4.13.1 In submitting its Tender, the tenderer signifies agreement to comply with the Code.
- 4.13.2 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.

4.14 Prescribed Form of Tender

- 4.14.1 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.
- 4.14.2 The Tender will be taken to be for the provision of the Services on the terms and conditions stated in Part D except to the extent that these are amended by the Tender and agreed by WorkCover and the Nominal Insurer.

4.15 Addenda to RFT

- 4.15.1 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.
- 4.15.2 In each case, an Addendum becomes part of the RFT.
- 4.15.3 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.
- 4.15.4 Tenderers must check the web site address,
<https://tenders.nsw.gov.au/commerce> and download the Addendum.

4.16 Tenderer's Costs

- 4.16.1 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.

4.17 Custody of Tenders after Receipt

- 4.17.1 Tenders lodged electronically to the eTendering system through the NSW Department of Commerce Tenders web site will be treated in accordance with the *Electronic Transactions Act 2000*.
- 4.17.2 On receipt of Tenders lodged electronically to the NSW Government eTendering system, Tenders are encrypted and stored in a secure "electronic tender box."
- 4.17.3 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.
- 4.17.4 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.

4.18 Ownership of Tenders

- 4.18.1 All Tenders become the property of the Board on submission.
- 4.18.2 The Board may make copies of the Tenders for any purpose related to this RFT.

4.19 Discontinuance of Tender Process

- 4.19.1 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.

4.20 Variations to Tenders

- 4.20.1 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 4.20.2, vary its Tender:
- 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.
- 4.20.2 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 4.20.1(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 4.20.1(c) the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 4.20.3 If a Tender is varied in accordance with clause 4.20.1(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.
- 4.20.4 A variation of a Tender under clause 4.20.1 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 4.20.1(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

- 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 70% of the total evaluation score. The evaluation criteria for this RFT that relate to price will account for 30% 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.
- 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

- 5.2.1 The selection criteria to be used in the evaluation of Tenders are outlined below. The criteria are not in any particular order and are not necessarily exhaustive or to be given equal weight.

-
- a) Price
 - b) Demonstrated understanding of WorkCover NSW and its requirements;
 - c) The tenderer's previous experience providing comparable services,
 - d) Tenderer's ability and capacity to meet the requirement
 - e) Suitability of tenderer's proposed methodologies
 - f) Degree of Compliance with the Terms and Conditions of the Contract Agreement
 - g) Degree of Compliance with the Specification of Services
 - h) Probity and integrity declarations
 - i) Demonstrated commitment to and capacity to comply with legislative obligation
 - j) Compliance with NSW Government procurement policy and other applicable NSW Government policies

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 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.
- 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 Acceptance of a Tender or part Tender will be subject to the execution of a formal Contract Agreement in the terms of Part D. Until WorkCover and the Nominal Insurer and the successful tenderer(s) execute a formal Contract Agreement there will be no legally enforceable agreement concluded between them.

7 Disclosure Information

- 7.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their Tenders.
- 7.2 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>
- 7.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

8 Complaints Procedure

- 8.1 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 and/or the Specification of Services in Part D 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"> a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; and location of the tender call documents. <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>Class 1 contracts All government contracts with estimated value \$150,000 or above).</p>	<ul style="list-style-type: none"> a) The name and business address of the contractor; 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; c) The date on which the contract became effective and the duration of the contract; 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; e) The estimated amount payable to the contractor under the contract; f) A description of any provisions under which the amount payable to the contractor may be varied; 	Routine public disclosure within 60 days after the contract becomes effective.

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Request for Tender, Part B – Conditions of Tender

	<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; 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>Class 2 contracts Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> - result from a direct negotiation where there has not been a tender process; or - 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 - involve operation or maintenance obligations for 10 years or longer; or - involve a privately financed project as defined by relevant Treasury guidelines; or - involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. 	<p>The information required for class 1 contracts and</p> <ul style="list-style-type: none"> 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; b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer; c) The results of any cost-benefit analysis of the contract conducted by the agency; d) The components and quantum of the public sector comparator if used; 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); 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; 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 h) Particulars of any other key elements of the contract. 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p>Class 3 contracts 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"> • the reasons for not publishing the contract or provisions; 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

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Request for Tender, Part B – Conditions of Tender

	<ul style="list-style-type: none">• a statement as to whether the contract or provisions will be published and, if so, when; and• 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.	
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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.

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



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

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

PART C

TENDER RESPONSE

Request for Tender
RFT Id: 0800374

**Provision of Workers Compensation Wage Audit Services
for WorkCover Authority of New South Wales and the
Workers Compensation Nominal Insurer**

Closing Date: Wednesday 18 March 2009
Closing Time: 9:30 am Sydney Time

Your Company's Legal Name:

Your Company's Trading Name:

Your Company's ABN:

Your Company's street address:

Contact Name:

<insert name to whom enquiries should be directed>

Contact Phone:

*Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus two (2) copies of the tender. Tenders are to be marked **"Original"**, **"Copy 1"**, **"Copy 2"** accordingly.*

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PART C RESPONSE TO BE PROVIDED BY TENDERERS

PART C1 INFORMATION SUPPLIED BY TENDERERS

1. INTRODUCTION AND REQUIREMENTS

Tenderers are to read all documentation and information provided with the Request For Tender (RFT) carefully before preparing responses.

Unless a contrary intention appears words or terms which are not defined in this document have the same meaning given to them in the Definitions of Terms at Part B of the Request for Tender No. 0800374.

The information provided by the tenderer in response to this Part will be used for the assessment of tenders.

References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

References to “Services” in this Part means the services as described in the Third Schedule to Part D of the RFT.

2. FEE AND RELATED INFORMATION

2.1.1 General Guidance to Tenderers

Tenderers must set out the tendered fees in the format of the Fee Schedule contained below

The Tendered Fees must be in Australian dollars.

2.1.2 Fee Schedule

Blended Hourly Labour Rate				
Position Description of Key Person/s who will contribute to a Wage Audit and report preparation (i.e. Auditor, but possibly also Partner, Director, Senior Manager, Manager etc).	Hourly Rate Excluding GST	GST component	Total Hourly Rate	% of Wage Audit/report preparation time the Key Person contributes
	\$	\$	\$	%
	\$	\$	\$	%
	\$	\$	\$	%
	\$	\$	\$	%
Tendered Blended charge-out rate for all services covered by this RFT	\$	\$	\$	Total of above = 100%

NOTE: The blended hourly labour rate above is inclusive of all activities conducted by the Contractor in the course of completing the Wage Audit and includes travelling time but excludes the related disbursements set out below.

2.1.3 DISBURSEMENTS

Disbursement Item Description	
Vehicle Mileage:	The pre-set rates for Vehicle Mileage claimable is in accordance with the allowances contained in the Crown Employees (Public Service Conditions of Employment 1997) Award, as amended from time to time.
Accommodation:	The pre-set rates for Travel Allowances claimable are set in accordance with the allowances contained in the Crown Employees (Public Service Conditions of Employment 1997) Award, as amended from time to time..
ASIC Searches:	The pre-set rates for company searches and other related ASIC searches claimable will be as set by ASIC, as amended from time to time.
Postage:	At Cost

2.2 VALIDITY

The Tender will remain valid for acceptance within _____ months from the deadline for lodgement of tenders, in accordance with Part A.

N.B. The minimum validity period is six (6) months.

2.3 PRICE BASIS

You must indicate below the price basis of your Tender as follows:

- (a) Firm for the duration of the Contract Agreement, including the two (2) optional extension periods; or
- (b) Firm for the first twelve months of the Contract Agreement and then on the date, which is the first anniversary and subsequent anniversaries of the Contract Agreement; the prices shall increase by the Consumer Price Index (CPI) percentage.

Indicate the appropriate box below

(a) ☐

(b) ☐

Note: The Consumer Price Index (CPI) is the All Groups weighted average of eight capital cities published by the Australian Statistician, or substitute index if CPI is abolished. The applicable increase will be calculated in accordance with the formula outlined at clause 10 of the Contract Agreement.

3 GENERAL INFORMATION SUPPLIED BY TENDERERS

3.1. TENDERER DETAILS

Company/Partnership/ Individual Name	
ABN	
Trading Name	
Registered Business Address	
Postal Address	
Telephone	
Facsimile	
Website	
Key Contact Name	
Direct Telephone	
Direct Facsimile	
Email	

3.2 Details of Ownership

- 3.2.1 If you are a company, please provide details of your ownership (eg Australian, Overseas, largest shareholder, paid-up capital etc) and other relevant details (eg alliances, related entities or other business relationships).

- 3.2.2 If you are a partnership, please provide a list of partners and details of the partnership financial arrangements.

- 3.2.3 Corporate Group Structure

- 3.2.4 Overall structure of the business

- 3.2.5 Subject to commercial sensitivity, specify any potential changes to company structure/ownership or directors, including mergers/acquisitions.

3.3. CURRENT LEGAL PROCEEDINGS

3.3.1 Are you or any of your directors or close associates currently, or have you, or have your directors or close associates been at any time within the last five years, the subject of any or any pending:

- (a) legal proceedings, including winding up or bankruptcy proceedings,
- (b) insolvency administrations or investigations; and/or
- (c) investigations by ICAC or any other public body?

Yes/No

If “**Yes**”, please supply full details below:
(attach further details where necessary.)

3.4 SUB-CONTRACTORS

3.4.1 Is /are any part/s of the Services to be provided through sub-contract?

Yes/No

If “**Yes**”, give details of the type/s of Service/s to be provided, and the name, address and ABN of the proposed sub-contractor(s).

- 3.4.2 Provide details of proposed sub-contractors' legal status (company, partnership, individual, etc.) and their experience and qualifications in the provision of similar services.

3.5 SCHEDULE OF INSURANCES

3.5.1 Worker's Compensation Insurance

Insurance Company:	<hr/>
Address:	<hr/>
	<hr/>
Phone number:	<hr/>
Policy number:	<hr/>
Expiry Date:	<hr/>

3.5.2 Public Liability Insurance

Insurance Company:	<hr/>
Address:	<hr/>
	<hr/>
Phone number:	<hr/>
Policy number:	<hr/>
Expiry Date:	<hr/>
Limit of Liability:	<hr/>

3.5.3 Professional Indemnity Insurance

Insurance Company:	_____
Address:	_____ _____ _____
Phone number:	_____
Policy number:	_____
Expiry Date:	_____
Limit of Liability:	_____

3.6 REFEREES

Provide details for persons willing to act as referees to the tenderer's standard of service and performance in relation to their ability as a provider for the required Services.

Referee No 1.

Name:

Position:

Company:

No. of Years tenderer has provided required Service to Referee: years

Telephone No:

Fax No:

Email Address:

Referee No 2.

Name:

Position:

Company:

No. of Years tenderer has provided required Service to Referee: years

Telephone No:

Fax No:

Email Address:

Referee No 3.

Name:

Position:

Company:

No. of Years tenderer has provided required Service to Referee: years

Telephone No:

Fax No:

Email Address:

Principal Banker

Name:

Position:

Company:

No. of Years tenderer has banked _____ years
with this bank

Telephone No:

Fax No:

Email Address:

3.7 ADDENDA TO THIS RFT AFTER ISSUE

3.7.1 Were any Addenda to this RFT issued after the issue of this RFT:

Yes/No

If "Yes", indicate below how many addenda were issued (if any) and confirm that you have read and allowed for the addenda in your Tender.

Number of Addenda _____

Confirmation that you have read and allowed for the addenda in your Tender:

Yes/No

4. SELECTION CRITERIA

- 4.1.1 Tenderers are required to respond individually to each of the selection criteria outlined in the following spaces. The information provided will be used in the assessment of tenders. Responses are to be concise and focus on key elements of the tenderer's proposal as it relates to each of the following selection criteria.
- 4.1.2 Tenderers who wish to provide details of their company profile or marketing material should do so as a separate attachment and not include this information in the response to the selection criteria.
- 4.1.3 Where copies of documents, reports, etc are required, these should be included as attachments. Names, addresses and other confidential / private details may be altered or blacked-out where necessary / required.
- 4.1.4 All attachments should be clearly labelled / marked and referenced within the response.
- 4.1.5 Tenderers should support their responses with examples of how their understanding, experience, abilities and methods, etc has been / will be applied to delivery of the Services or similar services.

4.2 PRICE

No response is required by tenderers. Information provided at Section 2 will be used to assess this criteria.

4.3. Demonstrated understanding of WorkCover, the Nominal Insurer and their requirements including:

i. Demonstrated understanding of WorkCover's role, functions, objectives, culture and ethics.

Tenderers should describe how they will support WorkCover's role, functions, objectives, culture and ethics in delivering the Services.

ii. Demonstrated understanding of WorkCover's and the Nominal Insurer's requirements for undertaking workers compensation wage audits.

4.4 The tenderer's previous experience providing comparable services, including:

General

Tenderers shall provide the information detailed below:

- Years in Business

State the number of years you have been in business in the form in which you are presently constituted.

State the number of years providing the required Services:

History and scope of tenderer's current business activities

Geographic operating regions

Provide details of any previous Contract(s) with WorkCover, other NSW Government Departments, and/or Private Organisations that you have been involved in during the past four years, providing similar services:

Note: Persons nominated below may be contacted for references in addition to the Referees nominated at clause 3.68.

Contract No.	Contract Name	Client Organisation	Contract Period	Contract Manager	Phone Number

If you have undertaken any previous Contracts provide details of any assessment/s undertaken of your performance. If performance reports or other evidence/records of client satisfaction were prepared in respect of your performance, please provide copies.

- i. **Demonstrated experience in providing forensic audit investigation services in relation to the general insurance industry and/or workers' compensation schemes and other areas particularly relevant to WorkCover's and the Nominal Insurer's requirements.**

- ii. **Demonstrated experience in providing management reports to a head agency, especially in relation to reporting on a program of works, including progress reporting.**
Two examples of completed reports are to be provided as attachments.

i. Resource capability to perform the services including demonstrated knowledge, qualifications, skills, experience, suitability, availability and proposed roles of the personnel proposed to be assigned to the Services, including the designated Key Person.

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Total No of Employees:

Organisation: _____

To be utilised on proposed Contract Agreement: _____

Details of Employee Nos:

Organisation:

	Management	Professional	Administration
Full-time			
Part-time			

To be utilised on proposed Contract Agreement:

	Management	Professional	Administration
Full-time			
Part-time			

Key Personnel:

Tenderers are to provide in the format below the following details for each Key Personnel to be utilised for the purposes of any proposed Contract Agreement.

STAFF CATEGORY (ie Management, Professional, Administration)	NAME	POSITION	LENGTH OF SERVICE	EMPLOYMENT STATUS (eg Employee, Contractor, Agency temp etc)	QUALIFICATIONS/ EXPERIENCE/ PROFESSIONAL MEMBERSHIP	NO. OF YEARS RELEVANT EXPERIENCE

Certifications/Qualifications

Please provide details and relevant copies as attachments of the certifications/qualifications held by the tenderer and all employees, agents and subcontractors of the tenderer who will perform the Services.

- ii. Demonstrated ability to quickly scale up or scale down operations to reflect changing WorkCover's and the Nominal Insurer's requirements, including the availability of additional resources to meet peak demands.**

- iii. Demonstrated ability to deliver a service in accordance with agreed timeframes**

- iv. Demonstrated ability to educate/communicate with policy holders/employers as to their legislated obligations and appropriate insurance requirements whilst undertaking audits.**

- v. Tenderer's capacity to provide regional coverage, including location of regional or affiliated offices.**

vi. The tenderer's financial capacity and stability.

Give the annual Australian turnover for the past three (3) years in \$A.

1. _____

2. _____

3. _____

If a company, please submit a copy of each of your annual financial reports for the last three financial years as an attachment to your Tender.

Tenderers shall provide details below of any other factors, which they are aware of, that could significantly impact on the financial ability of the tenderer to successfully perform the Services.

i. Outline of the tenderer's proposed wage audit service delivery methodologies.

Tenderer's should describe the processes, work methods and facilities, etc to be utilised in delivering the Services to the required outcomes. Tenderers should describe how they propose to manage delivery of the Services in light of their other possible lines of business.

[illegible]

- Tenderer's should provide evidence of compliance with or accreditation/authorisation/certification from an approved authority in regards to standards and/or regulatory requirements to be used or applied in the delivery of the Services. Tenderer's should also include information on any proposed value-add services.*

[illegible]

iii. Details of the tenderer's mechanism for avoiding and dealing with conflicts of interests, including performance of work on behalf of Scheme Agents.

Tenderers should describe how they identify, address and communicate potential and actual conflicts of interest.

Tenderers shall describe any circumstance or relationship which constitutes, or may be perceived to constitute, an actual, potential, or apparent conflict of interest particularly arising as a result of a relationship for the provision of services to

- *The Nominal Insurer*
- *WorkCover*
- *Key subcontractors to the tenderer*
- *Scheme Agents/Insurers; and*
- *Third Party Service Providers*

4.7 Degree of Compliance with the Terms and Conditions of the Contract Agreement

Tenderers should complete the following table in regards to compliance with Conditions of Contract Agreement

CONDITIONS OF CONTRACT AGREEMENT CLAUSE NO. AND TITLE		COMPLY/ DOES NOT COMPLY	PROPOSED VARIATION
1.	Interpretation		
2.	Term of this Contract Agreement		
3.	Key Personnel		
4.	Contractor's Warranties		
5.	Independence of Contractor		
6.	Provision of Services		
7.	Engagement of Services		
8.	Right to Obtain Services Elsewhere		
9.	Subcontracting or Assignment		
10.	Payment for Services		
11.	Mistakes in Information		
12.	Monitoring of Performance		
13.	Confidential Information		
14.	Privacy		
15.	Intellectual Property Rights		
16.	Conflict of Interest		
17.	Payment of Wages and Allowances		
18.	Creating, Keeping and Access to Records		
19.	Exchange of Information Between Government Agencies		
20.	Access to Contractor's Premises		
21.	Insurances		
22.	Entry to Official Establishments		
23.	Entry to Employer Establishments		
24.	Damage to Property		
25.	Suspension		
26.	Termination		
27.	Consequences of Termination		
28.	Dispute Resolution		
29.	Transition-Out Services		
30.	Variation		
31.	Notices		
32.	Indemnities		
33.	Proper Law and Jurisdiction		

Selection Criteria

34.	Compliance with Laws and Policies		
35.	WorkCover NSW Statement of Business Ethics		
36.	Waiver		
37.	Whole Agreement		
1 st Sched	Agreement Details		
2 nd Sched	Confidentiality Deed		
3 rd Sched	Specification of Services		
4 th Sched	WorkCover NSW Statement of Business Ethics		

4.8 Degree of Compliance with the Specification of Services

Tenderers should complete the following table in regards to compliance with Specification of Services

SPECIFICATION OF SERVICES CLAUSE NO. AND TITLE		COMPLY/ DOES NOT COMPLY	PROPOSED VARIATION
2.1	General		
2.2	Engagement of Services		
2.3	Reports		
2.4	Wage Audit Files		
2.5	Training and Development of WorkCover NSW Staff		
2.6	Transition-Out Services		
2.7	Fraud and Prosecutions		
2.8	Wage Auditor Panel Quarterly Forum		

4.9 Probity and integrity declarations

Tenderers are required to complete the Probity and Integrity Declaration at Annexure 1 hereto.

4.10 Demonstrated commitment to and capacity to comply with legislative obligations (including compliance with regulations, codes of practice or other subsidiary instruments) under the following Acts:

- **Occupational Health and Safety Act 2000**

- **Workers Compensation Act 1987**

- **Workplace Injury Management and Workers Compensation Act 1998**

- **Industrial Relations Act 1996**

4.11 Compliance with NSW Government procurement policy and other applicable NSW Government policies

4.11.1 Code of Practice for Procurement and NSW Government Procurement Policy

4.11.2 Have you have read the Code of Practice for Procurement NSW Government Procurement Policy and taken them into consideration in preparing and submitting your Tender?

Yes/No

4.11.3 Will you maintain compliance with the Code for the purposes of the agreement, advise the Board of any breaches of the Code for the duration of the agreement and provide evidence of compliance when requested by the Board during the course of the agreement?

Yes/No

4.11.2 WorkCover NSW Statement of Business Ethics

Have you read the WorkCover NSW Statement of Business Ethics http://www.workcover.nsw.gov.au/NR/rdonlyres/50904967-F22F-42C2-80F8-FEB8DB2F1DF7/0/statement_of_business_ethics_4864.pdf or 4th Schedule to Part D and taken it into consideration in preparing and submitting your Tender?

Yes/No

ANNEXURE 1

PROBITY AND INTEGRITY DECLARATIONS

The tenderer shall complete this declaration as part of the tender. The information (if any) provided by the tenderer in the space below will be taken into account in evaluating the tender.

1 To the best of the Tenderer's knowledge and belief, after due inquiry, no family relationship exists between:

- (a) on the one hand, the Tenderer or any employee of the Tenderer directly or indirectly involved in the preparation or submission of the Tender; and
- (b) on the other hand, any employee of WorkCover NSW or the Department of Commerce ("**the Agencies**") involved in evaluation of tenders or administration of contracts or in possession of confidential information relating to the Tender or the Contract.

OR

Family relationships existing between:

- (a) on the one hand, the Tenderer or any employee of the Tenderer directly or indirectly involved in the preparation or submission of the Tender; and
- (b) on the other hand, any employee of WorkCover NSW or the Department of Commerce ("**the Agencies**") involved in evaluation of tenders or administration of contracts or in possession of confidential information relating to the Tender or the Contract,

are disclosed in this Annexure.

Disclosure of family relationships with the Agencies' employees must include details of the nature and extent of the relationship or association.

2 The Tenderer has not engaged in any unethical behaviour or sought and/or obtained an unfair advantage in obtaining business with the Agencies (whether through lobbying of Ministers or the Agencies or other government officials or by any other means) and will not in relation to this Tender and Contract.

3 Unless stated below, the Tenderer has not been nor presently is an employee of the Agencies.

4 The Tenderer shall notify the Agencies in writing immediately any provision of this declaration becomes incorrect, with full details of the reasons.

(Please preface any statements here with reference to the relevant issue. By way of a hypothetical example: *"With reference to 1., above, John Smith Industries is aware of the following family relationship in regards to ..."*)

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Date _____

Note that by stating YES below, such declaration is confirmed.

Yes/No

Provision of Workers Compensation Wage Audit Services for WorkCover Authority of NSW and Workers Compensation Nominal Insurer - RFT 0800374

PART C2

ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

Note to tenderers: If submitting a hard copy Tender, execute cl. 2.2.
If submitting an electronic Tender, only complete cl. 2.3.

- 1.1 Lodgement of a Tender will itself be an acknowledgement and representation by you that you are aware of the requirements of the Codes; that you will comply with the Codes; and that you agree to report to the Board any breaches of the Codes for the duration of the agreement.
- 1.2 I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

 Signature of tenderer (if an individual)

OR

 Signature of authorised officer of tenderer

OR

 Signature of partner completing tender on behalf of partnership

- 1.3 If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the Department of Commerce tenders website is sufficient to verify and affirm that this is your Tender to supply the deliverables at the prices tendered on the conditions contained in Part C, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgement and acceptance, by stating "Yes", is a necessary prerequisite to consideration of your Tender.

Yes/No

DATE ON WHICH CONTRACTOR IS ABLE TO COMMENCE CONTRACT

- 2.1 Please state below the date on which you are able to commence the contract.

Commencement

date:

.....



PART D

DRAFT CONTRACT AGREEMENT

Request for Tender Id: 0800374
**Provision of Workers Compensation Wage Audit
Services For WorkCover Authority of NSW and
the Workers Compensation Nominal Insurer**

DRAFT AGREEMENT

0800374

BETWEEN

**WORKCOVER AUTHORITY OF
NEW SOUTH WALES**

ABN 77 682 742 966

WORKERS COMPENSATION NOMINAL INSURER

ABN 83 564 379 108

AND

[NAME OF CONTRACTOR]

ABN

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THIS AGREEMENT is made on the day of2009

Between:

WORKCOVER AUTHORITY OF NEW SOUTH WALES (ABN 77 682 742 966)
(“WorkCover”) of 92-100 Donnison Street, Gosford, New South Wales;

WORKERS COMPENSATION NOMINAL INSURER (ABN 83 564 379 108)
(“Nominal Insurer”) of 92-100 Donnison Street, Gosford, New South Wales;

AND

.....**[insert name of contractor]** of
**[Insert address]** in the State of New South Wales,
(“the Contractor”) [insert ABN number]

jointly referred to in this Agreement as “the parties”.

RECITALS:

- A. The WorkCover Authority of New South Wales (WorkCover) is a statutory corporation, representing the Crown, constituted pursuant to section 14 of the 1998 Act.
- B. WorkCover administers and enforces compliance with occupational health and safety, injury management, return to work and workers compensation legislation, and manages the NSW workers compensation system. The workers compensation system provides a system of statutory workers compensation insurance for employers and workers in NSW.
- C. The Workers Compensation Nominal Insurer (Nominal Insurer) is a statutory legal entity established under section 154A of the 1987 Act. The Nominal Insurer is a licensed insurer under the workers compensation legislation and issues policies of workers compensation insurance and deals with claims under those policies as insurer. The Nominal Insurer appoints agents to exercise its insurance functions. WorkCover acts for the Nominal Insurer under section 154C of the 1987 Act.
- D. WorkCover is authorised under section 174 of the 1987 Act to make certain orders in respect of Employers.
- E. A Wage Audit may be initiated by either WorkCover or the Nominal Insurer.

- F. The State Contracts Control Board on behalf of WorkCover and the Nominal Insurer has issued a Request for Tender for the provision of Services in relation to workers compensation Wage Audits.
- G. The Contractor has responded to the Request for Tender and has been selected to provide workers compensation wage audit Services as described in the Specification in the Third Schedule.
- H. The Contractor agrees to provide and WorkCover and the Nominal Insurer agree to procure the Services in accordance with the terms of this Contract Agreement.

1 Interpretation

1.1 Definitions

1987 Act means the *Workers Compensation Act 1987*.

1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

Agreement Price means the price for the Services as specified in Part 4 of the First Schedule.

Books means any information or documents, including financial records (in whatever form), of WorkCover and/or the Nominal Insurer, a Scheme Agent/Insurer or an Employer provided to the Contractor in connection with the Services.

Business Day means a day other than Saturday or Sunday during which banks are open for general banking business in Sydney, New South Wales.

Cancellation Fee means an amount of \$100.00 payable to the Contractor for each Engagement that is cancelled in accordance with clause 7.

Commencement Date means the date specified in Part 1 of the First Schedule to this Contract Agreement.

Confidential Information means the terms of this Contract Agreement, any details of the Services and any trade secrets, systems, operations, business or regulatory plans, processes or information belonging to WorkCover or the Nominal Insurer or any information concerning the organisation, business, finances, transactions or affairs of WorkCover or the Nominal Insurer or information of the relevant Minister, Government Department or personal information about officers of WorkCover which may come into the knowledge of the Contractor during the course of service under this Contract Agreement including information created by the Contractor derived from such information of WorkCover or the Nominal Insurer.

Contract Agreement means this Contract Agreement concluded between WorkCover, the Nominal Insurer and the Contractor and includes:

- a) the Schedules that are incorporated into this Contract Agreement directly or by reference, (as amended from time to time in accordance with this Contract Agreement);
- b) the terms of the Request For Tender and the tenderer's response to that Request For Tender; and
- c) any other documents incorporating and forming part of the Contract Agreement.

Contract Material means:

- a) any and all reports, analysis, computer models, software, data, information, tools, procedures, documentation, programs, invention, discovery, improvement, idea, design, technique or material conceived, developed or produced by the Contractor in the course of providing the Services under this Contract Agreement ("New Contract Material"); and
- b) any material which is existing at the date of execution of this Contract Agreement and which is incorporated with the New Contract Material ("Existing Contract Material") including WorkCover's Material, WorkCover's Data, Nominal Insurer's Material and Nominal Insurer's Data.

Contractor means the persons engaged to perform the Services and includes officers, employees, agents and authorised sub-contractors (and their employees and agents) engaged by the Contractor.

Contractor's Material means any material, information, data or documentation (in whatever form and however stored) owned by or licensed to the Contractor and used by the Contractor in the performance of the Services.

Contractor's Tender means the tender response submitted by the Contractor pursuant to the Request For Tender, including any subsequent correspondence, whether oral or written, or any submissions, corrections of mistakes, or presentations concerning that tender response.

Document means documentation or material in any form and includes reports, specifications, user or technical manuals, designs, plans, spreadsheets, drawings, pictures, or any other marking in any format.

Employer means ‘employer’ as that term is defined in the 1987 Act.

Engagement means an individual Wage Audit as identified in the Engagement Advice.

Engagement Advice means a direction from the Initiating Party to the Contractor to undertake a Wage Audit with respect to one or more named Employers and includes any addition or variation.

Final Report means the report to be provided to WorkCover and/or Scheme Agent/Insurer by the Contractor at the conclusion of an Engagement in conformance with the requirements set out in Appendix B to the Third Schedule to this Contract Agreement.

GST means the goods and services tax payable under the GST Law.

GST Law has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information means information in any form, and includes but is not limited to information in the form of data, text or images.

Information Privacy Principle means any or all of the:

- a) Information Protection Principles contained in sections 8 to 19 of the *Privacy and Personal Information Protection Act 1998* (NSW); and
- b) Information Privacy Principles contained in section 14 of the *Privacy Act 1988* (Cth).

Initiating Party means the party identified in the Engagement Advice, being either WorkCover or the Nominal Insurer.

Insurance Premiums Order or **IPO** means an ‘insurance premiums order’ as the term is defined in the 1987 Act.

Insurer means a 'licensed insurer' as that term is defined in the 1987 Act, a former licensed insurer or a 'self-insurer' as that term is defined in the 1987 Act.

Intellectual Property Rights means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of Intellectual Property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967, whether created before or after the date of this Contract Agreement.

Interference with Privacy means:

- a) an interference with the privacy of an individual as defined in section 13 of the *Privacy Act 1988* (Cth); or
- b) a breach of any requirement of the Privacy Legislation.

Issue Notification Report means the report to be provided to WorkCover by the Contractor where issues have arisen that will prevent the commencement, conduct or completion of a Wage Audit in conformance with the requirements set out in Appendix C to the Third Schedule to this Contract Agreement.

Key Person means the person(s) identified as such in Part 2 of the First Schedule and any permitted replacement.

Key Personnel means the Personnel of the Contractor including without limitation the Key Person specified in Part 2 of the First Schedule, required to undertake the provision of the Services or such other Personnel as appointed by the Contractor from time to time.

Laws means:

- a) any applicable statute or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or local government;
- b) the common law and the principles of equity as applicable from time to time; and
- c) any relevant standards or industry codes of conduct (whether mandatory or voluntary in their application).

Monthly Progress Report means the report to be provided to WorkCover or the Nominal Insurer by the Contractor within 10 Business Days of the end of each month in conformance with the requirements set out in Appendix A to the Third Schedule to this Contract Agreement.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date.

Nominal Insurer or Workers Compensation Nominal Insurer means the Workers Compensation Nominal Insurer established under Division 1A of Part 7 of the 1987 Act.

Nominal Insurer's Data means all data and information, (in whatever form and however stored or represented) which comes into the possession or control of the Nominal Insurer before the Commencement Date and/or during the term, and which relates to, or is created by or for, the Nominal Insurer (including data and information relating to the operation, facilities, customers, personnel, assets, finances, transactions, policies or processes of the Nominal Insurer), and includes, for the avoidance of doubt:

- a) any database in which such data or information is contained;
- b) any of the Nominal Insurer's Material and Contract Material embodying or referring to such data or information;
- c) any products resulting from the use, processing or manipulation of such data or information; and
- d) any and all copies of the above.

Nominal Insurer's Material means any material, information, data, documentation or software (in whatever form and however stored) owned by or licensed to the Nominal Insurer, which exists at the Commencement Date.

Nominal Insurer's Representative means the authorised representative of the Nominal Insurer specified in the First Schedule Part 2.

Non-Complying Employer means an Employer who:

- a) in the reasonable opinion of the Contractor (and in relation to a Wage Audit):
 - (i) refuses to co-operate with the Contractor
 - (ii) co-operates with the Contractor but to such a limited extent that their conduct hinders the undertaking and/or finalisation of the Wage Audit; or
- b) WorkCover or the Nominal Insurer determines to be a Non-Complying Employer.

Performance Management Framework means the framework as described in Appendix F to the Third Schedule to this Contract Agreement.

Performance Management Interventions means the intervention actions as described in Appendix F to the Third Schedule of this Contract Agreement.

Performance Standards means the standards required of the Contractor in providing the Services in conformance with the requirements set out in Appendix F to the Third Schedule to this Contract Agreement.

Personal Information has the same meaning as in the *Privacy and Personal Information Protection Act 1998* (NSW).

Personnel

In the case of the Contractor means:

- a) officers, employees, agents and contractors of that party; and
- b) includes Key Personnel and sub-contractors; and

in the case of either WorkCover or the Nominal Insurer means:

- a) officers, employees, and agents of that party; or
- b) officers, employees and agents engaged by the Office of the WorkCover Authority Division of the Government Service of New South Wales under Chapter 1A of the *Public Sector Employment and Management Act 2002*.

Privacy Legislation means:

- a) the *Privacy Act 1988* (Cth);
- b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- c) any legislation (to the extent that such legislation applies to WorkCover or the Nominal Insurer, the Contractor or any other recipient of the Protected Information from time to time in force or applying in New South Wales affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal information; and
- d) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under the legislation referred to in paragraphs (a) – (c), (to the extent that such instruments apply to WorkCover, the Nominal Insurer, the Contractor, or any other recipient of the Protected Information, as amended from time to time.

Protected Information means:

- a) any personal information (including Personal Information, tax file numbers, credit information files or credit reports or any other information relating to an individual), whether in a written, oral or other form, in respect of which the Contractor, WorkCover or the Nominal Insurer:
 - (i) has a duty not to engage in any act or practice which constitutes; or
 - (ii) is required to undertake a specified act or practice, or to provide specified protection, failure to do or provide which is;
an Interference with Privacy; or
- b) any information which WorkCover or the Nominal Insurer must at law or in equity keep confidential.

Request For Tender means the document by which Department of commerce on behalf of WorkCover and the Nominal Insurer provided an invitation to submit a proposal for the provision of the Services under this Contract Agreement.

s174 Order means an order issued to a Non-Complying Employer under section 174 of the 1987 Act.

Scheme Agent means 'scheme agent' as that term is defined in the 1987 Act.

Services means services as described in the Specification in the Third Schedule to this Contract Agreement.

Specification means the document comprising the description of the Services detailed in the Third Schedule to this Contract Agreement.

Subcontractor means a person engaged by the Contractor in any capacity whatsoever, either directly or through another person, to provide any part or all of the Services and who is not an employee of the Contractor.

Substantial Breach means a substantial breach of a term of this Contract Agreement by the Contractor or its Personnel and includes, but is not limited to, any breach of the following clauses (which will be taken in each case to be a substantial breach of this Contract Agreement):

- (a) clause 3 (Key Personnel)
- (b) clause 4 (Contractor's Warranties)
- (c) clause 13 (Confidential Information)
- (d) clause 14 (Privacy)
- (e) clause 15 (Intellectual Property Rights)
- (f) clause 16 (Conflict of Interest)
- (g) clause 21 (Insurances); and
- (h) clause 34 (Compliance with Laws and Policies).

Tax Invoice means a tax invoice for the purposes of the GST Law and in conformance with the requirements set out in the Third Schedule Appendix D to this Contract Agreement.

Transition-Out Period means a period of one (1) month (or such other period as the parties may agree) after the cessation of the Contract Agreement, whether through expiry or termination, or any other determination of WorkCover and/or the Nominal Insurer unless WorkCover and /or the Nominal Insurer advise the Contractor in writing that it does not require the Contractor to provide Transition-Out Services.

Transition-Out Services means the services necessary to be provided by the Contractor, for efficient and effective transfer of responsibility for the provision of the Services (or part of them) from the Contractor to WorkCover or the Nominal Insurer, or a third party designated by WorkCover or the Nominal Insurer, and all matters related to or connected with WorkCover or the Nominal Insurer (or a third party) assuming control of the Services, as specified in the Third Schedule (Specification of Services) to this Contract Agreement and in accordance with clause 29.

Wage Audit means an audit activity to:

- a) examine an Employer's wage records as referred to in section 174 of the 1987 Act and the business activities of the Employer;
- b) verify the number of workers employed by an Employer and the trade, occupation or calling of each such worker and the wages paid to them; and
- c) confirm that the correct workers compensation insurance premium is calculated for and paid by an Employer for its workers or deemed workers as defined under the 1987 Act.

Wage Audit Database means the database maintained by WorkCover which includes data regarding Wage Audits.

WorkCover means the WorkCover Authority of New South Wales as constituted by the 1998 Act and includes officers, employees, agents and authorised sub-contractors (and their employees and agents) engaged by the WorkCover Authority of New South Wales or by the Office of the WorkCover Authority Division of the Government Service of New South Wales under Chapter 1A of the *Public Sector Employment and Management Act 2002* except where the context requires it to be more narrowly construed.

WorkCover's Data means all data and information, (in whatever form and however stored or represented) which comes into the possession or control of WorkCover before the Commencement Date and/or during the Term, and which relates to, or is created by or for, the WorkCover (including data and information relating to the operation, facilities, customers, Personnel, assets, finances, transactions, policies or processes of the WorkCover), and includes, for the avoidance of doubt:

- a) any database in which such data or information is contained;
- b) any of the Contract Material embodying or referring to such data or information;
- c) any products resulting from the use, processing or manipulation of such data or information; and
- d) any and all copies of the above.

WorkCover's Material means any material, information, data, documentation or software (in whatever form and however stored) owned by or licensed to WorkCover which exists at the Commencement Date.

WorkCover's Representative means the authorised representative of WorkCover specified in the Part 2 of the First Schedule.

Workers Compensation Insurance means a policy of insurance that complies with section 155 of the 1987 Act.

1.2 In this Contract Agreement, unless the contrary intention appears:

- a) Words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders unless repugnant in context;
- b) Clause headings are for reference purposes only and do not form part of this Contract Agreement and are to be disregarded in the interpretation of this Contract Agreement;
- c) All sums due are payable in Australian dollars;
- d) All warranties shall have the force and effect of conditions and further shall survive completion of the Contract Agreement;
- e) Words importing natural persons shall (unless repugnant in context) mean and include companies, corporations, firms, unincorporated associations and any other entities recognised by law and vice versa;
- f) Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

- g) Any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
 - h) Any other agreement or instrument where amended or replaced means that agreement or instrument as amended or replaced;
 - i) A clause, schedule, annexure or exhibit is a reference to a clause of, schedule to, annexure to or exhibit to this Contract Agreement;
 - j) A group of persons includes any one or more of them; and
 - k) A thing or amount is a reference to the whole or part of it.
- 1.3 If there is a conflict between provisions of this Contract Agreement, then the documents shall be given the following order of priority such that the conflicting provision in the document lower in the order of priority shall be read down or severed to the extent necessary to resolve the conflict:
- a) this Contract Agreement;
 - b) the Request for Tender; and
 - c) the Contractor's Tender.

2. Term of this Contract Agreement

- 2.1 The Contract Agreement will commence on the Commencement Date, and continue until the date 3 years from the Commencement Date, subject to earlier termination or extension under the terms of this Contract Agreement.
- 2.2 The Contractor is to commence performance of the Services on the Commencement Date unless another date is given in Part 1 of the First Schedule to this Contract Agreement.
- 2.3 The Contract Agreement may be extended by two (2) additional periods, each of up to one (1) year in duration.
- 2.4 Any extension under clause 2.3 will be at the sole discretion of WorkCover and the Nominal Insurer.

- 2.5 WorkCover and the Nominal Insurer must notify the Contractor in writing at least one (1) month prior to the end of the then current term of their intention to extend the Contract Agreement for an additional period of up to one (1) year.
- 2.6 If WorkCover and the Nominal Insurer exercise their option to extend the Contract Agreement from the end of the initial term of three (3) years, the provisions of this Contract Agreement will apply to the extended term, except that this clause will be read so that the Contract Agreement may only be extended by one (1) additional period of up to one (1) year.

3. Key Personnel

- 3.1 The Contractor is required to nominate a team of personnel (the “Key Personnel”) to undertake the work required. The team is expected to be made up of a mix of appropriately qualified staff to undertake all tasks required in accordance with the terms and conditions of the Contract Agreement with regard to the Services to be performed by the Contractor.
- 3.2 At a minimum, Key Personnel who will be conducting the Wage Audits are required to hold formal qualifications in accounting or related discipline (commerce/finance) sufficient to gain membership to the Australian Society of Certified Practising Accountants or Institute of Chartered Accountants.
- 3.3 Within their team of Key Personnel the Contractor is to nominate a Key Person. The Key Person is to have ultimate professional and management responsibility for the delivery of services under the Contract Agreement.
- 3.4 The Contractor may request in writing that any other person be appointed as a Key Person (either in addition to or in place of an existing Key Person). WorkCover and the Nominal Insurer may in their absolute discretion approve or refuse to approve such person as a Key Person. Approval or refusal must be given in writing.
- 3.5 The Contractor must ensure that each Key Person and all Key Personnel sign and give to WorkCover and the Nominal Insurer a deed in the form of the Second Schedule. WorkCover and the Nominal Insurer will not be obliged to commence or continue any of their obligations under this Contract Agreement

(including payment) unless every Key Person and all Key Personnel have executed and given to WorkCover and the Nominal Insurer a deed in that form.

- 3.6 The Contractor agrees that police security checks may be carried out on each of the nominated Key Persons and that as a result of such checks WorkCover and the Nominal Insurer may not approve of particular Key Persons.
- 3.7 The Key Person will be required to:
- a) sign off on all reports and advice (unless otherwise agreed by WorkCover and the Nominal Insurer in advance);
 - b) manage the delivery of services under the Contract Agreement and in accordance with any relevant professional standards, specified requirements, guidance templates, directions of WorkCover and/or the Nominal Insurer, and timetables;
 - c) be the point of contact for official correspondence under the Contract Agreement;
 - d) present to WorkCover and/or the Nominal Insurer and any parties nominated by WorkCover and/or the Nominal Insurer from time to time on service delivery progress, any recommendations or other topics as directed by WorkCover and/or the Nominal Insurer;
 - e) submit invoices, Monthly Progress Reports, Final Reports, ad-hoc reports and/or Issue Notification Reports; and
 - f) meet with WorkCover and/or the Nominal Insurer regularly, and at a minimum bi-annually to discuss performance (clause 12).
- 3.8 The Contractor will notify WorkCover and the Nominal Insurer of any changes to its Key Personnel and ownership/control within 10 Business Days of the change being known to the Contractor.
- 3.9 Upon request from WorkCover or the Nominal Insurer, the Contractor must provide details of any changed Key Personnel including, but not limited to:
- a) occupational competency;
 - b) qualifications and training;
 - c) employment history and experience; and
 - d) any other information requested by WorkCover or the Nominal Insurer.

4. Contractor's Warranties

4.1 The Contractor warrants on a continuing basis that:

- a) it will provide the Services in accordance with the requirements of this Contract Agreement (including without limitation any timeframes set out for the Services as specified in the Third Schedule (Specification of Services) to this Contract Agreement or as agreed with WorkCover and/or the Nominal Insurer) with due care and skill;
- b) all Personnel engaged in the provision of the Services are appropriately qualified, competent, experienced and licensed (where appropriate), to perform the Services;
- c) all Personnel are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order of the State or Territory or any relevant industrial agreement;
- d) it is and will remain responsible for all acts and omissions of its Personnel, with any acts or omissions of the Contractor's Personnel deemed to be the acts and omissions of the Contractor;
- e) all Services will be provided in accordance with all appropriate auditing or professional standards of the Institute of Chartered Accountants or CPA Australia (as applicable), and any other standards notified by WorkCover and/or the Nominal Insurer from time to time;
- f) it will comply with all statements or representations as to the provision of the Services in the tenderer's response to the Request For Tender;
- g) the information contained in the tenderer's response to the Request For Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor, the Key Personnel and any Subcontractors is complete and accurate and is not misleading in any material respect by omission or otherwise at the date of tender submission and that any material changes after tender submission will be promptly notified to WorkCover and the Nominal Insurer;

- h) it will not enter into any arrangement that impedes or is likely to impede its performance of the Services in a manner, and to a standard, that is satisfactory to WorkCover and the Nominal Insurer without first obtaining WorkCover and the Nominal Insurer's consent;
- i) the performance of the Services will not infringe the Intellectual Property Rights of any third party;
- j) it has established and will comply with and maintain during the term of the Contract Agreement, the security of information arrangements set out in the tenderer's response to the Request For Tender;
- k) the use of the Contractor's Materials will not infringe the Intellectual Property Rights of any person;
- l) the Services will conform to any applicable Laws and standards;
- m) WorkCover and the Nominal Insurer can rely upon the accuracy of the advice and Information provided by the Contractor;
- n) it will comply at all times with:
 - i) occupational health and safety laws, policies, procedures and programs of WorkCover and the Nominal Insurer; and
 - ii) all guidelines and directions given from time to time by WorkCover and the Nominal Insurer in relation to occupational health and safety issues when delivering the Services or otherwise present at premises or locations of WorkCover and the Nominal Insurer;
- o) it will ensure that its occupational health and safety management system is acceptable to WorkCover and the Nominal Insurer;
- p) it will fully cooperate, consult and liaise with the other Contractors (as required);
- q) as at the date of this Contract Agreement there are no conflicts of interest;

- r) it holds all insurances it is required to hold under this Contract Agreement;
- s) it has the authority to enter into and perform this Contract Agreement; and
- t) it will not do or omit to do anything that may diminish either WorkCover's, the Nominal Insurer's or a Scheme Agent/Insurer's reputation or in any case damage their name.

5. Independence of Contractor

- 5.1 In the performance of the Services and for all other purposes, the Contractor is an independent contractor and not to be considered the partner, employee, agent or representative of WorkCover or the Nominal Insurer.
- 5.2 In addition to clause 4, the Contractor warrants on a continuing basis that:
 - a) it will not hold out that it has any such partner, employee, agent or representative relationship with WorkCover or the Nominal Insurer; and
 - b) it shall not assume or create, either directly or indirectly, any obligation or liability on the part of WorkCover or the Nominal Insurer.

6. Provision of Services

- 6.1 The Contractor shall provide the Services as described in the Third Schedule (Specification of Services) to this Contract Agreement.
- 6.2 The Contractor acknowledges and accepts that the Contract Agreement constitutes a standing offer for the supply of only such Services on a non-exclusive basis as may be required from time to time during the term of the Contract Agreement and neither WorkCover nor the Nominal Insurer shall be bound expressly or impliedly to order from the Contractor any quantity of Service during the term of the Contract Agreement.

- 6.3 The Contractor shall establish immediately, at no additional cost to WorkCover or the Nominal Insurer, all necessary facilities for the effective conduct and management of all aspects of the Contract Agreement.
- 6.4 The Contractor must obtain at its own cost all licences, approvals, certifications and consents necessary for the effective provision of the Services.
- 6.5 Without limiting the generality of clause 6.1, the Contractor must perform the Services:
- a) in accordance with the terms and conditions detailed herein, in an efficient manner with the degree of care, skill and competence expected of an auditor acting as an expert in the delivery of the Services, including use of the latest technology and techniques available to provide the Services, in accordance with the Third Schedule (Specification of Services) to this Contract Agreement, and to the satisfaction of WorkCover and the Nominal Insurer and in accordance with WorkCover or the Nominal Insurer general directions;
 - b) in a timely manner, completing each part of the Services within any timeframe set out for that part of the Services or as otherwise agreed between WorkCover or the Nominal Insurer and the Contractor;
 - c) in a cost effective manner; and
 - d) in accordance with any directions given by WorkCover or the Nominal Insurer from time to time, including directions contained within the Engagement Advice or any additional or subsequent directions to an Engagement Advice.
- 6.6 As soon as practicable after becoming aware of any matter which is likely to delay provision or completion of the Services or any part of the Services, the Contractor must give written notice to WorkCover and the Nominal Insurer detailing the circumstances and likely impacts or extent of the delay to enable WorkCover and the Nominal Insurer to determine their actions.
- 6.7 The Contractor shall be responsible for all costs associated with rectifying Services deemed unacceptable by WorkCover or the Nominal Insurer and/or errors made by the Contractor in the provision of Services.

- 6.8 The Contractor shall report to WorkCover NSW's Representative and/or the Nominal Insurer's Representative (as specified in Part 2 of the First Schedule to this Contract Agreement) from time to time and for the purpose of reviewing the performance of this Contract Agreement and will specifically comply with the reporting requirements contained in the Third Schedule to this Contract Agreement.
- 6.9 For the purposes of this clause, the word "direction" includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which WorkCover or the Nominal Insurer or WorkCover's Representative or the Nominal Insurer's Representative may make, give or issue pursuant to the provisions of this Contract Agreement.
- 6.10 The Contractor must complete all Services in accordance with the written terms of this Contract Agreement and any guidelines agreed to between the Contractor and WorkCover or the Nominal Insurer at the time of Engagement of the Services by WorkCover or the Nominal Insurer.
- 6.11 The Contractor acknowledges and agrees:
- a) in performance of the Services, to fully co-operate, consult and liaise with the other Contractors of these Services or as otherwise directed by WorkCover or the Nominal Insurer; and
 - b) it will not, by any act or omission, impede, hinder, restrict or obstruct (or attempt to impede, hinder, restrict or obstruct) the performance by the other Contractors of the Services to be performed by them as specified in the Third Schedule (Specification of Services) to this Contract Agreement or as otherwise may be agreed between WorkCover or the Nominal Insurer and the Contractor.

7. Engagement of Services

- 7.1 Engagement of Services from the Contractor may only be initiated, withdrawn or cancelled by WorkCover or the Nominal Insurer.
- 7.2 WorkCover or the Nominal Insurer will advise both the Contractor and the Scheme Agent/Insurer, if applicable, of the initiation, withdrawal or cancellation of an Engagement by issuing an Engagement Advice.
- 7.3 The Engagement Advice will contain, as a minimum:
- a) Employer Name;
 - b) ABN details;
 - c) Employer address and/or contact details, as known;
 - d) Scheme Agent/Insurer, if applicable;
 - e) Policy number;
 - f) Period/s to be audited;
 - g) Reasons for the audit;
 - h) Required completion date;
 - i) Other comments/instructions;
 - j) Contact officer details; and
 - k) The name of the Initiating Party.
- 7.4 The Initiating Party will instruct the Scheme Agent/Insurer, if applicable, to provide all necessary information or support to the Contractor with regards to the Engagement.
- 7.5 During the Engagement, the Initiating Party may issue a direction to vary an Engagement. The relevant Engagement Advice is taken to have been varied by any such direction.
- 7.6 The Contractor may decline an Engagement only where:
- a) it is subject to a conflict of interest; and
 - b) it has notified Initiating Party of that fact within 10 Business Days of receipt of the Engagement Advice.
- 7.7 The Initiating Party may withdraw or cancel an engagement and in the event of any such withdrawal or cancellation of an engagement the Contractor will cooperate with the Initiating Party to ensure an orderly handover of the

engagement to either the initiating Party or a third party in accordance with the provisions in the Third Schedule.

- 7.8 The withdrawal or cancellation of an Engagement under this clause does not give rise to any rights that the Contractor may have in relation to a suspension under clause 25, or termination under clause 26, of the Contract Agreement.
- 7.9 The Contractor may seek guidance or clarification as to how to proceed with an Engagement from the Initiating Party. Such guidance or clarification will be promptly provided by the Initiating Party.
- 7.10 Where the Contractor is awaiting guidance or clarification and is not reasonably able to proceed with the Engagement, the Contractor may suspend completion of the Engagement after seeking approval of the suspension from the Initiating Party. The Initiating Party may not unreasonably withhold such approval.
- 7.11 Following any suspension as approved under clause 7.10, the required completion date identified in the Engagement Advice must be revised by the Initiating Party to account for any time taken by it in providing the requested guidance or clarification. The revised completion date will be advised to the Contractor in accordance with clause 7.5.
- 7.12 For the purposes of this clause 7, a withdrawn Engagement is one that may be reinitiated by either WorkCover or the Nominal Insurer at a future time.
- 7.13 For the purposes of this clause 7, a cancelled Engagement is one that may not be reinitiated by either WorkCover or the Nominal Insurer at a future time. A cancelled Engagement will entitle the Contractor to a Cancellation Fee.

7.14 Separate Agreement

7.14.1 Each Engagement constitutes a separate agreement between the Contractor and the Initiating Party.

7.14.2 Each Engagement is governed by the following terms:

- a) the Engagement Advice;
- b) this Contract Agreement; and
- c) directions, guidelines or instructions issued by the Initiating Party pursuant to this Contract Agreement.

7.15 Non-complying Employers

7.15.1 The Contractor must promptly notify WorkCover in writing of any Non-Complying Employers it encounters in an Engagement, particularising the issues concerning that Non-Complying Employer, including all details where the Non-Complying Employer has not cooperated with the Contractor.

7.15.2 WorkCover may issue a s174 Order as WorkCover considers appropriate. WorkCover must notify the Contractor and the Initiating Party of each s174 Order it issues in response to the Initiating Party's notification under clause 7.15.1.

7.15.3 Following the notification of the making of the S174 Order:

- a) the Contractor must use its reasonable endeavours to continue to perform the Wage Audit; and
- b) the Contractor must promptly notify WorkCover in writing if a Non-Complying Employer does not comply with the s174 Order or continues not to assist in a Wage Audit, particularising the issues concerning that Non-Complying Employer.

7.15.4 If the terms of the s174 Order do not permit the Wage Audit to be completed in accordance with the Engagement Advice, then the Engagement Advice is deemed to be amended, but only to the extent necessary to conform with the s174 Order.

8. Right to Obtain Services Elsewhere

8.1 The Contractor acknowledges and accepts that WorkCover and the Nominal Insurer reserve the right at all times to use any of the panel of Contractors, to use selective or open tendering procedures, or to refer work to any other

service provider/s outside the Contract Agreement, for any of the Services covered by the Contract Agreement and the Contract Agreement shall not be considered as infringed or vitiated thereby.

- 8.2 The Contractor will not be entitled to any payment or compensation in relation to Services provided by a third party pursuant to this clause.
- 8.3 The Contractor acknowledges that WorkCover and the Nominal Insurer will appoint more than one contractor to supply the Services, and warrants that the Contractor will make no objection to such appointment.

9. Subcontracting or Assignment

- 9.1 The Contractor may only subcontract the performance of any part of the Services if the part of the Services and the identity of the Subcontractor is specified in Part 5 of the First Schedule. Otherwise, the Contractor shall not assign or subcontract any part of the Services without the prior written consent of either WorkCover's Representative and/or the Nominal Insurer's Representative. WorkCover's Representative and the Nominal Insurer's Representative may withhold that consent at his or her discretion.
- 9.2 The Contractor may only subcontract the work to an approved and competent Subcontractor holding appropriate qualifications, experiences and licenses (if applicable). The Contractor remains responsible to WorkCover and/or the Nominal Insurer for the performance of the work by the Subcontractor.
- 9.3 At all times throughout the term of this Contract Agreement, the Contractor warrants that:
- a) it has paid its Subcontractors all amounts owing to them;
 - b) it has paid, on or before the due date for payment all:
 - i) remuneration and other benefits payable or to be provided to;
 - ii) pay-roll tax payable by the Contractor in respect of wages paid or payable in respect of; and

- iii) workers compensation insurance premiums payable by the Contractor in respect of;

employees (or deemed employees) of the Contractor in respect of work done in connection with this Contract Agreement; and

- c) each Subcontractor (if any) engaged by the Contractor has provided to the Contractor statements (in any form prescribed or appropriate under legislation with respect to workers compensation insurance, industrial relations, payment of Subcontractor's wages and pay-roll tax) to the effect that the payments referred to in paragraph (b) have been made.

9.4 The Contractor must, with each invoice it issues under this Contract Agreement, and otherwise on request, provide WorkCover and/or the Nominal Insurer with:

- a) a declaration and other evidence if required by WorkCover and/or the Nominal Insurer that it has paid all its Subcontractors all amounts owing to them;
- b) a written statement in any form prescribed under legislation with respect to workers compensation insurance, industrial relations (payment of Subcontractor's wages) and pay-roll tax:
 - i) to the effect that all payments referred to in clause 9.3 have been paid by the Contractor and by its Subcontractors (if any). If there is no prescribed form the statement shall be in such form as WorkCover and/or the Nominal Insurer approves; and
 - ii) stating whether the Contractor has engaged Subcontractors, and if so, whether the Contractor has received a written statement from its Subcontractors in the form specified in this clause.

9.5 The Contractor must indemnify WorkCover and the Nominal Insurer against any loss or liability (including statutory liability of the Contractor or any Subcontractor for unpaid wages, workers compensation insurance premiums, workers compensation liability and unpaid pay-roll tax) directly or indirectly arising from breach of this clause or failure to pay the foregoing when due.

- 9.6 WorkCover and/or the Nominal Insurer may withhold or suspend any payment or compliance by it with any other obligation under this Contract Agreement pending receipt of a statement and certificate required by this clause. Exercise of this right will not entitle the Contractor to cease work, terminate this Contract Agreement or to any other remedy and is without prejudice to the exercise of any statutory or other right or remedy (including termination) by WorkCover and the Nominal Insurer.
- 9.7 The Contractor must not assign or novate this Contract Agreement without obtaining the prior written consent of WorkCover and the Nominal Insurer.
- 9.8 The Contractor acknowledges that WorkCover and the Nominal Insurer may make financial checks on the entity proposing to take-over this Contract Agreement before determining whether or not to give its consent to the assignment or novation.

10. Payment for Services

- 10.1 WorkCover or the Nominal Insurer shall pay the Contractor according to the rates and sums and any time frames, stages or other conditions set out in Part 4 of the First Schedule, subject to the terms of this Contract Agreement.
- 10.2 If appropriate, WorkCover and/or the Nominal Insurer may deduct PAYG or such other withholding as WorkCover and/or the Nominal Insurer reasonably considers applies to amounts payable to the Contractor.
- 10.3 The Contractor shall keep proper accounts and records in accordance with general accounting principles and must provide these to WorkCover and the Nominal Insurer, if requested by either WorkCover or the Nominal Insurer respectively, in support of any payment the Contractor claims under this Contract Agreement.
- 10.4 Any prices and rates are inclusive of GST unless the First Schedule to this Contract Agreement states otherwise.
- 10.5 The Contractor, WorkCover and the Nominal Insurer agree to comply with their respective obligations under the GST Law.

- 10.6 The Contractor must provide WorkCover and/or the Nominal Insurer with a Tax Invoice detailing the Services performed and other information WorkCover and/or the Nominal Insurer may reasonably require in whatever form and as often as WorkCover and/or the Nominal Insurer may set down from time to time. A Tax Invoice may only be provided to WorkCover and/or the Nominal Insurer for Services already completed.
- 10.7 A Contractor is entitled to a payment for Services provided that:
- a) The Contractor issues a Tax Invoice in accordance with this Contract Agreement; and
 - b) The Services have been conducted in accordance with this Contract Agreement and to the reasonable satisfaction of the Initiating Party.
- 10.8 A Contractor is not entitled to payment for:
- a) Attendance at or preparations for Wage Auditor Panel Quarterly Forums (Third Schedule, clause 2.8); or
 - b) Attendance at or preparations for performance discussion meetings (clause 12); or
 - c) Preparations for or participation in Performance Management Interventions (Appendix G to Third Schedule, clause 5.0).
- 10.9 If a Tax Invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment shall be recoverable by or from the Contractor and without limiting recourse to other available means of set-off against any subsequent amount due by WorkCover and/or the Nominal Insurer to the Contractor.
- 10.10 WorkCover and the Nominal Insurer must make payment within 20 Business Days after receipt of the Contractor's valid Tax Invoice. If WorkCover or the Nominal Insurer has requested further information, the time for payment must be extended by the number of days between the date of the request by WorkCover or the Nominal Insurer and the date the further information is provided to WorkCover or the Nominal Insurer by the Contractor.

10.11 The making of a payment is not an acknowledgement that the Services have been provided in accordance with this Contract Agreement, but shall be taken to be payment on account only.

10.12 When the Contract Agreement Price basis is variable, the following conditions shall apply:

- a) The price is firm for the first twelve (12) months of the term of the Contract Agreement then subject to review at the end of that period in accordance with any percentage increase in the Consumer Price Index which would take effect on commencement of each subsequent twelve month period including subsequent extension periods, subject to such options being exercised by WorkCover and the Nominal Insurer.
- b) Applications for increases in prices shall be made in writing to WorkCover and the Nominal Insurer which, subject to the Contractor having provided to WorkCover and the Nominal Insurer all information needed by WorkCover and the Nominal Insurer to make a decision, shall approve and publish, or disapprove, a price increase application within six (6) weeks of lodgement of the application, or provision of any information required by WorkCover and the Nominal Insurer. Increased prices shall not, under any circumstances, be applied retrospectively.
- c) Applications for increases in Contract Agreement Prices must be made by the Contractor.
- d) Applications to increase Contract Agreement Prices (when applicable) will be approved at no less than twelve (12) monthly intervals.
- e) Variation on the basis of the Consumer Price Index (CPI) percentage and changes to the price based on CPI (or substitute index if CPI is abolished) is to be calculated in accordance with the following:
 - i) Tendered prices shall remain firm for the initial twelve (12) months of the Contract Agreement then on the date, which is the first anniversary of the Contract Agreement; the prices shall increase by no more than the CPI percentage increase. The increased prices will remain firm for the second year.
 - ii) On the date, which is the date of the second anniversary of the Contract Agreement, the prices may be increased by no more

than the CPI percentage increase. The increased prices shall then remain firm for the third year.

- iii) On the date, which is the date of the third anniversary of the Contract Agreement (subject to WorkCover and the Nominal Insurer exercising this option to extend the Contract Agreement), the prices may be increased by no more than the CPI percentage increase. The increased prices shall then remain firm for the fourth year.
- iv) On the date, which is the date of the fourth anniversary of the Contract Agreement (subject to WorkCover and the Nominal Insurer exercising this option to extend the Contract Agreement), the prices may be increased by no more than the CPI percentage increase. The increased prices shall then remain firm for the fifth year.
- v) The applicable increase will be calculated in accordance with the following formula:

$$\frac{\text{OF} \times \text{CCPI}}{\text{OCPI}} = \text{RF}$$

Where:

OF = Original Service Fee or Schedule of Rates at commencement of the Contract Agreement

OCPI = the original CPI available immediately before the commencement of the Contract Agreement

CCPI = the current CPI available immediately prior to the Anniversary

RF = Revised Fee: the revised Service Fee and/or the revised Schedule of Rates.

10.13 Where the Contractor has been requested to provide a fixed price quote for an Engagement, and the quote has been accepted by WorkCover or the Nominal Insurer, the Contractor agrees that:

- a) WorkCover or the Nominal Insurer shall not pay for any additional work undertaken by the Contractor unless the Contractor has obtained WorkCover or the Nominal Insurer's prior agreement in writing; and
- b) the Contractor will reduce the fixed price where the allocated hours used to calculate the price have not been utilised.

10.14 WorkCover and/or the Nominal Insurer will identify the Initiating Party as invoice addressee (whether WorkCover or the Workers Compensation Nominal Insurer) in its Engagement Advice.

10.15 Where an Engagement is withdrawn, the Contractor shall provide to WorkCover or the Nominal Insurer a Tax Invoice for and with evidence of work performed to the date of the withdrawal.

10.16 Where an Engagement is cancelled, the Contractor shall provide to WorkCover or the Nominal Insurer a Tax Invoice for and with evidence of work performed to the date of the cancellation and the Cancellation Fee.

11. Mistakes in Information

11.1 The Contractor must pay for the extra costs (if any) occasioned by errors or omissions in material or other Information supplied by it, even though that material or Information may have been approved by WorkCover or the Nominal Insurer.

12. Monitoring of Performance

12.1 For the purposes of reviewing the provision of the Services and to evaluate the Contractor's performance of its obligations under this Contract Agreement, WorkCover's Representative and/or the Nominal Insurer's Representative and the Contractor's Key Person will meet:

- a) bi-annually (twice per year) to discuss the Contractor's past performance with regard to:

- i) quality of service, including (if applicable) adherence to timeframes, quality of reports and compliance with guidelines, templates etc;
 - ii) current and future assignments and timeframes;
 - iii) management and suitability of Personnel and Sub-contractors;
 - iv) contract administration and management;
 - v) other matters deemed appropriate by either party; and
- b) at such other times as required by WorkCover and/or the Nominal Insurer.
- 12.2 Meetings will be held at WorkCover's premises unless otherwise agreed between the parties.
- 12.3 WorkCover and the Nominal Insurer will make available to the Contractor any performance reports prepared by WorkCover or the Nominal Insurer with regard to the Contractor and its performance in terms of clause 12.1.
- 12.4 The Contractor will undertake audits to verify the hours spent and the quality of the provision of Services to ensure that performance meets the Performance Standards required by WorkCover and the Nominal Insurer. WorkCover and/or the Nominal Insurer may require reports on these activities from time to time.
- 12.5 Where WorkCover or the Nominal Insurer receives a complaint from an Employer or its representative, or a Scheme Agent/Insurer regarding the Contractor, WorkCover and/or the Nominal Insurer must use reasonable endeavours to resolve the complaint to the satisfaction of the relevant parties. The determination made by WorkCover or the Nominal Insurer regarding a complaint is final and binding on the Contractor.
- 12.6 Whilst WorkCover and the Nominal Insurer intend to manage the Contractor's performance in accordance with the Performance Management Framework, nothing within the Performance Management Framework limits any rights or obligations of the parties to this Contract Agreement, including the rights of either WorkCover and/or the Nominal Insurer to exercise their powers under clauses 25 (Suspension) and 26 (Termination) of this Contract Agreement.

- 12.7 The Contractor acknowledges that WorkCover and/or the Nominal Insurer may commence to manage the Contractor's performance at any level of the Performance Management Framework.
- 12.8 If WorkCover or the Nominal Insurer approve a Performance Management Intervention, this will not constitute any waiver of any breach, nor does it affect the rights of WorkCover or the Nominal Insurer if the Contractor does not meet the requirements of the Performance Management Intervention that has been approved prior to receipt of any notice of a breach.

13. Confidential Information

- 13.1 The Contractor may use the Confidential Information solely for the purpose of providing the Services under this Contract Agreement.
- 13.2 The Contractor shall not reveal to any other party the terms of this Contract Agreement or the Services performed, the Confidential Information or any other information WorkCover and the Nominal Insurer tells the Contractor is confidential or which the Contractor should reasonably conclude is confidential.
- 13.3 The Contractor shall ensure at all times that it/she/he safeguards the Confidential Information against unauthorised use or disclosure.
- 13.4 Before disclosing the Confidential Information to its Personnel, the Contractor must ensure that the Personnel are aware of the confidentiality requirements of this Contract Agreement and are advised that it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Contract Agreement.
- 13.5 The obligations imposed by clauses 13.1, 13.2, 13.3 and 13.4 shall not apply to information which is in or comes into the public domain other than by reason of a breach of a duty of confidence.
- 13.6 It shall not be a breach of the Contractor's duty of confidence to disclose such Confidential Information as the Contractor is required by law to disclose, provided that the Contractor shall give WorkCover and/or the Nominal Insurer

prior written notice of any such required disclosure, and shall advise the party requiring disclosure of its confidential nature.

13.7 The Contractor shall return the Confidential Information to WorkCover and/or the Nominal Insurer immediately on completion of the Services, or on expiry or termination of this Contract Agreement, or on request by WorkCover and/or the Nominal Insurer.

14. Privacy

14.1 Without limiting clause 34 (Compliance with Laws and Policies) the Contractor must comply, and ensure that its Personnel comply, with the applicable requirements of the Privacy Legislation, including the Information Privacy Principles.

14.2 The Contractor agrees:

- a) to use, retain or disclose Protected Information obtained during the course of this Contract Agreement only for the purpose for which the Protected Information was acquired;
- b) not to do any act, or engage in any practice, that would breach an Information Privacy Principle;
- c) to notify WorkCover and/or the Nominal Insurer immediately of any breach or possible breach of the Privacy Legislation, whether by the Contractor or its Personnel or Subcontractors;
- d) to notify WorkCover and/or the Nominal Insurer immediately of any complaint received by the Contractor or its Personnel which arises out of an obligation referred to in subclause 14.1 and of the outcome of any investigation of such a complaint;
- e) to comply with all directions of WorkCover and/or the Nominal Insurer or a Privacy Commissioner in relation to the matters referred to in this clause;
- f) to ensure that any Personnel of the Contractor who are required to deal with the Protected Information for the purposes of this Contract Agreement are made aware of the obligations in this clause 14; and

- g) to ensure that any other agreement with a Subcontractor, who will be fulfilling a requirement in relation to this Contract Agreement which includes the handling of Protected Information, contains the same or equivalent obligations as this clause 14 which are enforceable by the Contractor against the Subcontractor.
- 14.3 Without limiting clause 14.2, the Contractor agrees to comply with the *Privacy and Personal Information Protection Act 1998* and WorkCover's *Personal and Privacy Information Management Plan 2006* (PPI Management Plan) which contains policies and practices of WorkCover that ensure compliance with the *Privacy and Personal Information Protection Act 1998*, in the same manner and to the same extent as WorkCover. For the purposes of compliance with the *Privacy and Personal Information Protection Act 1998* and the PPI Management Plan, the Contractor is to be regarded as a part of WorkCover.

15. Intellectual Property Rights

- 15.1 In performing the Services it is the Contractor's responsibility to ensure that neither the Contractor nor WorkCover nor the Nominal Insurer infringes the copyright or other intellectual property rights of any person in relation to the carrying out of the Services or the creation or use of the materials to be created in the performance of the Services specified in the Third Schedule to this Contract Agreement.
- 15.2 The Contractor shall:
 - a) agree that all copyright and other intellectual property rights in respect of material created in the performance of the Services shall vest in and belong to WorkCover or the Nominal Insurer;
 - b) assign, and must ensure that any other relevant party assigns to WorkCover or the Nominal Insurer, all copyright and other intellectual property rights in respect of material produced in performance of the Services;
 - c) consent, and must ensure that any other relevant party consents in writing to WorkCover, its employees, licensees and assignees, and the

Nominal Insurer doing any act in relation to any copyright works or subject matter in respect of which the Contractor has any Moral Rights or other rights of a like nature anywhere in the world, whether or not such act would have constituted a breach of those rights. In particular, the Contractor consents to the publication, reproduction, communication, amendment, variation, distribution and adaptation of such works or subject matter without attribution or the need for any further consent or permission; and

- d) warrant that neither the Services nor any of the materials produced in performance of the Services under this Contract Agreement infringe the copyright, Moral Rights or other intellectual property rights of any other party.

15.3 The Contractor shall grant to WorkCover or the Nominal Insurer an irrevocable world wide, royalty free and unrestricted licence to use the copyright or other intellectual property rights incorporated in any materials created in performance of the Services (to the extent that such rights have not been assigned to or vested in WorkCover or the Nominal Insurer), and the materials themselves for any purpose WorkCover or the Nominal Insurer sees fit, including the right to change, copy, exhibit, sell, licence and reproduce relevant material, except to the extent that WorkCover or the Nominal Insurer has expressly agreed in writing that the Contractor may retain rights which would otherwise belong to WorkCover or the Nominal Insurer under this clause 15.

15.4 WorkCover or the Nominal Insurer may take legal proceedings including injunctive proceedings, against the Contractor if there is any actual, threatened or suspected breach of this clause 15.

15.5 In the event of any claim being made or brought against WorkCover or the Nominal Insurer in respect of any breach or alleged breach by the Contractor of any Intellectual Property Rights, WorkCover or the Nominal Insurer will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of WorkCover or the Nominal Insurer, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement WorkCover or the Nominal Insurer may suspend

payment of any money due to the Contractor under the Contract Agreement until such claim has been satisfied, settled, or withdrawn.

15.6 The Contractor, WorkCover and the Nominal Insurer acknowledge that all Intellectual Property in any Books is retained by the party providing those books to a Contractor.

15.7 The Contractor, WorkCover and the Nominal Insurer acknowledge that all Intellectual Property in any reports or databases produced pursuant to this agreement is owned by WorkCover and the Nominal Insurer.

16. Conflict of Interest

16.1 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 this Contract Agreement. A conflict of interest will include, but not be limited to:

- a) the Contractor performing work for a third party when the third party is a party to legal proceedings with WorkCover or the Nominal Insurer; or
- b) the Contractor performing work for an Employer named in an Engagement Advice.

16.2 The Contractor shall always, during the period of this Contract Agreement, ensure that no action is taken by the Contractor or the Contractor’s Key Personnel, employees, agents or Subcontractors, which does or could create conditions which conflict with the best interests of WorkCover or the Nominal Insurer.

16.3 Upon becoming aware of the existence or possibility of a conflict of interest affecting the Contractor, the Contractor shall advise WorkCover or the Nominal Insurer in writing, including details of the nature and particulars of the conflict of interest.

- 16.4 On receipt of the notice under clause 16.3 (as above) WorkCover or the Nominal Insurer may:
- a) Request further information from the Contractor to assess the severity of the conflict of interest; and/or
 - b) Approve the Contractor continuing the Services subject to reasonable conditions and proposed actions by the Contractor to resolve the conflict to the satisfaction of either WorkCover or the Nominal Insurer within the time period specified in writing by WorkCover or the Nominal Insurer respectively; or
 - c) Require the Contractor to cease conduct of an individual Engagement; or
 - d) Recommend to the other, the Nominal Insurer or WorkCover as the case may be, that this Contract Agreement be terminated in accordance with clause 26.2 if in its view a conflict of interest exists which prevents the proper performance of this Contract Agreement.
- 16.5 The Contractor must comply with any direction given by WorkCover or the Nominal Insurer under clause 16.4.
- 16.6 The Contractor warrants that at the time of signing this Contract Agreement it has disclosed all actual or potential conflicts of interest which exist or are likely to arise in the performance of the Services, as specified in the Third Schedule to this Contract Agreement.

17. Payment of Wages and Allowances

- 17.1 The Contractor shall ensure that all persons employed by it in or in connection with the Services are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order of the State of New South Wales or under any other industrial agreement that is in force and that all such persons are employed under the conditions contained in any such award, judgement, order or industrial agreement.

- 17.2 It shall be a precondition, notwithstanding any other provision of this Contract Agreement, to the obligation to pay any monies due to the Contractor that wherever requested by WorkCover or the Nominal Insurer, the Contractor shall give WorkCover or the Nominal Insurer respectively a statutory declaration to the effect that no wages, payroll taxes or workers compensation insurance premiums are due and owing by the Contractor in respect of work undertaken pursuant to this Contract Agreement.
- 17.3 Neither WorkCover nor the Nominal Insurer will be liable for any of the Contractor's employee "on-costs", including wages, salaries, holiday pay or allowances, sick pay, workers' compensation insurance or any other insurance premiums, or any tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Contractor.
- 17.4 The Contractor must indemnify WorkCover and the Nominal Insurer against any loss or liability (including statutory liability of the Contractor or any Subcontractor for unpaid remuneration or other benefits, workers compensation premiums, workers compensation liability and unpaid payroll tax) directly or indirectly arising from a breach of this clause or failure to pay the foregoing due.

18. Creating, Keeping and Access to Records

- 18.1 For the purposes of this clause, "**records**" include books of account, timesheets, files, Books, and reports, and all other documentation that could reasonably be associated with the performance of the Services.
- 18.2 The Contractor must keep proper records in accordance with the accounting principles generally applied in commercial practice, any codes of practice relevant to the Contractor's industry and in accordance with any directions issued by WorkCover and/or the Nominal Insurer, and may only use Books in the performance of the Services.
- 18.3 During the term, the Contractor must, within seven (7) days of a request from either WorkCover or the Nominal Insurer, give WorkCover and the Nominal Insurer respectively access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Contract Agreement, and

any financial information, that WorkCover and/or the Nominal Insurer reasonably requires in order for WorkCover and/or the Nominal Insurer to conduct an audit or review of the performance of the Services.

- 18.4 The Contractor must provide all reasonable assistance to WorkCover and/or the Nominal Insurer during the audits or reviews including attendance by the Contractor. The Contractor must promptly implement effective corrective action on matters disclosed by audit or review.
- 18.5 The Contractor must take all reasonable steps to ensure that Books and other records are secured and safeguarded against loss, theft, vandalism or other damage at all times.
- 18.6 At the completion, withdrawal or cancellation of an Engagement, the Contractor must return all Books and copies of Books to the party providing them.
- 18.7 WorkCover and/or the Nominal Insurer may copy any or all of the records, at their own expense.
- 18.8 The Contractor must keep records for at least five (5) years after completion of an Engagement.
- 18.9 The Contractor is entitled to access to completed Services records upon written request to WorkCover or the Nominal Insurer. Access will be provided at the premises of WorkCover and/or the Nominal Insurer during normal business hours.

19. Exchange of Information Between Government Agencies

- 19.1 The Contractor authorises WorkCover and its employees and agents, and the Nominal Insurer and agents, to make available to NSW Government departments or agencies information concerning the Contractor, including any information provided by the Contractor to WorkCover and/or the Nominal

Insurer and any information relating to the Contractor's performance under the Contract, or the Contractor's financial position.

- 19.2 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.
- 19.3 WorkCover and the Nominal Insurer regard 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).
- 19.4 The Contractor releases and indemnifies WorkCover and the Nominal Insurer and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information.
- 19.5 Without limiting the above, the Contractor releases WorkCover and the Nominal Insurer 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.

20. Access to Contractor's Premises

- 20.1 During the Contract Agreement term, the Contractor shall at all times during ordinary working hours (ie. Monday to Friday, 9.00am to 5.00 pm) permit or arrange for WorkCover and the Nominal Insurer (including but not limited to WorkCover's Representatives or agents and the Nominal Insurer's Representatives or agents) to have reasonable access as required to the Contractor's premises, Personnel, systems, documents and records to inspect, audit and review the processes and methods of the Contractor to ensure compliance with this Contract Agreement.

21. Insurances

21.1 The Contractor must hold and maintain, and must ensure that all employees, Personnel and Subcontractors utilised in the provision of the Services are beneficiaries under or otherwise hold and maintain, the following insurances for the term of this Contract Agreement:

- a) public liability insurance with insurers approved by WorkCover and the Nominal Insurer for an amount of at least ten million dollars in respect of each claim;
- b) current workers compensation insurance for all persons who are workers within the meaning of the *Workplace Injury Management and Workers Compensation Act 1998*;
- c) professional indemnity insurance with insurers approved by WorkCover and the Nominal Insurer for an amount of at least ten million dollars in respect of each claim; and
- d) other specific insurance (if any) that may be required by WorkCover and/or the Nominal Insurer.

21.2 Within 10 Business Days after the Commencement Date and then within 10 Business Days of the anniversary of the renewal date for each policy, for every year for which the Contractor is required to maintain the policy under this Contract Agreement, the Contractor must produce such documentary evidence to WorkCover and the Nominal Insurer that the insurance required under the Contract Agreement is current and in effect.

21.3 If the Contractor fails to comply with this clause 21, WorkCover and/or the Nominal Insurer may:

- a) effect and maintain that insurance and pay the necessary premiums; and
- b) recover from the Contractor the cost of the premiums and reasonable cost to WorkCover and/or the Nominal Insurer of effecting and maintaining the insurance.

- 21.4 Where the Contractor is insured under a foreign company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor.
- 21.5 The Contractor is responsible for insuring the Contractor's own plant and equipment. Neither WorkCover nor the Nominal Insurer will be liable for loss of or damage to any of the Contractor's plant or equipment. This will apply notwithstanding that the loss or damage occurs on premises of either WorkCover or the Nominal Insurer.
- 21.6 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Contract Agreement.

22. Entry to Official Establishments

- 22.1 All Personnel entering official establishments are required to be approved and conform with the regulations regarding security and discipline within the area as may be laid down by WorkCover and the Nominal Insurer or Authority concerned.

23. Entry to Employer establishments

- 23.1 All Personnel entering Employer establishments are required to conform with the regulations regarding security and discipline within the area as may be laid down by the Employer concerned and any relevant Law.

24. Damage to property

- 24.1 If, in the performance of the Contractor's obligations herein, the Contractor or any Personnel, servant or agent of the Contractor by any act or omission damages or causes to be damaged any property of WorkCover or the Nominal Insurer, then the Contractor shall pay the costs of repairing and making good such damage and the amount of any consequential losses, costs or expenses which may be suffered or incurred by reason of such property having been so damaged.

25. Suspension

25.1 Suspension of Services

25.1.1 In addition to the rights of WorkCover and the Nominal Insurer under clauses 6 (Provision of Services), 8 (Right to Obtain Services Elsewhere) and 26 (Termination), WorkCover or the Nominal Insurer may give the Contractor a written notice requiring the Contractor to suspend all or some of the Services from the date set out in the notice if, in the opinion of either WorkCover or the Nominal Insurer, the Contractor has breached, is in breach of or is likely to breach this Contract Agreement or is not performing the Services in a diligent or competent manner.

25.1.2 If the Contractor receives a notice from WorkCover or the Nominal Insurer under clause 25.1.1 then the Contractor must:

- a) cease any work associated with the Services being suspended;
- b) take all necessary action to mitigate any losses or obligations arising from the suspension of the Services; and
- c) not enter into any agreements or arrangements with third parties with respect to the suspended Services without the written consent of WorkCover or the Nominal Insurer .

25.1.3 If WorkCover or the Nominal Insurer give a notice under clause 25.1.1, suspending the Contract Agreement, then the Contractor is entitled to payment of any outstanding amounts invoiced in respect of the suspended services as at the date the notice of suspension was given.

25.1.4 If the Contractor and WorkCover and/or the Nominal Insurer are not able to reach agreement in relation to the suspended Services within 20 Business Days of a notice issued by WorkCover or the Nominal Insurer under clause 25.1.1 then the Contract Agreement will be deemed to have been terminated on the 20th Business Day or such other date notified by WorkCover or the Nominal Insurer in respect of the suspended Services only. If there are other Services that the Contractor is required to provide under this Contract Agreement that have not been suspended by WorkCover or the Nominal Insurer, then this Contract Agreement will continue to apply to those Services.

25.1.5 WorkCover and the Nominal Insurer shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the suspension of any Services by WorkCover or the Nominal Insurer.

25.1.6 The Contractor acknowledges that WorkCover or the Nominal Insurer may also be required to refer the reasons for suspension to the relevant professional or registration body.

25.2 Suspension of Payment

25.2.1 Should the Contractor refuse or fail to carry out the instructions or requirements of WorkCover or the Nominal Insurer in regard to any matter connected with this Contract Agreement, WorkCover and the Nominal Insurer may suspend all payments to the Contractor without penalty until such instructions or requirements have been complied with by the Contractor.

26. Termination

26.1 This Contract Agreement can be terminated by WorkCover and the Nominal Insurer at any time, by 60 days notice in writing addressed to the Contractor.

26.2 WorkCover and the Nominal Insurer may immediately terminate this Contract Agreement by written notice to the Contractor if any of the following occur:

- a) the Services are not being provided by a Key Person (if applicable);
- b) in the opinion of WorkCover and the Nominal Insurer, the Contractor is unlikely to complete the Services in the required time;
- c) where legal or licensing proceedings are commenced by Australian Competition Consumer Commission, Australian Prudential Regulation Authority, the Independent Commission Against Corruption or similar investigative body against the Contractor alleging corrupt conduct, collusive tendering or breach of any relevant Law;
- d) the Contractor is declared bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with its/her/his

creditors, makes an assignment of remuneration for their benefit, or becomes an externally-administered body corporate;

- e) the Contractor is in breach of any term of this Contract Agreement which, in the reasonable opinion of WorkCover and the Nominal Insurer, cannot be rectified, or where the Contractor fails to remedy it within 10 Business Days notice in writing from WorkCover and the Nominal Insurer of the breach with a request for the Contractor to remedy the breach;
- f) if, in the view of WorkCover and the Nominal Insurer, a conflict of interest exists for the Contractor which prevents the proper performance of this Contract Agreement;
- g) if the Contractor abandons or refuses to proceed with any of the Services having commenced same;
- h) if the Contractor ceases to carry on business or any licence or authorisation it requires to carry on business is suspended or revoked;
- i) if the Contractor engages in fraud or wilful misconduct;
- j) if the Contractor makes any statement, fact, information, representation or provides material in the Contractor's Tender which is false, untrue, or incorrect in a way which materially affects the agreement;
- k) if the Contractor breaches clause 4 (Warranties); or
- l) if the Contractor otherwise fails to comply with the provisions of this Contract Agreement.

26.3 The Contractor may terminate this Agreement by written notice to WorkCover and the Nominal Insurer if WorkCover or the Nominal Insurer breach any of the terms of this Contract Agreement and fail to remedy such breach within 20 Business Days of notice in writing from the Contractor to WorkCover or the Nominal Insurer to do so.

26.4 Where WorkCover and the Nominal Insurer terminate the Contract Agreement under this clause 26, WorkCover and the Nominal Insurer shall not be liable for any loss suffered by the Contractor as a consequence of such termination. In particular where WorkCover and the Nominal Insurer exercise such a right of termination, WorkCover and the Nominal Insurer shall not be liable for any loss

of income, profit or for other economic or consequential loss of opportunity suffered by the Contractor.

- 26.5 Termination of this Contract Agreement does not affect or put an end to any rights or remedies, which have accrued as at the date of termination. Notwithstanding termination or expiry of this Contract Agreement all obligations of confidentiality, all provisions in relation to the ownership and licensing of Intellectual Property Rights and all indemnities given to WorkCover and the Nominal Insurer shall continue in effect.
- 26.6 The Contractor acknowledges that WorkCover and/or the Nominal Insurer may also be required to refer the reasons for termination to the relevant professional or registration body.

27. Consequences of Termination

- 27.1 In the event of termination the Contractor shall immediately provide and deliver up to WorkCover and/or the Nominal Insurer or any other party nominated by WorkCover and/or the Nominal Insurer all results of the Contractor's work and all materials created in performance of the Services conducted up to the date of termination and a statement of the amount owing to the Contractor.
- 27.2 The Contractor will fully cooperate with WorkCover and the Nominal Insurer and any other party nominated by WorkCover and/or the Nominal Insurer to arrange for the Services to be provided by another party nominated by WorkCover and/or the Nominal Insurer and will provide the Transition-Out Services in accordance with clause 29 (Transition-Out Services) and all terms and conditions of this Contract Agreement.
- 27.3 After setting off any amounts which are or may be becoming due by the Contractor to WorkCover and/or the Nominal Insurer, unless WorkCover and the Nominal Insurer have terminated this Contract Agreement pursuant to clause 26.2, WorkCover and/or the Nominal Insurer shall pay the Contractor for the work conducted up to the date of termination in accordance with the rates set out in Part 4 of the First Schedule. If the payment claimed is expressed to be by way of lump sum or fixed fee, WorkCover and/or the Nominal Insurer shall pay an amount reasonably determined by WorkCover and/or the Nominal

Insurer as to the value of the work completed up to the date of termination with regard to the amount payable for the whole of the work.

27.4 In the event of termination where any sum has been paid in advance to the Contractor, the Contractor shall, within 5 Business Days of receiving notice of the termination, reimburse to WorkCover and/or the Nominal Insurer so much of the amount that relates to the period beyond the date of receipt of the notice of termination.

27.5 Notwithstanding termination or expiry of this Contract Agreement, all rights and obligations of the parties arising under this clause and clauses:

- 4 (Contractor's Warranties);
- 10 (Payment for Services);
- 12 (Confidential Information);
- 14 (Privacy);
- 15 (Intellectual Property Rights);
- 21 (Insurances);
- 29 (Transition-Out Services);
- 31 (Notices);
- 32 (Indemnities)
- 34 (Compliance with Laws and Policies); and

any other provisions of this Contract Agreement which contemplate performance or observance following termination or expiry of this Contract Agreement or the provision of the Services continue in effect.

28. Dispute Resolution

28.1 The Contractor and WorkCover and the Nominal Insurer must try to resolve any dispute (other than any claim for payment) under this Contract Agreement by negotiation. If any dispute is not resolved by negotiation, then the dispute may be referred to mediation before either party commences legal action (other than urgent interlocutory proceedings). Either party may request the head of the Australian Commercial Disputes Centre to nominate a mediator.

28.2 The Contractor and WorkCover and the Nominal Insurer shall share equally the costs of the mediation.

28.3 Each party must continue to perform its obligations under this Contract Agreement (apart from the payment of money) even when there is a dispute.

29. Transition-Out Services

- 29.1 The Contractor acknowledges that it is critical that there is continuity of the Services and, for that reason, WorkCover and the Nominal Insurer rely significantly on the Contractor fulfilling the Transition-Out Services. Accordingly the Contractor must ensure that Transition-Out Services are performed in a timely and orderly manner by carrying out the Transition-Out Services during the Transition-Out Period, unless WorkCover and the Nominal Insurer advise the Contractor in writing that it does not require the Contractor to provide Transition-Out Services.
- 29.2 If WorkCover and the Nominal Insurer appoint a third party to take over the Services or perform any of the Services, the Contractor must provide all reasonable co-operation and assistance to that third party.
- 29.3 The Contractor must:
- a) continue to provide the Services in accordance with the terms of this Contract Agreement during the Transition-Out Period unless otherwise directed by WorkCover and the Nominal Insurer; and
 - b) ensure that there is no degradation of quality of the Services during Transition-Out Period unless otherwise agreed with WorkCover and the Nominal Insurer.
- 29.4 During the Transition-Out Period WorkCover and the Nominal Insurer must provide all reasonable co-operation and assistance to the Contractor as reasonably required by the Contractor in relation to Transition-Out Services.
- 29.5 The Transition-Out Period shall be as specified in the definitions.

30. Variation

- 30.1 WorkCover and the Nominal Insurer may, on the recommendation of the Contractor or otherwise, instruct the Contractor in writing to vary the Services. Unless the Contractor agrees otherwise, the variation must be within the general scope of the Services.
- 30.2 Variations must be approved in writing by WorkCover and the Nominal Insurer's Representative.
- 30.3 Before instructing a variation WorkCover and the Nominal Insurer may ask the Contractor to provide a written estimate of the time and cost and other consequences of the proposed variation. The Contractor's written estimate shall be provided within a reasonable time nominated by WorkCover and the Nominal Insurer.
- 30.4 Unless otherwise agreed, the value of any proposed or actual variation shall be determined using the rates set out in Part 4 of the First Schedule. If Part 4 of the First Schedule does not include rates relevant to the proposed or actual variation, then the estimate and charges must apply reasonable rates and prices as agreed between the parties.

31. Notices

- 31.1 A notice may be given by one party to this Contract Agreement to the other by:
- a) personally serving it;
 - b) sending it by post to the address given in this Contract Agreement or otherwise notified in writing by the recipient as an address for Service of notices under this Contract Agreement;
 - c) faxing it; or
 - d) by e-mail.
- 31.2 A notice takes effect from the time it is received unless the notice states otherwise.

- 31.3 In the case of a posted letter, a notice is taken to be received on the third day after posting. In the case of a fax, a notice is taken to be received at the time stated on the transmission report, unless the transmission takes place after 4pm or on a day that is not a Business Day, in which notice is taken to be received on the next business day.
- 31.4 Unless otherwise notified in writing, the addresses for notices under this Contract Agreement are as follows:

Notices to WorkCover:

Name: Lynette Harper
Director, Premiums Group
WorkCover NSW
Locked Bag 2906,
Lisarow NSW 2252
Facsimile: (02) 4325 4145

Notices to the Nominal Insurer:

Name: Rob Thomson
General Manager, Workers Compensation Division
WorkCover NSW
Locked Bag 2906,
Lisarow NSW 2252
Facsimile: (02) 4325 4145

Notices to the Contractor:

Name:
Address:.....
Facsimile:.....

Email:

32. Indemnities

32.1 The Contractor must indemnify and keep indemnified WorkCover and its officers, employees and agents and the Nominal Insurer and its officers, employees and agents, if any, (“those indemnified”), from and against all claims, losses, damages and expenses (including legal costs on a solicitor and client basis), which any of those indemnified pays, suffers, incurs or is liable for as a result of:

- a) any breach of the Contract Agreement or of the terms governing an Engagement by the Contractor;
- b) any claim that the provision, supply or use of the Services or any Contract Material provided under this Contract Agreement infringes the Intellectual Property Rights and or Moral Rights of any person;
- c) any unlawful, negligent, wilful or reckless act, default or omission of the Contractor or any of its officers, employees, agents and/or sub-contractors in the performance of this Contract Agreement or in the provision of the Services;
- d) any act or omission of the Contractor or any of its officers, employees, agents and/or Sub-contractors resulting in personal injury to or the death of any person, or the loss of or damage to property,

and the Contractor hereby agrees to release and discharge WorkCover and the Nominal Insurer from any actions, proceedings, claims or demands which, but for this provision, might be brought or made against or upon WorkCover and the Nominal Insurer.

32.2 The Contractor’s liability to indemnify those indemnified under this Contract Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss. This limitation of liability is not to apply to any breach of a statutory requirement, wilful or reckless misconduct, fraud or criminal conduct by the Contractor.

32.3 These obligations continue after the termination of this Contract Agreement.

33. Proper Law and Jurisdiction

33.1 The law of New South Wales applies to this Contract Agreement.

33.2 The Contractor agrees to submit to the non-exclusive jurisdiction of the Courts of New South Wales.

34. Compliance with Laws and Policies

34.1 In performing the Services the Contractor shall comply and ensure that the Contractor's employees, agents or Subcontractors, comply with all applicable Laws, including without limitation, complying with all taxation legislation, privacy legislation, workers compensation and occupational health and safety requirements.

34.2 The Contractor must:

- a) ensure the Services will conform to any applicable Laws and standards;
- b) obtain and maintain any licences, authorisations, consents, approvals and permits required under applicable Laws to provide the Services and to perform the Contractor's obligations under this Contract Agreement;
- c) continue to comply with the requirements set out in this clause 34 throughout the term, notwithstanding any changes to applicable Laws;
- d) not do anything, or omit to do something, that would cause WorkCover, the Nominal Insurer or the NSW Government to breach their obligations under applicable Laws;
- e) immediately advise WorkCover and the Nominal Insurer of any significant breaches by the Contractor or its Personnel of any Laws which relate to this Contract Agreement; and
- f) comply with the provisions of this Contract Agreement.

34.3 Without limiting clause 34.2, the Contractor must comply with any reasonable direction of WorkCover and/or the Nominal Insurer to provide information and or documentation to enable WorkCover and/or the Nominal Insurer to comply with its obligations at Law and/or under any applicable Government policies and

guidelines and must provide such information and/or documentation within the timeframes stipulated by WorkCover and/or the Nominal Insurer.

- 34.4 The Contractor shall comply with the standards for service contracting required by NSW Government policy, which standards are set out in the Code of Practice for NSW Government Procurement, as published on the website of the NSW Treasury.

35. WorkCover Statement of Business Ethics

- 35.1 Each employee, Subcontractor or agent of the Contractor must comply with WorkCover's Statement of Business Ethics set out in the Fourth Schedule.

36. Waiver

- 36.1 No waiver of any rights under this Contract Agreement or from breach of this Contract Agreement can be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed. No waiver of breach is a waiver of any other or subsequent breach. The failure of either party to enforce a term of this Contract Agreement will not be interpreted as a waiver of that term.

37. Whole Agreement

- 37.1 This Contract Agreement replaces all prior discussions and writing and forms the whole and only agreement between the parties about the subject matter. It may not be amended except in writing signed by the parties.

CONTRACT AGREEMENT EXECUTION:

SIGNED FOR AND ON BEHALF OF THE WORKCOVER AUTHORITY OF NEW SOUTH WALES by its authorised delegate in the presence of:	
_____ Witness	_____ Delegate
_____ Print Name	_____ Print Name

SIGNED FOR AND ON BEHALF OF THE WORKERS COMPENSATION NOMINAL INSURER by its authorised delegate in the presence of:	
_____ Witness	_____ Delegate
_____ Print Name	_____ Print Name
<u>Where the Contractor is a company:</u> SIGNED ON BEHALF OF <i>(enter company name,</i> <i>>ABN< number)</i> in accordance with section 127 of the <i>Corporations Act 2001</i> in the presence of:	
_____ Secretary	_____ Director
_____ Print Name	_____ Print Name

Where the Contractor is an individual:

SIGNED BY THE SAID *(insert party name)* in the
presence of:

Witness

Signatory

Print Name

Print Name

FIRST SCHEDULE

Agreement Details

PART 1 **Commencement Date**

Date for the Services to commence

(if other than the Commencement Date)

PART 2 **Contractor**

(An ABN must be quoted or PAYG must be withheld)

(insert all relevant details)

Name:

ABN:

Contractor's Key Person(s)

Name:

Address:

.....

Phone:

Facsimile:

Email:

(insert additional names and details if applicable)

WorkCovers's Representative

Name:...TBA.....

Title: Manager, Compliance Improvement Branch

Address:92-100 Donnison Street

Gosford NSW 2250

Phone:4321

Facsimile: 9287

Nominal Insurer's Representative

Name:...TBA.....

Title:

Address:92-100 Donnison Street

Gosford NSW 2250

Phone:4321

Facsimile: 9287

PART 3 Services

The Services to be provided under this Agreement are as per the Specification of Services in the Third Schedule.

PART 4 Payment for Services (inclusive of any applicable GST unless stated otherwise)

4.1 Blended Hourly Rate

Blended Hourly Labour Rate				
Position Description of Key Person/s who will contribute to a Wage Audit and report preparation (i.e. Auditor, but possibly also Partner, Director, Senior Manager, Manager etc).	Hourly Rate Excluding GST	GST component	Total Hourly Rate	% of Wage Audit/report preparation time the Key Person contributes
				%
				%
				%
				%
Tendered Blended charge-out rate for all services covered by this RFT				100%

Note: The blended hourly rate above is all inclusive of all activities conducted by the Contractor in the course of the Services and includes any related travelling time but excludes the related disbursements set out below in Part 4.3

4.2 Disbursements

Disbursement Item Description	
Vehicle Mileage:	The pre-set rates for Vehicle Mileage claimable is in accordance with the allowances contained in the Crown Employees (Public Service Conditions of Employment 1997) Award, as amended from time to time.
Accommodation:	The pre-set rates for Travel Allowances claimable are set in accordance with the allowances contained in the Crown Employees (Public Service Conditions of Employment 1997) Award, as amended from time to time..
ASIC Searches:	The pre-set rates for company searches and other related ASIC searches claimable will be as set by ASIC, as amended from time to time.
Postage:	At Cost

4.3 Invoices

The Contractor will invoice WorkCover or the Nominal Insurer upon completion of the Services, or as agreed between the parties.

Invoices to either: *WorkCover NSW*

C/- [Name]

Manager, Compliance Improvement Branch

92 – 100 Donnison Street

Gosford NSW 2250

OR

Workers Compensation Nominal Insurer

C/- [Scheme Agent] or [WorkCover]

[Address of Scheme Agent] or [WorkCover Address]

as specified in the Engagement Advice.

PART 5 Permitted Subcontractors

Name:

Part of Services

PART 6 Conflict/s of Interest

Name:

Details of Conflict/Activities/Services provided

SECOND SCHEDULE**Deed**

I,

of

acknowledge and agree that:

1. I am the representative of "the Contractor " as defined in a Contract Agreement for the provision of Services to WorkCover and the Nominal Insurer
2. I understand the Contract Agreement contains provisions about confidential information (clause 13), intellectual property (clause 15) and about conflicts of interest (clause 16).
3. Separately and independently of the obligations owed to WorkCover and the Nominal Insurer by the Contractor, I agree to be bound directly to WorkCover and the Nominal Insurer in respect of those provisions (with things changed that must be changed) as if I were the Contractor.
4. I understand the obligations imposed by the *Privacy and Personal Information Protection Act 1998* of New South Wales in relation to the collection, use and disclosure of personal information and other matters and I agree to comply with the requirements of that Act as if I were a State Government agency.
5. I execute this deed in favour of WorkCover and the Nominal Insurer.

EXECUTED AS A DEED

Signed by:

Name of Representative (please print)

in the presence of:

Name of Witness (please print)

.....
Witness

.....
Representative

THIRD SCHEDULE

Specification of Services

1.0 BACKGROUND

- 1.1 The *Workers Compensation Act 1987* (1987 Act) and the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act) make up the legislative framework for the management and regulation of the NSW workers compensation system.
- 1.2 The 1987 Act provides WorkCover with powers to:
 - (a) recover unpaid premiums (s155(4) and s156(1))
 - (b) require an employer to produce a policy for inspection (s161(1))
 - (c) order an employer to make records available for inspection by a person authorised by the Authority (s174(5)(b) and (c))
 - (d) require an employer to make records available to the insurer who issued the policy (s174(6))
 - (e) recover costs of an audit/inspection (s174A(1))
 - (f) order an employer to pay the correct premium amount to an insurer (s175(1)).
- 1.3 The 1998 Act defines the functions of WorkCover as including:
 - (a) responsibility for ensuring compliance with workers compensation legislation (s22(1)(a))
 - (b) ensuring the efficient operation of workers compensation insurance arrangements (s22(3)(c))
 - (c) monitoring the operation of requirements and arrangements imposed or made by, or under workers compensation legislation with regard to workers compensation insurance and commence/conduct prosecutions for offences in connection with any such requirements (s23(l)).
- 1.4 WorkCover, in its own right and in acting on behalf of the Nominal Insurer, initiates Wage Audits to ensure compliance is being maintained with the law as regards workers compensation insurance policies and payment of premiums.
- 1.5 In addition to ensuring compliance, Wage Audits are conducted to:
 - (a) determine the correct wages amount to be adopted in the calculation of premium due and past premiums paid;
 - (b) gather and assess information to allow determination and verification of industry classification;
 - (c) identify any predecessor Employers or related entities in accordance with the provisions of the Insurance Premiums Order;
 - (d) ensure claimants against the policy are shown in the wages records at the date of injury;
 - (e) confirm that the Employer's details are correct including verifying the legal identity of the insured and confirming that other information, for example the address, are consistent with what is recorded by the Scheme Agent/Insurer; and/or
 - (f) provide the Employer with information that may assist in the correct determination of wages paid, the nature and types of records to be kept, and other aspects of compliance with their legal obligations.

2.0 PROVISION OF SERVICES

2.1 General

2.1.1 The Contractor must comply with the following:

- (a) the Contract Agreement;
- (b) the Engagement Advice;
- (c) Performance Standards contained in Appendix F of this Third Schedule;
- (d) the Laws; and
- (e) all statements or representations as to the provision of the Services contained in the Contractor's Tender.

2.1.2 The Contractor must conduct a full Wage Audit unless the Engagement Advice requires otherwise.

2.1.3 The Contractor shall ensure that it, its Personnel and Sub-contractors:

- (a) complies with relevant professional standards of conduct;
- (b) upholds and acts in accordance with WorkCover's values and the WorkCover Statement of Business Ethics;
- (c) possesses the knowledge, skills, and disciplines essential to the provision of the Services;
- (d) maintains technical competence through maintenance of appropriate licenses, accreditations and certifications, and continuing education;
- (e) provides all Services with proficiency and due professional care;
- (f) provides all Services in accordance with appropriate auditing and industry best practice standards;
- (g) complies with the ethical requirements of the Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants;
- (h) is skilled in dealing with people and communicating effectively;
- (i) maintains the confidentiality of all information, practices, and procedures etc of WorkCover or the Nominal Insurer observed in performing the Services, or obtained during the course of, or subsequent to, any activities associated with the delivery of the Services;
- (j) preserves its impartiality and recognises the legal and equitable rights of all parties at all times;
- (k) operates in a lawful manner at all times;
- (l) is honest and truthful at all times when dealing with WorkCover or the Nominal Insurer, and other workers compensation system participants, namely Scheme Agents, Insurers, service providers, employers, workers, and other participants in the workers compensation system;
- (m) only speaks on behalf of WorkCover or the Nominal Insurer within the terms of the Contract Agreement;
- (n) does not act or purport to act as an agent of WorkCover or the Nominal Insurer;
- (o) does not by words or actions, directly or indirectly, denigrate WorkCover or the Nominal Insurer in any manner or form whilst delivering Services or carrying out activities as part of the Contract Agreement;

- (p) informs WorkCover and/or the Nominal Insurer immediately of any actual or potential conflicts of interest;
- (q) does not discuss with any third party the details of any instruction, document or outcome of any of the Services without the express knowledge and written approval of WorkCover or the Nominal Insurer; and
- (r) does not attempt to secure instructions or work by any commission or inducement.

2.1.4 In delivering the Services, the Contractor must ensure that it complies with all relevant Acts, Regulations and guidelines, and relevant professional standards, including, but not limited to the :

- (a) *Public Finance and Audit Act 1983*, and any Regulations thereunder;
- (b) *Privacy Act 1988* (Cth);
- (c) *Privacy and Personal Information Protection Act 1998* (NSW);
- (d) *Independent Commission Against Corruption Act 1988*, and any Regulations thereunder;
- (e) *Freedom of Information Act 1989*, and any Regulations thereunder;
- (f) *Workers Compensation Act 1987* (NSW);
- (g) *Workplace Injury Management and Workers Compensation Act 1998* (NSW); and
- (h) Any relevant provisions which may be specified in other legislation.

2.1.5 In conducting interviews the Contractor must ensure that:

- (a) it does not knowingly become involved in any covert recording of conversations;
- (b) it seeks further instructions when handling Non-Complying Employers or situations where there is minimal prospect of obtaining useful and/or credible information;
- (c) there is continuity of interviews, ie no conduct of “off the record” discussions;
- (d) full aspects of the Wage Audit within the Contractor’s control are known and understood;
- (e) it provides helpful and informative responses to questions referencing relevant legislation and other support materials (eg Worker Status Ruling tool, WorkCover website, WorkCover publications etc);
- (f) it does not make, infer or imply any outcome or decisions that may be made by WorkCover and/or the Nominal Insurer;
- (g) if required, only the services of an accredited and independent interpreter (NAATI¹ Level 3) are used;
- (h) persons under 18 years of age are interviewed in the presence of a parent, guardian or relative; and
- (i) all transcripts accurately reflect the interview.

2.1.6 In producing/submitting reports the Contractor must ensure that:

- (a) they are clear, concise and factual, disclosing all material facts;
- (b) they conform with the requirements of any predetermined templates or instructions for structure and/or content;

¹ National Accreditation Authority for Translators and Interpreters Ltd

Provision of Workers Compensation Wage Audit Services for WorkCover Authority of NSW and Workers Compensation Nominal Insurer - RFT 0800374

- (c) information obtained in constructing the report was appropriately obtained; and
- (d) the confidentiality of the information has been maintained.

2.2 Engagement of Services

2.2.1 Engagement Advice

2.2.1.1 WorkCover or the Nominal Insurer, as the Initiating Party, will provide the Contractor with an Engagement Advice.

2.2.1.2 The Engagement Advice will contain, at a minimum:

- (a) Employer name;
- (b) ABN details;
- (c) Employer address and/or contact details, as known;
- (d) Scheme Agent/Insurer, if applicable;
- (e) Policy number;
- (f) Period/s to be audited;
- (g) Reason/s for the audit;
- (h) Required completion date;
- (i) Other comments/instructions; and
- (j) Contact officer and Initiating Party details.

2.2.1.3 The Initiating Party will also advise the Scheme Agent/Insurer (if applicable) of the Engagement.

2.2.2 Commencement of the Wage Audit

2.2.2.1 The Initiating Party will advise all known contact information regarding the Employer.

2.2.2.2 The Contractor must make all reasonable efforts to contact the Employer to arrange an appointment to inspect an Employer's records. This contact must be made within 10 business days of the date of the Engagement Advice.

2.2.2.2.1 Where the Contractor believes that contact details may be incorrect or incomplete, it should:

- (a) contact the Scheme Agent/Insurer, if applicable; or
- (b) conduct an ASIC search

to obtain correct information; or

- (c) advise the Initiating Party that details are incorrect on an Issue Notification Report.

2.2.2.3 The Contractor must record all details of all contacts and/or attempted contacts with the Employer and/or its representatives. Details to be recorded include, at a minimum:

- (a) Employer name;
- (b) Name of individual contacted;

- (c) Date and time; and
- (d) Outcomes of contact.

Where the Employer and/or its representative is uncooperative or abusive, details of the conversation should also be recorded.

2.2.2.4 In securing an appointment with the Employer, the Contractor must:

- (a) advise the Employer of the records necessary to conduct the Wage Audit; and
- (b) ascertain the identity of the Employer's authorised representative. The authorised representative must be able to legally bind the Employer and possess relevant knowledge of the Employer's operations.

2.2.2.5 If after two weeks since initial contact or attempted contact an appointment date has not been secured, or where an agreed date has not been met as a result of the conduct of the Employer or its representative, the Contractor must send a letter to the Employer or its representative by certified mail advising that:

- (a) a date must be fixed within 7 days of the date of the letter; and
- (b) if not fixed, the matter will be referred to WorkCover to determine whether a s174 Order is to be issued.

A s174 Information Sheet outlining the Employer's obligations must be enclosed with the letter.

2.2.3 Conduct of the Wage Audit

2.2.3.1 In conducting a Wage Audit, the Contractor must, at a minimum:

- (a) substantiate variances between wages declared to the Scheme Agent/Insurer by the Employer and the actual wage records disclosed by the Employer as part of the Wage Audit by reference to the source document/s sighted during the Wage Audit and the remuneration that is assessable as wages as defined in the Wages Definition Manual provided by WorkCover;
- (b) adjust the financial year figures where the Employer's wage records are based on a financial year and the insurance period is not to reflect wages for the policy period;
- (c) review relevant documents and other sources of evidence (eg. website, promotional materials, site inspection etc.) to ascertain that the description of the Employer's business or industrial activity is appropriate;
- (d) seek documentary evidence, where applicable, to substantiate that payments made to alleged contractors have been made to contractors in that capacity and not to contractors as deemed workers;
- (e) confirm whether all claimants identified under the Employer's policy of insurance are employees of the Employer; and

- (f) document all payments made to workers employed in the class of employment defined at D(12) of the determination made by the Workers' Compensation Dust Diseases Board under section 6(3) of the Dust Diseases Act and published in Gazette No. 64, 11 May 1979 for each period of insurance applicable to the Wage Audit.

2.2.3.2 Wage records include, but are not limited to:

- (a) wages books or registers;
- (b) computer payroll records or registers;
- (c) PAYG forms issued;
- (d) PAYG payment summary statements;
- (e) FBT returns and working papers;
- (f) tax invoices for contractors;
- (g) superannuation payment and salary sacrifice records;
- (h) payroll tax returns;
- (i) printouts from WorkCover's worker status self assessment tool or private rulings issued;
- (j) profit and loss statements; and
- (k) minutes from board meetings.

2.2.4 Completion of the Wage Audit

- 2.2.4.1 Unless otherwise agreed with the Initiating Party, Wage Audits must be completed as soon as possible and no later than 3 months after the Engagement Date recorded on the Engagement Advice.
- 2.2.4.2 The Contractor may discuss with the Employer the details of the Wage Audit that relate to any complete, over or under declaration of wages by the Employer, the reasons for the variance, and the adequacy of the wage records provided by the Employer.
- 2.2.4.3 The Contractor must discuss WorkCover's online tool and rulings service to assist in determining the status of a worker, particularly where the variance relates to incorrect interpretation of the status of an alleged contractor.
- 2.2.4.4 The Contractor must not discuss any expected impact on insurance premiums as a result of the Wage Audit findings.
- 2.2.4.5 The Contractor must not speculate on any actions that may be taken by WorkCover.
- 2.2.4.6 Any comments made by the Employer and/or its representative should be noted in the Final Report.

2.3 Reports

2.3.1 Monthly Progress Reports

- 2.3.1.1 The Contractor will provide to WorkCover, within 10 business days of the end of each month, unless otherwise requested, a Monthly Progress Report for all Wage Audits under Engagement.
- 2.3.1.2 Monthly Progress Reports must be in the format detailed in Appendix A to this Third Schedule, or as amended by WorkCover from time to time.

2.3.2 Final Reports

- 2.3.2.1 The Contractor will provide to the Initiating Party, within 1 month of the completion date of a Wage Audit, unless otherwise requested or agreed, a Final Report for each Wage Audit completed.
- 2.3.2.2 Where the Initiating Party is the Nominal Insurer, the Final Report is to be provided to the Scheme Agent
- 2.3.2.3 Where requested, a Final Report provided under clause 2.3.2.2 must also be provided to WorkCover.
- 2.3.2.4 Final Reports must be in the format detailed in Appendix B to this Third Schedule, or as amended by WorkCover from time to time.

2.3.3 Ad-Hoc Reports

- 2.3.3.1 The Contractor will provide to WorkCover, within the timeframes agreed at the time of request, ad-hoc reports regarding information as specified in the request.
- 2.3.3.2 Ad-hoc reports must be in a format as specified by WorkCover at the time of the request.

2.3.4 Issue Notification Reports

- 2.3.4.1 The Contractor will provide to the Initiating Party, within 10 business days of becoming aware of the issue, an Issue Notification Report for each Engagement where an issue is identified that will prevent commencement, conduct or completion of a Wage Audit.
- 2.3.4.2 An issue may include:
 - (a) a date has not been fixed by and/or there has been no response from the Employer to the letter issued under clause 2.2.2.5; or
 - (b) the description or name of the Employer provided in the Engagement Advice does not match the records provided by the Employer to the Contractor; or
 - (c) the Employer is not the correct or current holder of the insurance policy identified in the Engagement Advice; or
 - (d) the Employer's or its representative's acts or omissions prevent or delay the commencement, continuation or completion of the Wage Audit, ie a Non-Complying Employer; or
 - (e) a Non-Complying Employer's non compliance with a s174 Order or continued acts or omissions which prevent or delay the commencement, continuation or completion of the Wage Audit; or
 - (f) records provided by the Employer are insufficient to effectively conduct the Wage Audit; or
 - (g) the Contractor is unable to identify a claimant under the policy of insurance of the Employer from the Employer's records; or
 - (h) the Contractor has identified a matter/s of possible fraud; or
 - (i) the Contractor has identified an actual or potential conflict of interest.

- 2.3.4.3 Issue Notification Reports must be in the format detailed in Appendix C to this Third Schedule, or as amended by WorkCover from time to time.

2.4 Wage Audit Files

- 2.4.1 The Contractor must create and maintain Wage Audit files containing all material/documentation pertaining to the Wage Audit, including, but not limited to:
- (a) Engagement Advice;
 - (b) contact log;
 - (c) copies of wage records;
 - (d) working papers;
 - (e) copies of correspondence issued and/or received;
 - (f) ASIC searches;
 - (g) copies of Ad-hoc Reports (if applicable);
 - (h) copies of Issue Notification Reports (if applicable); and
 - (i) copy of Final Report.
- 2.4.2 The contact log should list date and time of the contact or attempted contact, with whom the contact was made and any relevant comments.
- 2.4.3 The contents of the Wage Audit files should be secured within an appropriate outer covering, for example an A4 cardboard manilla folder.

2.5 Training and Development of WorkCover Staff

- 2.5.1 The Contractor will provide, as requested by WorkCover, training and development of WorkCover staff to build staff knowledge and capacity on Wage Audit related matters and to improve WorkCover's capacity to manage the Workers Compensation System. This training may be both formal and informal and may include, but is not limited to:
- (a) case study reviews; and
 - (b) participation in the field.

2.6 Transition-Out Services

- 2.6.1 The Contractor is required to work closely and cooperatively and generally in good faith with any existing providers or newly appointed providers as well as WorkCover and/or the Nominal Insurer to ensure the smooth transition of responsibilities in relation to any existing Engagements and/or handover of matters for reasons of performance, expiry of the Contract Agreement term or if the Contract Agreement is terminated, or as otherwise determined by WorkCover and/or the Nominal Insurer.
- 2.6.2 WorkCover or the Nominal Insurer will advise the Contractor when Transition-Out Services are required, the reasons for the requirement, and the Engagement/s so affected. WorkCover and/or the Nominal Insurer in its absolute discretion may determine whether all or part of the Contractor's existing Engagements are affected by the requirement for Transition-Out Services.

- 2.6.3 At the commencement and during the Transition-Out Period, unless otherwise advised by WorkCover and/or the Nominal Insurer, the Contractor will be required to:
- (a) provide all Wage Audit files and other records relating to existing Engagements as identified by WorkCover and/or the Nominal Insurer to WorkCover, the Nominal Insurer or a third party nominated by WorkCover and/or the Nominal Insurer;
 - (b) discontinue communication with Employers and Scheme Agents/Insurers with regards to the Engagements so identified by WorkCover and/or the Nominal Insurer;
 - (c) provide all reasonable assistance to ensure smooth transition; and
 - (d) provide briefings to any third party nominated by WorkCover and/or the Nominal Insurer in relation to the above material.
- 2.6.4 Upon receiving advice from WorkCover and/or the Nominal Insurer of the requirement for Transition-Out Services, the Contractor must provide within 10 business days an Ad-hoc Report in the format of the Monthly Status Report for all affected Engagements.
- 2.6.5 All Wage Audit files and other records to be provided in terms of clause 2.6.3(a) must be in a serviceable condition consistent with the requirements at clause 2.4.
- 2.6.6 WorkCover or the Nominal Insurer will liaise with the Contractor regarding transportation arrangements for provision of Wage Audit files and other records.
- 2.6.7 The Contractor's final Tax Invoice/s relating to affected Engagements must be provided to the Initiating Party within 20 business days of the expiry of the Transition-Out Period.

2.7 Fraud and Prosecutions

2.7.1 Referral of Possible Fraud

- 2.7.1.1 The Contractor may be required to prepare and collate documentation and supporting materials related to details of possible fraud for referral to WorkCover's Fraud Investigation Branch.

2.7.2 Brief of Evidence

- 2.7.2.1 The Contractor may be required to assist in the preparation of a brief of evidence for court of law or other regulatory authority, if required.

2.7.3 Attend Court

- 2.7.3.1 The Contractor may be required to attend court to give evidence regarding its investigations and outcomes.

2.8 Wage Auditor Panel Quarterly Forums

- 2.8.1 The Contractor must participate in the Wage Auditor Panel Quarterly Forums.
- 2.8.2 The Terms Of Reference for the Wage Auditor Panel Quarterly Forum are detailed in Appendix E to this Third Schedule, or as amended by WorkCover from time to time.

[Contractor Name]

NB: Engagements to be listed in Engagement Date order

[Date of Report]

[CONTRACTOR NAME]
[CONTRACTOR STREET ADDRESS]
[CONTRACTOR POSTAL ADDRESS]
[CONTRACTOR PHONE/FAX DETAILS]
[CONTRACTOR ACN/ABN]

[CONTRACTOR LOGO]

FINAL REPORT LETTER TEMPLATE *delete this line when using*

[DATE]

[INITIATING PARTY NAME]
[C/- SCHEME AGENT/INSURER (if applicable)]
[INITIATING PARTY ADDRESS]
[INITIATING PARTY ADDRESS]

Dear [CONTACT OFFICER OR SCHEME AGENT/INSURER]

RE: Wage Audit Final Report
[EMPLOYER NAME]
Your Ref: [YEAR/REF NO.]

Please find attached the Final Report for the Wage Audit of the abovementioned Employer.

Should you have any further queries in regards to this matter, please do not hesitate to contact me.

Yours faithfully

[CONTRACTOR KEY PERSON]

FINAL REPORT

WAGE AUDIT OF [EMPLOYER NAME]

CONDUCTED BY [CONTRACTOR NAME]

REF NO. [YEAR/REF NO.]

Background

Employer Details:

Employer Name	
Insurance Policy Number	
ACN/ABN	
Type of Entity	(Incorporated, trust, trustee company, sole trader, partnership etc)
Date of Incorporation	(if applicable)
Registered Office Address	
Postal Address	
Trading Name	(if applicable)
Trading Address	
Contact Name	
Contact Phone Number	
Contact Fax Number	
Employer's Representative	(if applicable)
Employer's Accountant	
Address	
Phone Number	
Fax Number	

Wage Audit Details

Reason for Wage Audit	
Period of Wage Audit	
Location of Wage Audit	

Engagement Details

Engagement Date	Engagement Initiating Party	Scheme Agent / Insurer (if applicable)	Wage Audit Completion Due Date	Wage Audit Commencement Date	Wage Audit Actual Completion Date

Contractor Details

Key Personnel Conducting Wage Audit	Nature of Contribution

Employer History

- Date of commencement of business of Employer
- Details of any changes in Employer trading name/s
- Details of any anomalies between incorporation, trading, employment of staff/contractors and insurance commencement dates
- Details of any related or associated entities including ACN/ABN, registered address/s, workers compensation policy number/s, and business location/s
- Details of which entity was responsible for payment of wages to workers, contractor, directors etc during the audited period/s
- Details of whether the Employer is part of a group including whether that group has been registered and the registration number, other members of the group, any changes to the group during the audited period/s, and/or other entities that should be included in the group.
-

Employer Business Description and Industry Classification

- Description of Employer's business activity*, clientele and trading locations
- Details of any changes in business activity during period of Wage Audit
- Details of site inspection (if applicable)
- Brief description of Employer's premises
- Number of employees, noting any apprentices/trainees employed under the NSW Department of Education and Training approved apprenticeship contract
- Details and reasons for any increase or reduction in workforce during the period of Wage Audit
- Recommendation for review of business activity/industry classification (if applicable).

* If construction, identify types of buildings constructed (commercial/residential), height of structures (above/below three storeys or high rise), and whether contractors are used.

Employer Records

- List all documents and records of the Employer inspected
- Comment on any denial of access to records
- Define the sources of wages verification
- Comment on the condition, adequacy and/or reliability of the Employer's records for Wage Audit purposes and in compliance with legislated requirements, summarising any deficiencies
- Provide details of explanations provided by the Employer or its representative on the condition, adequacy and/or reliability of the Employer's records where records are unavailable or poor*
- Comment on the reconciliation between records provided by the Employer's accountant with those of the Employer and/or Scheme Agent/Insurer .

* Where possible, the Employer or its representative should be requested to sign a statement indicating their agreement with the explanations as recorded.

Quantum and Classification of Wages

Audited Wages and Declared Wages

- Provide details of the results of a comparison of audited wages and declared wages for the period of Wage Audit
- Provide reasons for any variance, noting whether the variance factor should be or should not be considered assessable as wages for the purposes of calculating premiums
- Provide details of explanations provided by the Employer or its representative, including any agreement with the Contractor's findings.

Detail wages paid to workers including wages paid to Directors but excluding wages paid to apprentices/trainees under NSW DET approved contracts in the following table:

Policy Period	No. of Workers		Audited as Assessable	Declared / Estimated	Difference	Reasons
		Workers	\$	\$	\$	
		Deemed Workers	\$	\$	\$	
		Workers	\$	\$	\$	
		Deemed Workers	\$	\$	\$	

Detail wages paid to apprentices/trainees under NSW DET approved contracts in the following table:

Policy Period	No. of DET Apprentices/trainees	Name of DET Apprentice(s)/Trainee(s)	Audited as Assessable	Declared / Estimated	Difference	Reasons
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	
			\$	\$	\$	

-

Directors (if applicable)

- List names and amounts paid to each Director
- Identify the Director type (working / non-working).

Where the entity is a corporation, detail wages paid to each Director for each policy period in the following table:

Policy Period	Name of Director(s)	Working (yes/no)	Audited Wages of Working Director(s)
			\$
			\$
			\$
			\$

If Director's Fees were paid in relation to policies commenced prior to 4.00pm 30 June 2003, complete the following table:

Policy Period	Name of Director(s)	Working (yes/no)	Director's Fees Paid	Full Time / Part Time and Hours	Director's Fees Deemed as Wages
			\$		\$
			\$		\$
			\$		\$
			\$		\$

Contractors (if applicable)

- List names of all contractors and activities performed
- Provide details of total amounts received by contractor/s and date/s of payment
- Provide details of evidence produced by the Employer to identify whether a contractor is a worker / deemed worker
- Provide details of the methodology adopted in determining whether a contractor is a worker / deemed worker
- Provide details of whether payments have or have not been included in wage summary
- If a contractor is a deemed worker, identify the percentage of payment for labour and indicate the goods/services provided which justify the percentage exempted
- Provide details of the results of any use of the WorkCover worker status ruling tool
- Provide details of any private rulings issued by WorkCover.

Fringe Benefits Tax (if applicable)

- Provide details of the form in which Fringe Benefits Tax was provided to employees
- Provide details on the value of taxable fringe benefits provided to employees.

Trust Distributions (if applicable)

Trust Beneficiaries

Name of Trust Beneficiary	Working (yes/no)	Full Time / Part Time and Hours	Wages Paid (yes/no)	Trust Benefit Paid (yes/no)

Working Trust Beneficiaries

Policy Period	Name of Beneficiary	Hours Worked per Week	Wage Paid	Trust Distribution Paid	Trust Distribution Deemed as Wages
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$
			\$	\$	\$

Dust Diseases determined Class D(12) (if applicable)

- Provide details of any determined class D (12) workers and amounts paid to such workers for each policy year.

Cross Border (if applicable)

- Provide details of any cross border issues.

Policy Renewal (if applicable)

- Provide wages estimates for current policy year.

Claims

- Identify whether claimant/s was employed by the Employer at time of injury
- Provide details of claimant's occupation / duties.

Other Information

- Provide details of any non-insured periods identified during the audit where wages have been paid*
- Include any other information made available which may be of interest to the Scheme Agent/Insurer or WorkCover NSW regarding business activity, structures, wages, employee activity etc.

* Where a non-insured period has been identified a copy of the report should also be provided to WorkCover NSW.

Conclusion

- Provide a summary of results of Wage Audit
- Provide details of the Employer's or its representative's response to the Contractor's findings
- Provide comment on Employer's financial position
- Provide details of any matter/s requiring further investigation by WorkCover.

Wages Summary

Policy Period	WIC Rate & Description	No. of Workers		Audited as Assessable	Declared / Estimated	Difference	Difference
			Workers	\$	\$	\$	%
			Deemed Workers	\$	\$	\$	%
			Directors	\$	\$	\$	%
			Subtotal	\$	\$	\$	%
			DET Apprentices/trainees	\$	\$	\$	%
POLICY PERIOD TOTAL WAGES				\$	\$	\$	%
			Workers	\$	\$	\$	%
			Deemed Workers	\$	\$	\$	%
			Directors	\$	\$	\$	%
			Subtotal	\$	\$	\$	%
			DET Apprentices/Trainees	\$	\$	\$	%
POLICY PERIOD TOTAL WAGES				\$	\$	\$	%

Endorsement

I/we confirm that this Wage Audit was conducted in accordance with the following applicable standards:

- List standards.

Key Person Name: _____

Key Person Signature: _____

Date: _____

ISSUE NOTIFICATION REPORT

WAGE AUDIT OF [EMPLOYER NAME]

CONDUCTED BY [CONTRACTOR NAME]

Employer Details:

Employer Name	
Policy Number (if applicable)	

Issue Details

- Provide details of the issue/s
- Provide details of the impact/s on commencement, conduct or completion of the Wage Audit
- Provide details of what actions have been taken to resolve the issue/s
- Provide details of any responses provided by the Employer or its representative
- Comment on possible future actions to address.

Key Person Name: _____

Key Person Signature: _____

Date: _____

TAX INVOICE AND ACCOUNT

INITIATING PARTY

[Address]

Attention: [Insert name]

Wage Audit

Employer [Insert name of Employer]
 Period for audit: [Insert period of cover to be reviewed]
 Engagement Ref no: [##]
 Partner responsible: Jane Doe Ph: +61 #####
 Assistant responsible: John Doe
 Account period: up to and including [dd / mm / yyyy]

ACCOUNT SUMMARY

Category	AUD\$
Professional fees (at blended charge out rate)	##
Disbursements:	##
Subtotal:	##
GST:	##
Amount payable:	AUD\$##

ACCOUNT DETAILS:

Date	Description	Personnel
[dd/mm/yy]	[describe services provided]	[personnel providing the service]
[dd/mm/yy]	[describe services provided]	[personnel providing the service]
[dd/mm/yy]	[describe services provided]	[personnel providing the service]

FEE EARNER SUMMARY:

Name	Hours
Jane Doe (Position eg: Partner)	XX
John Doe (Position eg: Manager)	XX
Total	XX

GST SUMMARY:

Description	AUD\$
GST on fees	\$XX.00
GST on Auditor disbursements	\$XX.00
GST on external disbursements	\$XX.00
TOTAL GST	\$XX.00

Note: The blended charge out rate is all inclusive of all wage audit activities conducted by the Auditor in the course of the Wage Audit and includes travelling time but excludes typing, travel allowances and accommodation expenses, and related disbursements such as company searches photocopying and postage. The set rates for travel allowances and accommodation expenses are detailed in the Crown Employees (Public Service Conditions of Employment 1997) Award (as that Award is amended from time to time). The set rates for company searches and other related ASIC searches will be as set by ASIC.

WORKCOVER WAGE AUDITOR PANEL QUARTERLY FORUM

Terms of Reference	
Purpose	The WorkCover Wage Auditor Panel Quarterly Forum is intended to provide a regular forum for WorkCover, the Nominal Insurer and Wage Auditors to meet and discuss industry-wide trends, emerging issues, new initiatives, unusual cases and outcomes, and legislative change in workers compensation and/or accounting/auditing practices.
Guiding Principles	In line with the Contract Agreement between WorkCover and the Nominal Insurer and each Wage Auditor, parties participating in the forums should exhibit a willingness to fully co-operate, consult and liaise with each other to share professional experiences and expertise in support of assisting WorkCover to achieve its objectives.
Attendees / Members	<p>WorkCover</p> <ul style="list-style-type: none"> • Director, Premiums Group (as required) • Director, Agent Operations (as required) • Manager, Compliance Improvement Branch • Team Leader/s, Compliance Improvement Branch • Compliance Investigators (as required) <p>Wage Auditor (max. of 2)</p> <ul style="list-style-type: none"> • Key Person • Other Personnel (as required) <p>Other WorkCover or Wage Auditor Personnel as required Scheme Agent representatives as required Guest speakers as required</p>
Chair	WorkCover Director Premiums Group and/or Manager Compliance Improvement Branch
Minute Taker	WorkCover Team Leader Compliance Improvement Branch
Agenda	<p>The Agenda should include:</p> <ul style="list-style-type: none"> • review of relevant industry-wide trends and emerging issues • discussion of new initiatives and any proposed legislative or policy changes • review of any proposed legislative or policy changes impact on conduct of wage audits • review of policy and practice guidelines • discussion of general business and new business arising.
Frequency / Location	<p>Quarterly – February, May, August, November</p> <p>TBA</p>

Administration	<ul style="list-style-type: none">• Draft agenda distributed two weeks in advance of meeting for feedback and input• Finalised agenda distributed at least three days prior to the meeting• Minutes and actions distributed within one week after the meeting

PERFORMANCE MANAGEMENT FRAMEWORK

1.0 Introduction

- 1.1 The Performance Management Framework provides WorkCover and/or the Nominal Insurer with the means for evaluating and managing the performance of the Contractor's obligations under this Contract Agreement.
- 1.2 Following evaluation, the Framework provides WorkCover and/or the Nominal Insurer with the means of determining the type and level of intervention it may select in correcting any deviations from the required Service Standards.
- 1.3 Performance data and supporting information will be sourced from:
 - (a) WorkCover's Wage Audit Database;
 - (b) Contractor reports as detailed in Appendices A, B and C to this Third Schedule;
 - (c) Level of participation by the Contractor in the Wage Auditor Panel Quarterly Forums;
 - (d) Employer surveys;
 - (e) Scheme Agent/Insurer surveys;
 - (f) Other sources of feedback and/or complaints;
 - (g) Site visits; and/or
 - (h) Information sources from within WorkCover or its Personnel (eg WorkCover Assistance Service [WAS]).
- 1.4 The Performance Management Framework may be enhanced or modified from time to time in accordance with clause 30 (Variation) of this Contract Agreement.

2.0 Guiding Principles

- 2.1 The Performance Management Framework is designed to:
 - (a) support the provision of quality and cost effective Services;
 - (b) meet WorkCover's and the Nominal Insurer's objectives;
 - (c) ensure the Contractor is responsible and accountable for meeting its obligations under this Contract Agreement;
 - (d) ensure a minimum standard of practice in delivering the Services; and
 - (e) create an environment to enable the Contractor to maintain and/or improve its delivery of the Services.

2.2 In supporting the Framework, the Contractor is obliged to:

- (a) undertake regular self-audits of its own performance and quality of service delivery;
- (b) adopt corrective actions where its self-audit identifies deviations in performance or quality of service delivery;
- (c) actively participate in performance management discussions with WorkCover and/or the Nominal Insurer; and
- (d) actively engage in any required intervention adopted by WorkCover and/or the Nominal Insurer.

3.0 Performance Standards

3.1 The Contractor maintains effective communications facilitating engagement of all parties by:

- (a) being respectful, open and honest;
- (b) ensuring two-way communications with the Employer and/or Scheme Agent/Insurer and/or WorkCover or the Nominal Insurer are maintained throughout the Wage Audit;
- (c) ensuring stages in the Wage Audit process are clearly articulated;
- (d) ensuring outcomes of the audit are clearly explained, addressing all queries and concerns; and
- (e) ensuring progress is communicated with WorkCover, Scheme Agent/Insurer and/or Employer throughout the Wage Audit.

3.2 The Contractor maintains a focus on education regarding compliance through ensuring the Employer understands their legislated obligations with regards to workers compensation insurance.

3.3 The Contractor ensures effective service provision within required timeframes and at appropriate cost through:

- (a) adherence to specified timeframes and/or keeping WorkCover or the Nominal Insurer and/or Scheme Agent/Insurer fully advised of progress or issues;
- (b) regular internal review to evaluate progress and ability to adhere to specified timeframes;
- (c) regular internal review of hours logged and appropriateness for stage of Wage Audit; and
- (d) production of appropriately justified invoices.

3.4 The Contractor contributes to evidence-based decisions by ensuring that recommendations are based on objective assessment of the documentation provided/obtained.

3.5 The Contractor complies with the WorkCover Statement of Business Ethics set out in the Fourth Schedule.

- 3.6 The Contractor actively participates in the Wage Auditor Panel Quarterly Forum, engaging with WorkCover, the Nominal Insurer and other Contractors to share experiences and improve service delivery.
- 3.7 The Contractor maintains its competence and professional expertise through various means, including, but not limited to:
 - (a) relevant training;
 - (b) attendance at industry or professional association activities; and/or
 - (c) attendance and participation in WorkCover led training, eg changes to legislation and the WorkCover Industry Classification System(WIC).
- 3.8 The Contractor maintains a focus on continuous improvement and utilises performance feedback to improve its service delivery.

4.0 Performance Management Process

- 4.1 WorkCover and/or the Nominal Insurer will periodically review all relevant performance data and supporting information. This may involve, but not be limited to:
 - (a) desktop review of reports provided;
 - (b) analysis of completion timeframes and comparison with required timeframes and/or other Contractors/averages;
 - (c) Employer and/or Scheme Agent/Insurer survey results, informal feedback and/or complaints;
 - (d) onsite and/or in the field evaluations; or
 - (e) peer review of recommendations made by the Contractor by another Contractor or an independent auditor at WorkCover's or the Nominal Insurer's sole discretion.
- 4.2 WorkCover and/or the Nominal Insurer and the Contractor will meet bi-annually to discuss the outcomes of the review.
- 4.3 WorkCover and/or the Nominal Insurer will, at its sole discretion, determine the appropriate level of intervention in the case of a performance deviation.
- 4.4 Any dispute regarding performance management interventions must be resolved in accordance with clause 28 (Dispute Resolution) of this Contract Agreement.

5.0 Performance Management Interventions

5.1 Performance Management Interventions are designed to mitigate the need for dispute resolution. All attempts must be made to resolve any performance related failure by applying the Performance Management Framework.

5.2 Level 1 – Corrective Action Plans

5.2.1 A Corrective Action Plan (CAP) may be required when the day-to-day delivery of Services is impacted and/or where WorkCover and/or the Nominal Insurer is of the view that an issue raised via an Issue Notification Report requires a formal plan to address it. At a minimum the plan will include:

- (a) analysis of the root cause of the deviation;
- (b) the steps to be, or that have been, taken by the Contractor to remedy the failure;
- (c) timeframes for implementation of the plan; and
- (d) what actions will be taken to ensure there will be no recurrence.

5.2.2 A CAP must be drafted by the Contractor.

5.2.3 A CAP will only be approved by WorkCover and/or the Nominal Insurer where it satisfactorily demonstrates that it will remedy the failure.

5.2.4 The Contractor must report fortnightly on the progress and results of the CAP.

5.3 Level 2 - Formal Projects

5.3.1 WorkCover and/or the Nominal Insurer may require that a formal project be initiated where the Contractor's performance indicates the potential for ongoing disruption to service delivery or where the Level 1 intervention has not produced the required results.

5.3.2 The Contractor will be required to submit a project plan for WorkCover's and/or the Nominal Insurer's review.

5.3.3 Once accepted, the project will be coordinated through the Manager, Compliance Improvement Branch and oversighted by WorkCover's Representative and/or the Nominal Insurer's representative.

5.3.4 The Contractor must report fortnightly or as otherwise agreed on the progress and results of the project.

5.4 Level 3 – Suspension or Termination

- 5.4.1 Where the Contractor's performance indicates no improvement despite implementation of Level 1 and/or 2 interventions, WorkCover and the Nominal Insurer may suspend the Services in accordance with clause 25, or terminate the Contract Agreement in accordance with clause 26.

6.0 Employer and Scheme Agent/Insurer Surveys

- 6.1 WorkCover and/or the Nominal Insurer, at its sole discretion, will periodically issue surveys to Employers and/or Scheme Agents/Insurers seeking feedback on the Contractor.
- 6.2 The surveys will be used to assess the Contractor's performance in the following areas, but not limited to:
- (a) an assessment of the effectiveness of communications and engagement;
 - (b) an assessment of the experience, including whether the Employer's knowledge of its obligations was improved; and
 - (c) an assessment of compliance with WorkCover's Statement of Business Ethics.

7.0 Complaints Management

- 7.1 WorkCover and/or the Nominal Insurer, at its sole discretion, will investigate complaints referred to it regarding the Contractor's performance.
- 7.2 The Contractor is obliged to fully co-operate with WorkCover and/or the Nominal Insurer during such investigations.
- 7.3 WorkCover and/or the Nominal Insurer, at its sole discretion, will determine the means of addressing the complaint and any corrective actions required of the Contractor, which may include, but not be limited to, implementation of Performance Management Interventions.

8.0 Performance Reports

- 8.1 In preparation for performance meetings WorkCover and/or the Nominal Insurer, at its sole discretion, may prepare a performance report.
- 8.2 The structure of the performance report will be in accordance with Appendix G to the Third Schedule or as varied by WorkCover from time to time.

PERFORMANCE REPORT **[PERIOD OF REVIEW]** **[CONTRACTOR NAME]**
[MEETING DATE]

Performance Standard	Evidence / Comments	Action Required (if any)
Effectiveness of communication and engagement		
Employer education		
Adherence to required timeframes		
Quality of reports and recommendations		
Compliance with WorkCover NSW Statement of Business Ethics		
Participation in Wage Auditor Panel Quarterly Forum		
Results of Employer / Scheme Agent/Insurer Surveys		
Condition of Wage Audit Files		
Training and Development of WorkCover NSW staff		
Other		
Overall Comments		

[Name]
Manager, Compliance Improvement -----

FOURTH SCHEDULE

WorkCover Statement of Business Ethics

Forward from the CEO

WorkCover's Code of Conduct sets out the behaviour expected from staff and WorkCover relies upon our business associates being aware of and adhering to the same values when carrying out work on our behalf.

This Statement of Business Ethics provides guidance for suppliers and other contractors when doing business with WorkCover.

WorkCover is committed to a comprehensive Statement of Business Ethics, which helps us maintain our good reputation among customers, business contacts, and the wider community. We expect our service providers who undertake work for us to act the same way.

Business Principles

The principle of value-for-money is at the core of all of WorkCover's business relationships with our suppliers.

Achieving value-for-money does not always mean selecting the lowest price, rather WorkCover will balance all relevant factors including:

- Compliance with specification;
- Quality;
- Whole of life cost;
- Initial and ongoing costs;
- Reliability; and
- Timeliness

in determining true value-for-money.

WorkCover will ensure that all its policies, procedures and practices related to tendering, contracting and the purchase of goods and services are consistent with NSW Government Guidelines and high standards of ethical conduct.

Contractors', Clients' and Agencies' Responsibilities

In dealing with WorkCover, you are responsible for maintaining high ethical standards in all works. WorkCover expects all parties to perform their duties with integrity. Behaviour must be courteous and adhere to all relevant laws and contractual obligations.

All business associates and staff are responsible for their own conduct and are expected to understand their responsibilities, what work is to be done, how it is to be done and expected outcomes.

Safety is paramount and therefore all persons should protect their safety and the safety of those around them. WorkCover is responsible for providing a safe work environment and for putting the health, safety and welfare of its employees/contractors first.

Fairness and Equity

All personnel are expected to be honest, fair and non-discriminatory in their dealings with WorkCover staff, clients, contractors, suppliers and their staff as well as the public.

You should avoid causing distress or other forms of harm, respect other people's individual differences and rights including their opinions, and treat all people with courtesy and respect.

What we ask of you

We require all suppliers to observe the following principles when doing business with WorkCover:

- Comply with WorkCover's supplier engagement protocols;
- Provide accurate and reliable information;
- Declare conflicts of interest (real, potential, or reasonably perceived) as soon as you become aware of them;
- Act ethically, fairly and honestly in all dealing with WorkCover; and
- Take all reasonable steps to prevent disclosure of WorkCover information noting that disclosure requires specific WorkCover authorisation.

DO NOT ENGAGE IN BUSINESS PRACTICES THAT WILL RESTRICT OR LIMIT COMPETITION. IN PARTICULAR:

- Never discuss or reach an understanding or arrangement with a competitor about supplies, process, terms, tenders, other competitors or other factors relevant to competition;
- Never try to influence another supplier's or competitor's dealings with WorkCover;
- Do not take advantage of others' disadvantages by acting unfairly or unconscionably;
- Do not supply goods or services in a manner that contravenes legislation;
- With advertising, predictions or opinions, do not mislead or deceive; and
- Refrain from discussing WorkCover's business or information in the media.

Why is following this Statement of Business Ethics important?

It is important to comply with this statement as compliance will provide you the opportunity to bid for public sector work on an even playing field and will also provide you with an increased capacity to undertake public sector works with similar compliance requirements in the future.

However, failure to comply with WorkCover's Statement of Business Ethics may lead to the following consequences if any corrupt or unethical behaviour has occurred:

- Termination of contracts
- Loss of future work opportunities
- Loss of reputation
- Investigation for corruption
- Matters being referred for criminal investigation.

Apart from the above considerations, behaving appropriately will enable you to advance your business objectives in a fair and ethical manner. As all our suppliers must comply with this statement your compliance will not be a disadvantage.

Guidance

Incentives, gifts and benefits

WorkCover staff are not to solicit incentives, gifts or benefits in connection with their employment.

Our staff are unable to accept any gifts or benefits of more than nominal value.

If a gift is accepted WorkCover's Code of Conduct requires staff to immediately inform their Manager and Human Resources for recording in our Gifts and Benefits Register.

Conflicts of Interest

All WorkCover staff are required to avoid conflicts of interest and to disclose any potential conflicts of interest. WorkCover extends this requirement to all our suppliers.

Confidentiality

WorkCover expects its suppliers to take all reasonable steps to protect confidential information. Disclosure requires authorisation.

Intellectual property rights

In business relationships with WorkCover, parties are expected to respect each other's intellectual property rights and formally negotiate any access, license or use of intellectual property.

Secondary employment of our staff

WorkCover's code of conduct details the limitations of secondary employment for its staff.

Use of WorkCover equipment, resources and information

It is required that WorkCover's resources and information be only utilised for official WorkCover business.

Public Comment or Statement

Non WorkCover personnel must not make any public comment or statement that would lead anyone to believe that they are representing WorkCover, or expressing its views or policies whether at public and community meetings, via the media, or when it is reasonable foreseeable that the comments or statement will become known to the public at large.

Protected disclosures

If a WorkCover employee discovers evidence of corrupt conduct, maladministration or serious waste of public resources and reports it, they may be protected by the Protected Disclosures Act 1994. This Act protects public officials who disclose corruption-related matters from reprisal or detrimental actions and ensures disclosures are properly investigated and dealt with.

Personal Information

You must abide by privacy legislation governing the collection, holding, use, correction, disclosure or transfer of personal information obtained through your dealings with WorkCover.

Alcohol and Drugs

No person should enter any WorkCover site or return to work if they are under the influence of alcohol or other drugs that could impair their work or endanger themselves or others.

Who to contact

If you have any questions regarding this statement or wish to provide information about suspected corrupt conduct, please contact WorkCover directly by letter, phone or e-mail utilising the contact details below:

Phone: 02 4321 5000

E-Mail: complaints@workcover.nsw.gov.au

Correspondence marked Confidential to:

Director, Internal Audit, or
Director, Business Risk Management and Site Services
WorkCover NSW
92-100 Donnison St
Gosford NSW 2250