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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: 0801620

Laboratory Consumables

Period Contract: Two Years Duration, plus Three (3) One-Year Extension Options

Expected Start Date: 1 May 2009

Tender Issue Date: 19 December, 2008

Closing Date: 4 February, 2009

Closing Time: 9:30 am Sydney Time

Note: Industry Forum Details	
Date:	Wednesday 14 th January 2009
Time:	2.00pm to 3.00pm
Location:	Conference Room Level 4 McKell Building 2-24 Rawson Place Sydney NSW 2000
Contact:	Graham Keating
Phone:	02 9372 7396
Email:	Graham.Keating@commerce.nsw.gov.au

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

Other matters should be directed to:

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

Laboratory Consumables

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REQUEST FOR TENDER - PART A – OVERVIEW

1 Outcome

This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the supply of Deliverables to NSW Health and other Eligible Customers as these terms are defined in the Statement of Requirements of this RFT.

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services.

The key outcome of this RFT is to provide an innovative, purchasing and distribution framework (through the proposed Agreement) for the required Deliverables which meets the needs of the Eligible Customers.

The Deliverables are to be supplied to the NSW public health system and the Customers listed in Part D of this RFT.

2 Objectives

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

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

3 Required Benefits

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

- (a) A sustainable, mutually beneficial supply chain partnership;
- (b) Savings and efficiency gains;
- (c) Reduced costs to NSW Government by value-engineering its delivery methods;
- (d) Increasing the number of Eligible Customers which procure the Deliverables under the proposed Agreement;
- (e) Transparency of all transactions, including performance measurement, pricing and reporting;
- (f) Expanded utilisation of electronic procurement across NSW Government to drive efficiency and transparency through systems such as smartbuy®, e-Tendering, National Product Catalogue etc.

4 Scope of RFT

4.1 Deliverables

The purchasing and distribution of the following Deliverables are covered under the proposed Agreement:

- Category 1** - *Blood Collection Equipment*
- Category 2** - *Haematology Supplies*
- Category 3** - *Histology Supplies*
- Category 4** - *Internal Laboratory Tubes and Racks*
- Category 5** - *Microbiology Supplies*
- Category 6** - *Microscopy Supplies*
- Category 7** - *Non Blood Specimen Containers, Kits and Tubes*
- Category 8** - *Petri Dishes*
- Category 9** - *Pipettes*
- Category 10** - *Specimen Transport Bags and Containers*
- Category 11** - *Tissue Culture Equipment*
- Category 12** - *Laboratory Chemicals*

Additional items related to the deliverables sought, may be tendered in the format required by Clause 3.1 (Price Schedule) Part C and Part C2 (Price Schedule).

NSW Health is seeking with this tendering exercise to maximise its contracting possibilities for contracting with appropriate suppliers for an entire range of products; the intention is, where possible, to contract across a whole product 'group' or 'range' or list of 'Laboratory Consumables' and relevant products.

A detailed description of the Deliverables is described in the Statement of Requirements (RFT, Part F).

Contractors must be proactive in marketing their Deliverables to Eligible Customers.

4.2 Contract and Duration

The proposed Agreement, which is in the form of a Deed of Agreement (RFT, Part D) will be between the Board and the successful tenderer(s).

It is envisaged that the term of the proposed Agreement will be of 2 years, which may be extended for three (3), 12 month options at the discretion of the Board.

4.3 Current Scope and Expenditure

The current expenditure incurred by government agencies for the procurement of the Deliverables is approximately \$ 6 million/year. This amount is provided for information only and does not constitute a guarantee for future work through the proposed Agreement.

4.4 Engagement of Additional Contractors

The Board reserves the right to appoint more than one contractor under the proposed Agreement.

The Board further reserves the right to issue a restricted RFT during the term of the Agreement to engage additional Contractors. Such RFTs will be restricted to those tenderers who have been awarded agreements for the supply of Deliverables for Categories covered by

this RFT but not included in the Agreement. The tenderers will have to meet the same terms and conditions and will be subjected to the same evaluation criteria as for this RFT.

The Board reserves the right to an additional intake of New Generation Products being considered and accepted from successful Contractors regardless of the Category covered by those Contractors as long as the Deliverables meets the wider requirements of the proposed Laboratory Consumables.

4.5 NSW Government requirements

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

5 RFT Structure

This RFT comprises 6 Parts as follows:

Overview – Part A

It is an executive summary of main outcomes, objectives, requirements and expectations for this Agreement as described in detail in the proposed Agreement and the Statement of Requirements. It provides the tenderer(s) 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.

Deed of Agreement - Part D

This is the conditions of contract to be executed between the successful tenderer/s and the Board.

Special Conditions – Part E Not Used

Statement of Requirements – Part F

A detailed description of the Deliverables to be provided by the successful tenderer/s including technical specification, service levels and performance framework. It will form part of the Agreement to be executed between the successful tenderer/s and the Board.

6 Best Price and Cost Structure

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

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

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

- Provide the Board with transparency of the tenderer's Cost Structure;
- Form the basis for future Price variations, if applicable.

The tenderer's Cost Structure may be linked to the performance framework under the proposed Agreement.

Alternatively, the tenderer may select the Published Price List as the basis for future price variations. If the tenderer does select the Published Price List approach, the tenderer is not obliged to submit its Cost Structure. Any variations to the Published Price List will be capped at the percentage indicated by the Board.

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

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

7 Not Used

8 Performance Framework

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

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

Schedule 8 of Part D of the RFT describes the performance framework in detail and the measurement/targets of all performance indicators.

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

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

9 Customer Contract Formation

Eligible Customers will place orders against the proposed Agreement based on the contracted pricing and the Statement of Requirements. Each time an Eligible Customer places an order, a separate contract will be formed.

Eligible Customers will provide feedback to the Board on the performance of all Contractors.

10 Electronic Business

The use of electronic commerce is a mandatory requirement under this Agreement. Further details are included in the sample Agreement (RFT, Part D) and the Statement of Requirements (RFT, Part F).

The use of NSW Government electronic procurement systems (e.g. smartbuy®, NPC, e-Tendering, TenderMax) is a mandatory requirement under this Agreement. Tenderers are encouraged to present similar electronic solutions that can further support expanding adoption of electronic procurement by NSW government agencies and their suppliers.

With regards to e-business the following requirements must also be observed by successful tenderers:-

National Product Catalogue Requirements

- The Board will not enter into an Agreement with a legal entity that is not compliant with the requirements of the National Product Catalogue (NPC). NPC compliance requirements include registration for GS1net and the loading of product and pricing data. For more details please review the NPC Supplier User Guide available at: http://www.gs1au.org/services/gs1net/industry/npc/user_guides.asp
- Tenders from tenderers that are not compliant with the requirements of the NPC may be considered at the Board's discretion if the tenderer demonstrates that it will comply with NPC requirements prior to entering into the Agreement.

LABORATORY CONSUMABLES

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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 made before Closing Date and Time.

“Agreement” means an agreement made by a tenderer with the Board pursuant to the RFT under which there is an Agreement for the provision of goods and services on the order of any Customer for whom the Board has arranged the contract. The Agreement will be embodied in a Deed of Agreement between the Board and the Contractor in the form of Part D to this RFT.

“Alternative Tender”

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

“Board”

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

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

“Category” means generic categories comprising of multiple Products and associated services.

“Closing Date and Closing Time” means the Closing Date and 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/procurement/pdf/code_of_prac-curr.pdf

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

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

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

“Cost Structure” means the individual tenderer's cost breakdown in accordance with the number of product categories specified in Part C (details of its labour costs, region of sourcing and cost of production in the identified region, cost of key inputs, shipping costs, fuel, margins and other relevant information) for specified Categories and/or Products which will be used when the Contractor seeks a price variation or upon

notification made by the Board to vary the Price). Such breakdown must equate to 100% of the tenderer's cost for the supply of the Deliverables.

“Customer Contract” means the contract that is made between the Contractor and an Eligible Customer, by means of the placing of an order by the Eligible Customer with the Contractor.

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

“Deliverables” means the goods or services sought under this RFT, as detailed in the Statement of Requirements of Part F of this RFT.

“Eligible Customer” means

- (a) An entity listed in Schedule 1 to the *Public Sector Employment and Management Act 2002* as amended from time to time;
- (b) A public body as defined by clause 18(4) of the *Public Sector Management (Goods and Services) Regulation 2000* being:
 - (i) a government trading enterprise (including a State owned corporation),
 - (ii) a public or private hospital (including an area health service),
 - (iii) a local government agency,
 - (iv) a charity or other community non-profit organisation,
 - (v) a public or private school or a college or university,
 - (vi) a public authority of this State, the Commonwealth or any other State or Territory,
 - (vii) a contractor to a public authority (but only in respect of things done as such a contractor),
 - (viii) a Nominee Purchaser provided that it satisfies the requirements of clause 3.6 of Part D (Agreement), and
 - (ix) such other persons or entities, which the Board may from time to time in its discretion, determine through a customer registration process.

“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.

“National Product Catalogue” (NPC) means a repository of product, pricing and other data for the healthcare industry for the purpose of data synchronisation and is the single source of product master data for public health institutions in Australia seeking to purchase medicines, medical devices and other healthcare items.

“New Generation Product” means the development of innovative products or the adaptation of known products either singly or in combination to produce new products that have improved functionality and the potential for improved health care outcomes.

“Nominee Purchaser” means a contractor to an Eligible Customer, nominated by the Eligible Customer to be authorised to place orders under Agreements and registered by NSW Procurement – Contracting Services.

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

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D;

-
- (c) other Parts of this RFT;
 - (d) is not in the prescribed form.

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

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

“smartbuy®TRADE” means an entry level product for organisations new to eProcurement. It delivers a single source, easy to use, electronic product and service ordering system.

“smartbuy® CONNECT” means the electronic document exchange providing the security, connectivity, transformation, and trading partner management services.

“Statement of Requirements” means the detailed description of the goods and services contained in Part F.

“State Contracts Control Board” is the Board.

“Supporting Items” means any product samples, models and other related items supplied by the tenderer in support of its tender, (but excludes printed matter).

“Health Support Services (HSS)” means the unit of the Health Administration Corporation Public Health System Support Division named as such and established under s126B Health Administration Act (1982).

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:
 - (a) that the tender, including the tender price is correct; and
 - (b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

2.2 Assumptions made by Tenderer

Where a tenderer has made assumptions in preparing its tender, such assumptions must be set out in a supporting statement and submitted with the tender.

2.3 Information Supplied in Part F

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

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

3.2 Financial Capability of Tenderer

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

3.3 ABN Requirements

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

3.4 National Product Catalogue Requirements

- 3.4.1 The Board will only enter into an Agreement with a legal entity that complies with the requirements of the National Product Catalogue (NPC). NPC compliance requirements including registration for GS1net and the loading of product and pricing data. For more details please review the NPC Supplier User Guide available at: http://www.gs1au.org/services/gs1net/industry/npc/user_guides.asp
- 3.4.2 Tenders from tenderers that are not compliant with the requirements of the NPC may be considered at the Board's discretion if the tenderer demonstrates that it will be fully compliant with NPC requirements prior to entering into the Agreement.

4 Tender Process

4.1 Not Used

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. No more than 2 persons from each tenderer will be permitted to attend the tenderer briefing.

Location: NSW Procurement
Department of Commerce
Level 4, Conference Room

Date: 14 January, 2009

Time: 2pm – 3pm

4.3 Contact Officer

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

Graham Keating
NSW Procurement

Client Support Centre
Phone: 1800 NSW BUY (679 289)
Email: nswbuy@commerce.nsw.gov.au

This RFT will continue to be open during the Christmas-New Year period. Please note that the NSW Department of Commerce will be closed from Monday, 22 December 2008 until Monday, 5 January 2009. However, inquiries about this RFT may still be made via the Department's Call Centre (which shall be operating on skeleton staff) on the following days during this period:-

Monday, 22nd to Wednesday 24th December; Tuesday 30th December; Wednesday 31st December; and Friday 2nd January 2009.

If the Call Centre staff are unable to answer or fully answer inquiries specific to this RFT, the inquiries will be recorded and forwarded to the relevant contact officer (Graham Keating) who will attend to them upon resumption of business on Monday, 5 January 2009.

- 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 Pre-Tender Access to Prospective Nominee Purchasers

- 4.4.1 A tenderer who wishes to become a Nominee Purchaser to an Eligible Customer under any existing NSW State Contracts Control Board Agreement, must apply to that Eligible Customer to be granted temporary viewing access to view the relevant Board Agreements on smartbuy®. The procedure is described in the link below. The purpose of such pre tender access is to enable tenderers who wish to do so, to price the products and services at Board rates and confer any benefit in their tender to the Eligible Customer. The information must not be used for any other purpose.
- 4.4.2 A tenderer seeking pre tender access must complete the Pre-Tender Access Application Form indicated through the link below. The Eligible Customer will determine, in its sole discretion, whether the tenderer's application will be recommended. In the exercise of this discretion, the Eligible Customer will ensure that decisions made are applied consistently to all applicants. Recommended applications will be submitted by the Eligible Customer to NSWSP – Contracting Services for approval.
- 4.4.3 If the tenderer is successful in its tender, it must apply to become a Nominee Purchaser. <http://www.contractservices.nswp.commerce.nsw.gov.au/Publications/Forms.htm#nominee>

4.5 Conformity of Tenders

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

4.6 Alternative Tenders

- 4.6.1 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".

4.7 Submission of Tenders

- 4.7.1 Prices, responses and other information provided in the tender are to be in writing and in English.

-
- 4.7.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.
- 4.7.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 4.7.4 All tenders must be provided in an electronic format. Tenderers must ensure that all files can be viewed by Microsoft Word 2003 and / or Microsoft Excel 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to the lodgement of the tender response.
- 4.7.5 When submitting an electronic tender with Supporting Items:
- (a) The complete tender, including the Supporting Items must be submitted by Closing Date and Closing Time, and
 - (b) Supporting Items provided by the tenderer in support of its tender but excluding printed material, should be clearly designated as Supporting Items to the RFT to which they relate and be forwarded to the Contact Officer indicated in clause 4.3 of this RFT in a sealed envelope.
- 4.7.6 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to lodgment of the tender.
- 4.7.7 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.
- 4.7.8 Tenderers must not tender items that are already the subject of existing Contracts (except Contract 646 – Laboratory Consumables). Any items tendered that are already covered by such contracts are not capable of acceptance in this contract.
- 4.7.9 Tenderers must not tender Products in more than one Category of this RFT. All Products must be tendered in the Category best compliant with the Statement of Requirements (Part F).

4.8 Tender Lodgement

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

A Tender must be lodged electronically in 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).

The lodgement can only be made by a registered system user of the NSW Government eTendering system – register through the web site.

4.9 Electronic Tenders to the NSW Department of Commerce eTendering website

- 4.9.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than tenders lodged by other means.
- 4.9.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the Conditions and rules on the NSW Department of Commerce tenders website at <https://tenders.nsw.gov.au/commerce>.
- 4.9.3 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.
- 4.9.4 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 pathnames too long for the system, as detailed on the NSW Department of Commerce tenders website.
- 4.9.5 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.
- 4.9.6 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.
- 4.9.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- (a) If there is an extended defect or failure of the NSW Department of Commerce tenders website or eTendering system and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
 - (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.9.8 Tenderers may break down the lodgement of large tenders into smaller packages if clearly identified eg. Package 1 of 3; 2 of 3; 3 of 3.
- 4.9.9 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

4.10 Tender Validity Period

- 4.10.1 The Tender will remain open for acceptance by the Board for a period of 6 months from the Closing Date and Time for tenders.

4.11 Late Tenders

- 4.11.1 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.

4.12 Extension of Closing Date and Time

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

4.13 Corruption or Unethical Conduct

- 4.13.1 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.

- 4.13.2 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, Customer 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.

- 4.13.3 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.
- 4.13.4 If the Board becomes aware of improper conflict of interests by a successful tenderer after an Agreement has been executed, then the Board reserves the right to terminate the Agreement and any Customer Contract that has been made under it.

4.14 Code of Practice for Procurement

- 4.14.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.
- 4.14.2 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.

4.15 Prescribed Form of Tender

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.

4.16 Addenda to RFT

- 4.16.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued.
- 4.16.2 In each case, an Addendum becomes part of the RFT.

4.16.3 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 the Closing Date, even if a tender has already been submitted.

4.16.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

4.17 Tenderer's Costs

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

4.18 Custody of Tenders after Receipt

4.18.1 On receipt of tenders lodged electronically to the NSW Government eTendering system, Tenders are encrypted and stored in a secure "electronic tender box."

4.18.2 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.

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

4.19 Ownership of Tenders

4.19.1 All tenders become the property of the Board on submission.

4.19.2 The Board may make copies of the tenders for any purpose related to this RFT.

4.20 Discontinuance of Tender Process

4.20.1 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.

4.21 Variations to Tenders

4.21.1 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 4.21.2, 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.

4.21.2 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 4.21.1(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 4.21.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
 - 4.21.3 If a tender is varied in accordance with clause 4.21.1(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.
 - 4.21.4 A variation of a tender under clause 4.21.1 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 4.21.1(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 Evaluation Criteria

- 5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not set out in order of significance or equal weight.
- 5.1.2 There are price and non-price evaluation criteria for this RFT. Evaluation of tenders will be carried out in two stages. In the first stage, tenders will be assessed against mandatory, non-price-based criteria. The tenders which do not meet the mandatory non-price-based criteria will be culled. Those tenders that do meet the mandatory non-price-based criteria will be assessed against price criteria and ranked accordingly, with lowest price being evaluated as the most favourable.
- 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

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

- (a) Fitness for purpose including quality, range of products, innovative aspects, product design, performance and warranties;
- (b) Price;
- (c) Delivery requirements;
- (d) Capacity to perform the Agreement including:
 - (i) Production/technical capacity;
 - (ii) Human resource capacity, qualifications, skills and experience;
 - (iii) Financial capacity and stability (including security considerations);
 - (iv) Technical, warehousing, inventory and distribution systems;
 - (v) Maintenance and support service levels including availability of Help Desk for repair and help calls;
 - (vi) Quality assurance systems;
 - (vii) Suitability of sub-contractors;

- (viii) Previous experience and performance on similar agreements for the products and services covered in this RFT or other products and services, including performance of management fee obligations;
 - (ix) Record of ethical behaviour in service delivery;
 - (x) Compliance with other Board requirements, (including ability to market the proposed Agreement).
- (e) Compliance with the proposed conditions of Part D.
- (f) Compliance with NSW Government procurement policy and other applicable NSW Government policies, including:
 - (i) Development of long-term, internationally competitive industry;
 - (ii) Commitment to sustainable long-term industry development;
 - (iii) Development of long-term, strategic alliances;
 - (iv) Value-added activity;
 - (v) Innovation, research and development;
 - (vi) Workforce development;
 - (vii) Compliance with NSW Government Environmental Management Systems Guidelines.
- (g) Compliance with relevant legislation and standards.
- (h) Capacity and capability to facilitate electronic commerce through smartbuy®.
- (i) Compliance with the Statement of Requirements.
- (j) Compliance with National Product Catalogue (NPC) requirements.
- (k) Range of product. Preference will be placed on offers that cover entire categories, ranges and groupings of products.
- (l) Efficiency and cost improvements to invoicing and payment processes, e.g. consolidated invoice payment.
- (m) Value-add propositions, where assessed as relevant and appropriate.

5.3 Presentations by Tenderer

- 5.3.1 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.
- 5.3.2 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.
- 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 Annexure 1 to Part B (Disclosure Information).
- 5.7 Samples and Clinical Trials**

-
- 5.7.1 The Board may conduct examination of samples of the Deliverables or conduct clinical trials of the Deliverables either as a part of the evaluation of the tender or, in the event that there is a provisional award of certain Deliverables (subject to examination of samples or clinical trials) (provisional Deliverables”) then those provisional Deliverables may only be supplied under any Contract after the satisfactory completion of the examination of the samples of Deliverables of satisfactory conduct of the clinical trials.
- 5.7.2 In the event that samples of Deliverables are required to assist in determining the outcome of the tender process, then tenderers will be contacted and specifically asked to provide samples and this may be at any time prior to the award of contract. The samples must be supplied within 10 working days of the request to the location nominated in the letter of request. (Samples should not be submitted with the tender response documents). All costs associated with such exercises shall be borne by the relevant tenderer. Failure to supply samples as required by this clause will result in the tender being given no further consideration.
- 5.7.3 In relation to provisional Deliverables, the request to provide samples may be made after award of contract as part of a suitability assessment of the provisional Deliverables and for the purpose of removing the provisional status of them. The tenderer must not supply provisional Deliverables. The Board on behalf of NSW Health will request the tenderer to deliver the samples at a location designated by NSW Health, as part of a clinical inspection, examination, trial and / or assessment. Tenderers will be required to provide all reasonable stocks of samples for such purposes, and provide any requested documentary or expert professional support to assist with the assessment. All costs arising from compliance with this clause shall be borne by the relevant tenderer. Failure to comply with any such request may result in the tenderer being unable to supply the provisional Deliverable under the contract.
- 5.7.4 The Board shall at its own discretion use appropriate expertise and resources to evaluate provisional Deliverables, and shall make the decision as to the suitability of the provisional Deliverable at a time of its choosing. The Board will act in good faith to finalise such decisions as soon as possible after contract commencement, but it does not make any undertaking as to the timing of its decision on the provisional Deliverable. The tenderer shall not be entitled to compensation or costs of any kind in the event of delays in any such evaluation or assessment process.
- 5.7.5 Under no circumstances will the Board permit a provisional Deliverable to be purchased under a contract. The provisional status of, or removal of that status from, any provisional Deliverable is to be determined solely by the Board, in its discretion.
- 5.7.6 If a formal request for samples is made, instructions will be given as to the labelling and delivery of the samples and these are to be complied with in full.
- 5.7.7 All costs incurred in relation to the preparation, delivery, product support and subsequent collection of samples shall be borne by the tenderer and will not be reimbursed by the Board, regardless of the outcomes of the tender process or the final decision to include a Deliverable in the contract or not .

6 Method of Acceptance

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

7 Disclosure Information

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

8 Complaints Procedure

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

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

ANNEXURE 1 TO PART B (Disclosure of Information)

Disclosure of information concerning tenderers and outcome of the tender process

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

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	As a minimum: <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; andlocation of the tender call documents. The names and addresses of all entities which submit responses.	Routine public disclosure at the time tender calls are advertised. Routine public disclosure within 7 days of the date tender calls closed.
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
Class 1 contracts All government contracts with estimated value \$150,000 or above.	<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 <i>Corporations Act 2001</i> 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	Routine public disclosure within 60 days after the contract becomes effective.

	<p>be varied;</p> <p>g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; 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>

	<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 contained in schedules 1 or 2, or for a copy of a 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;
- 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 Freedom of Information 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 have the appeal rights available under the FOI Act...

6. 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 0801620

Contract Number: **046/646**

Contract Period: Two Years Duration, plus Three (3) One-Year Extension Options

RFT Issue Date: 19 December, 2008

Closing Date: 4 February, 2009

Closing Time: 9:30 am Sydney Time

Company Legal Name:

Company Trading Name:

Company ABN:

Contact Name

<Insert name to whom enquiries should be directed>

Contact Phone Number:

Contact Email Address:

Company Business Address

(i) **When submitting an electronic Tender, please answer the following and indicate Yes or No below:**

- Are you providing supporting documents in hard copy or on CD-ROM?
Yes
- Did you clearly mark the supporting documents as “Supporting Documents to RFT Number 0801620.”
Yes

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PART C1 Information supplied in response to Parts A & B.

1 Introduction

The information provided in this Part will be used in the assessment of Tenders. Questions have been framed to ensure responses that are relevant to the selection criteria. Please provide attachments where necessary, clearly labelled and cross-referenced.

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

Ensure that all questions in this section are fully addressed and full details are provided.

2 Fitness for Purpose

2.1 Quality Certification

Indicate below whether you have attached as supporting documentation any certification from approved testing authorities that confirm that the deliverables tendered meet the relevant Australian, Overseas or International Standards.

Answer to 2.1 Yes

2.2 Quality Assurance

2.2.1 Australian Standards and or International Standards

Indicate whether your company has attained certification under AS/NZS ISO 9001:2000 (including if you are in the process of transition from AS/NZS ISO 9001:1994 or AS/NZS ISO 9002:1994 to AS/NZS ISO 9001:2000) or is proceeding towards getting certification.

Answer to 2.2.1 Yes

2.2.2 If certification is being sought:

If you are in the process of attaining certification, provide evidence and a projected timetable and schedule for accreditation.

Answer to 2.2.2

2.3 Therapeutic Goods Australia

Tenderers are requested to indicate in the Pricing Schedule in this Request for Tender (Part C2) the TGA registration numbers for their products tendered. TGA numbers, therefore, need to have been obtained at time of tender. Products that are pending a TGA approval cannot be recommended nor accepted by the Board, if TGA is a requirement for their use in Australia. Copies of TGA certification documents for part or all of the tendered products may be requested during the evaluation process by the Contact Officer.

Answer to 2.3 Agree

2.4 Guarantees and Servicing Arrangements

Give full details of any guarantees or warranties relating to the Deliverables offered. If a specific warranty or warranties is or are stated to be a requirement or requirements in Part F, confirm that it is, or they are, offered. Where free service with respect to the Deliverables is offered during the period of guarantee or warranty, provide addresses (both Sydney and country areas) where service is available. State whether service is available at those points after the expiration of the period of guarantee or warranty and, if so, what charges are applicable.

The minimum extent of warranty offered is that prescribed by legislation, where applicable.

Answer to 2.4

2.5 Packaging

Will you provide the Deliverables with labelling that complies with the Therapeutic Goods Order 37, "General Requirements for Labels for Therapeutic Devices" or Therapeutic Goods (Medical Devices) Regulation 2002?

Answer to 2.5 Yes

2.6 Not Used

2.7 Other Comments on fitness for purpose

State here any details you may wish to add, particularly regarding the innovative aspects and performance of the tendered Deliverables.

Answer to 2.7

3 Pricing and related factors

3.1 Price Schedule

Complete the Price Schedule at Part C2.

Tenderers are to note that they must provide information that enables the pricing of their tender to be assessed on the basis of the tenderers list price of items, combined with the tenderer's nominated discount against those list prices.

The tenderer's rate of discount (e.g. 20 per cent, 30 per cent) against the tendered list price must be fixed for the first one (1) year of the contract.

The tenderer's discount against the list price must be firm for the first year of the contract.

PLEASE NOTE: The tenderer's FIS price in the Price Schedule is the tenderer's list price before the percentage discount is applied.

3.2 Price Basis

3.2.1 Price Variation Basis

Prices are firm for the first twelve (12) months of the Standing Offer agreement then subject to review at each six (6) monthly intervals based on one of the following price adjustment options.

Tenderers must indicate below the price basis of your Tender. You may select one or more of the listed adjustment options. Select the price adjustment from the options below (tick corresponding box below):

1. Based on variations in **rates of foreign exchange**. Cost structure required.
☐ Tenderers must note that no variation will be approved on this basis unless there is a 15% change in the exchange rate.
2. Based on variations in **cost of production**. Cost structure required.
☐
3. Based on variations in **cost of distribution**. Cost structure required.
☐

Or

4. Based on a capped percentage increase on the **Published Price List**.
Details of cost structure not required.

☐

3.2.2 Exchange Rate Price Variation Basis

A price variation on the basis of a change in the foreign exchange rate will not be approved unless there is a variation greater than 15% from the foreign exchange rate on which the tender is based has occurred.

Where you have nominated variations in rates of exchange of the selected price basis above (Selection 1), you must nominate the exchange rate that will be used as the basis for any future price variation request below.

Tenderers are to nominate the foreign currency and associated exchange rate based on the Westpac Bank's relevant selling rate as published in the *Sydney Morning Herald* seven (7) days prior to the Closing Date and Time.

Answer to 3.2.2

Name the Foreign Currency: (Eg US Dollar)

Associated Exchange Rate: (Eg. US\$ - 0.75)

3.2.3 Cost of Production Basis for variation

Where you have nominated variations in the cost of production as the selected price basis above, you must nominate the following:

- (a) the region of sourcing at the time of tendering for the labour primarily engaged in the Standing Offer agreement that will be used for any future price variation request.
- (b) detail of costs of production in the relevant region
- (c) Materials Cost Index – you must identify key inputs, margins and other relevant information for specified Categories and/or Products.

Note that variation on the basis of a material cost index other than those provided by the ABS must be appropriate, independent, consistently reported over time, published regularly and be readily available.

3.2.4 Cost of Distribution

Where you have nominated variations in the cost of distribution as the basis for the price variation, you must provide details of shipping costs, fuel, margins and other relevant information for specified Categories and/or Products.

3.2.5 Published List Price

- (a) The tenderer must provide a Published List Price valid at the date of tender which will remain firm for the first 12 months of the contract. The percentage variation to be applied to the Published Price List at the 6 month intervals will be capped at an amount equal to the percentage variation in the Consumer Price Index (CPI) – Sydney (for the appropriate index related to the products contained within this RFT) over a corresponding period of time. In all calculations pertaining to such price variation requests received from the Contractor, the CPI index published closest to the date of variation application will be used.
- (b) Where the price variation is based on the tenderer's published price list, Tenderers must submit a copy of the published price list to Part C – Tender Response.
- (c) Tenderers must complete the details required below including name, date and official Price List number of the Price List, Source of Price List and the frequency of revision of

the Price List. This information must be supplied at the time of tender closing for use in consideration of price variation requests.

Answer to 3.2.5

Name of Published Price List:	_____
Date of Issue of Published Price List:	_____
Official Price List Number:	_____
Frequency of Revision:	_____
Source of Published Price List:	_____

3.2.6 Cost Structure Provision of Details for Tender Submission

- (a) Tenderers are to provide a separate Microsoft excel file(s) containing the required cost structure information in accordance with clauses 3.2.3 and 3.2.4 in Part C above.
- (b) Tenderers may provide this information in the form of either but in either case it is the responsibility of the Tenderer to ensure that all details are provided:
- i) Cost structure details universally applicable to each product tendered;
 - or
 - ii) Cost structure details applicable to each of the categories listed in the RFT Pricing Schedule.
- (c) Tenderers should use a naming convention for this excel file(s), including Tenderers name, cost structure title and date.
- (d) Tenderers may use the same heading columns and format as per the Pricing Schedule eg: item number, HIMF, Item Product Description and Product Code. Sufficient information is required to correlate cost structure data with the submitted Pricing Schedule.

Answer to 3.2.6

Have you submitted a separate excel file containing your Cost Structure details?

No

Please provide the file name: _____

3.3 Discounts

3.3.1 Preferred Contractor to an AHS Quadrangle

Tenderers may offer additional discounts based on the total value of sales of Laboratory Consumables within NSW Health.

Additional discounts are to be offered if NSW Health purchases:

	<u>Discount Offered</u>
(1) 50% of their requirements from a single supplier	_____ %
(2) 75% of their requirements from a single supplier	_____ %
(3) 90% of their requirements from a single supplier	_____ %
(4) 100% of their requirements from a single supplier	_____ %

(Note: Tenderers may offer discounts as a percentage at any, all or none of the above options.)

The discounted percentage rate will be applied to all items under the contract, when NSW Health has met one of the volume targets listed above.

The application of discounts will be managed by Health as follows:

- (a) Obtaining six (6) monthly consumption reports from Health Support Services;
- (b) Reconciling this report with the Contractor's sales report provided to NSW Procurement for the same six (6) month period;
- (c) Then determining the percentage of business given to a Contractor by value;
- (d) Requesting the Contractor to make appropriate adjustments to the price payable in the National Product Catalogue;
- (e) Initial pricing will be determined by the estimated share of the market the Contractor holds, as estimated to the satisfaction of the Board as advised by NSW Health.

3.4 Not Used.

3.5 Not Used.

4 Delivery Considerations

4.1 Not Used.

4.2 Location of Branches

Detail the outlets to which Orders may be directed, stating any limitations to the range of Deliverables that may be ordered at each.

Answer to 4.2

4.3 Standard Deliveries

4.3.1 Tenderers are to indicate below, agreement to the following delivery times for standard deliveries.

Answer to 4.3.1

Sydney Metropolitan Area Deliveries within 24 hours of Order placement Yes

Regional NSW within 48 hours of Order placement Yes

If "No", please specify below

4.3.2 Tenderers are at liberty to offer additional standard delivery times that are more favourable to the above conditions as stated in Clause 4.3.1.

Answer to 4.3.2

4.4 Emergency Delivery Arrangements

4.4.1 Tenderers are to indicate below, agreement to the following delivery times for emergency deliveries.

Answer to 4.4.1

Sydney Metropolitan Area Deliveries within 12 hours of Order placement Yes

Regional NSW within 24 hours of Order placement Yes

If “No”, please specify below

4.4.2 Tenderers are at liberty to offer additional standard delivery times that are more favourable to the above conditions as stated in Clause 4.4.1.

Answer to 4.4.2

4.5 Delivery Performance Monitoring

Tenderers are to indicate below whether they have in place systems to monitor their on time delivery performance.

Answer to 4.5 **Yes**

If **YES** please state:

(a) What do you classify as an on time delivery?

(b) What is your target for deliveries completed on time? (%)

(c) Actual on time deliveries over the past 6 months (%)

4.6 Batch Tracking Facility

Does your organisation have a batch tracking facility?

Answer to 4.6

5 Capacity to Perform Agreement**5.1 Years in business**

State the number of years you have been in business under your present constituted form.

Answer to 5.1**5.2 Technical, warehousing, inventory and distribution capability**

Demonstrate the suitability of your resources/facilities/procedures for the purposes of fulfilling the requirement, including your production processes, warehousing, dispatch, transport and delivery arrangements. Include details of:

- (a) size of premises;
- (b) back up facilities and any significant equipment if available to ensure the completion of work;
- (c) maintenance schedules for any significant equipment nominated in (b).

Answer to 5.2**5.3 Stock Levels**

Describe your current stock levels and any issues you may experience during different times of the year in maintaining necessary levels.

Answer to 5.3**5.4 Human Resource Capability**

Provide details of qualifications and experience of key personnel to be involved in the operation of the proposed Standing Offer agreement.

Answer to 5.4**5.5 Help Desk Access**

If you have a toll-free help desk number specify:

- (a) the geographical area covered**
- (b) Phone Number(s)**
- (c) Non toll-free Help Desk number**
- (d) Corresponding Toll Charges**
- (e) Help Desk Hours**

5.6 In-Service Education and Training

The provision of comprehensive in-service and training in support of Deliverables supplied under Customer Contracts is a requirement of this standing offer agreement.

Provide details below of Manuals, Training plan/courses, Videos or Web sites that are available to support your in-service and training.

Answer to 5.6

5.7 Financial Viability

5.7.1 Annual Turnover

Give the annual turnover in Deliverables tendered, in \$A.

Answer to 5.7.1

5.7.2 Annual Financial Reports

During the course of the tender process, it may be required that you submit a copy of your last three annual financial reports to the Board, or to Kingsway Financial Assessments if so directed, in order to conduct financial analysis on behalf of the Board. Indicate below whether you will provide these reports if required.

Answer to 5.7.2 Yes

If “No”, comment below:

5.8 Agent Information (Sub-Contractors and others)

5.8.1 Products available through a Dealer or Distributor

Is any part of the Deliverables to be offered through a dealer or distributor? In this context, suppliers of raw materials and/or minor components to be incorporated into the Deliverables supplied by the Contractor are not regarded as dealers or distributors for the purpose of this question.

Answer to 5.8.1 Yes

5.8.2 Products available through a Sub-Contractor

Is any part of the Deliverables to be offered through a sub-contractor? In this context, suppliers of raw materials and/or minor components to be incorporated into the Deliverables supplied by the Contractor are not regarded as sub-contractors for the purpose of this question.

Answer to 5.8.2 Yes

If “Yes”, in respect of each nominated dealer, distributor and/or sub-contractor, please provide the following information. If unable to provide this information in the format below, attach to your Tender the information required for each dealer or distributor.

Distributor

- 1) If a company, Company Name
- 2) If a partnership, Partnership Name

- 3) If an individual, individual's name
- 4) Trading Name
- 5) Australian Business Number (ABN)
- 6) Registered Office (if a company)
- 7) Site Address (principal place of business)
- 8) Postal Address (principal place of business)
- 9) Alternative Address
- 10) Contract Administration Contact Name
- 11) Contract Administration Contact Telephone No.
- 12) Contract Administration Contact E-mail Address
- 13) Sales Order Contact Name
- 14) Sales Order Phone No.
- 15) Sales Order E-mail Address
- 16) Sales Order Fax No.
- 17) Chief Executive Officer's (CEO) Name
- 18) Switchboard Telephone No.
- 19) Company E-mail Address
- 20) Website address

5.9 Suitability of proposed Dealers, Distributors and Sub-Contractors

5.9.1 Dealer or Distributor Experience

For each nominated dealer or distributor, provide details of their experience and qualifications in the provision of similar Deliverables.

Answer to 5.9.1

5.9.2 Sub-Contractor Experience

For each nominated sub-contractor, provide details of their experience and qualifications in the provision of similar Deliverables.

Answer to 5.9.2

5.10 Marketing

The marketing of this Standing Offer agreement may include:

- (a) Provision of promotional material;
- (b) Direct marketing;

- (c) Product literature, brochures and other sales related activities.

Indicate below which, if any, of the activities above you would be prepared to assume responsibility:

Answer to 5.10

(a)

(b)

(c)

5.11 Other comments on the Capacity / Ability to perform the Standing Offer Agreement

State here any other details you may wish to add. Please also address your capacity to perform the contract in the context of the current commitments of your organisation. (Note that details of previous performance of similar contracts are sought in cl.10, below, and should not be referred to here.)

Answer to 5.11

6 Compliance with proposed Agreement

6.1 Agreement to conditions contained within Part D of this RFT.

Do you agree to be bound by all the conditions contained in Part D of this RFT?

Answer to 6.1 **Yes**

If **"No"**, provide a full statement of all amendments sought, giving reasons.

6.2 Minimum Insurance Requirements

- 6.2.1 Do you agree to comply with clause 12.9, Minimum Insurance Requirements, contained in Part D of this RFT?

Answer to 6.2.1 **Yes**

If **"No"**, provide a full statement of all amendments sought, giving reasons.

- 6.2.2 Please list the insurances you currently hold, the respective amount (or Limit of Liability) for each insurance policy and their expiry dates.

Answer to 6.2.2

7 Compliance with Policy

7.1 NSW Government Code of Practice for Procurement

- 7.1.1 “Code” means the NSW Government Code of Practice for Procurement, as amended from time to time. The NSW Government Procurement Policy and code are available from the NSW Department of Commerce and can be viewed and downloaded from the Department of Commerce Government Guidelines: Goods and Services Procurement Publication.

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

Answer to 7.1.1 Yes

- 7.1.2 Tenderers must comply with the Code and agree to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any agreement that may be awarded? Will you comply with the Code and the requirements imposed by it?

Answer to 7.1.2 Yes

7.2 Occupational Health, Safety & Rehabilitation

- 7.2.1 Tenderers are required to develop and attach, in each case a specific Health and Safety Management Plan for the Agreement.

In order to complete a Health and Safety Management Plan, and for instructions as the required content of the Plan, Tenderers are referred to the NSW Government Procurement Guidelines - OHS&R, specifically to attachments 1 and 2. This document is available electronically at <http://www.dpws.nsw.gov.au/nr/rdonlyres/efxtycbtexzihzty3nnlyxzob2ktnrpdlojq6gsaft4hybie4s2tzvlgcgvaneaugupzschzvlkslbkx5fqpr4nqoka/ohs%2006.pdf>

Have you attached as supporting documentation, a specific Health and Safety Management Plan for the agreement?

Answer 7.2.1 Yes

- 7.2.2 Does your organisation have Safe Work Procedures or specific health and safety instructions in place relevant to its operation?

Answer to 7.2.2 Yes

If “No”, provide details below.

- 7.2.3 Will you continue to comply with your OHS&R obligations specified in Item 9 of Schedule 1 of Part D, including obligations relating to performance monitoring and Sub-Contractor performance under the Standing Offer agreement awarded?

Answer to 7.2.3 Yes

If “No”, provide details below. If “Yes”, provide details below of how you will ensure that Sub-Contractors will perform in accordance with OHS&R obligations.

7.3 Environmental Management

Describe in what way or ways your organisation promotes the development of Ecologically Sustainable Development. For assistance in answering this question, you may refer to the Procurement Guidelines on Environment Management available electronically at a link under the Goods and Services Procurement:

<http://www.dpws.nsw.gov.au/NR/rdonlyres/eoxj5xdnqteblntdffjpp35qvvtlztzqvgcux37iswzohj2gced5c3pvjzjbzqzgb3o6guqnutpqyuotpbznwn6whjh/Guidelines+Environmental+Management+06.pdf>

Answer to 7.3

7.4 Not Used.

7.5 SME Involvement

- 7.5.1 It is NSW Government policy to support SMEs. Does your business support this policy objective?

Yes/No

If Yes provide details of the likely percentage of the value of the Deliverables to be provided under the Standing Offer agreement that will be sourced from SMEs and of the activities that will be carried out by SMEs under the Standing Offer agreement.

Answer to 7.5.1

- 7.5.2 State below how you will provide opportunities for SMEs in performing any Period Contract awarded. If the project involves formation of a relationship with one or more SMEs, provide the following information:

- (a) Name of, and contacts for, each SME
- (b) Description of each SME's role
- (c) Estimated dollar value of each SME's contribution, and
- (d) Level of value-added activity and any other benefits associated with each SME.

Answer to 7.5.2

8 Compliance with relevant legislation

Indicate below whether you comply with relevant legislation and standards applicable for all deliverables tendered.

Answer to 8.1

Yes

If “No”, provide details

9 Compliance with other Board requirements

9.1 Natural Rubber Latex Content

NSW Health objectives and policies require the use of latex free products and the board reserves the right to exclude such products from any products envisaged for this RFT. If you have indicated within the Pricing Schedule (Part C3) that the offered product contains natural rubber latex, please indicate below for each item offered the exact location of the natural rubber latex eg. within the packaging. In addition, if the natural rubber latex is to be replaced with a substitute product within the near future please indicate the approximate replacement date.

Answer to 9.1

Item No	Location of Natural Rubber Latex	Replacement Date

10 Previous contract experience and standard of performance

10.1 Previous contract experience

Provide details of any previous Standing Offer agreement(s) (Period Contract(s)) with the Board that you have been involved in during the past four years in the table below:

Contract No	Contract Name	Date commenced	Date finished (if applicable)

10.2 Previous experience in provision of Deliverables

Demonstrated expertise and experience in the successful provision of goods and/or services on a similar scale to the Requirement (not for the provision of goods and/or services to the Board). State the number of years in business providing these goods and/or services.

Answer to 10.2

10.3 Previous performance of Standing Offer agreements

If you have undertaken any previous Standing Offer agreements, provide details of any assessment undertaken of your performance. If performance reports were prepared, please provide copies.

Answer to 10.3

10.4 Referees

10.4.1 Please provide three (3) names and contact details of previous customers.

Answer to 10.4.1

10.4.2 To assist in the evaluation of your Tender it may be necessary to seek information from organisations that have current experience with the Deliverables offered. Please provide details below of hospitals to which the Deliverables have recently been supplied and also those where recent in-service training has taken place. If possible, please provide the appropriate contact persons with these organisations.

Answer to 10.4.2

11 Other information required

11.1 Details of ownership

11.1.1 If you are a company, please provide details of your ownership, that is, Australian, Overseas, name of each shareholder holding 20% or more of your issued share capital, paid-up capital and other relevant details.

Answer to 11.1.1

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

Answer 11.1.2

11.2 Contracting as Agent / Trustee

11.2.1 If awarded the Standing Offer Agreement, do you intend to contract in your own right or as agent for some other entity or entities? If an agent, identify the principal who will be bound by the Deed of Agreement and any authority given by that principal to you to execute any such agreement as its agent.

Answer 11.2.1

11.2.2 If awarded the Standing Offer Agreement, do you intend to contract in your own right or as trustee for some other entity or entities? If a trustee, provide a copy of the trust deed, set out the names of the trustees, and provide full details below of your capacity to enter any Deed of Agreement as a result of this RFT.

Answer 11.2.2

11.3 Current Legal Proceedings

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?

Answer to 11.3 Yes

If “Yes”, please supply full details below:

11.4 Conflict of Interest

In lodging a tender to this RFT, are you aware of any real or perceived conflict of interests (including any relevant relationships) existing, which require your disclosure,

Answer to 11.4 Yes

If the answer is “Yes”, disclose conflict of interest below.

11.5 Cataloguing – National Product Catalogue

- 11.5.1 The Board will not enter into an Agreement with a legal entity that is not compliant with the requirements of the National Product Catalogue (NPC). NPC compliance requirements include registration for GS1net and the loading of product and pricing data. For further information please review the NPC Supplier User Guide available at

http://www.gs1au.org/services/gs1net/industry/npc/user_guides.asp

Offers received from Tenderers that are not compliant with the requirements of the NPC may be considered at the Board's discretion, if the Tenderer demonstrates that it will comply with the NPC requirements prior to entering into the Agreement.

Is your organisation registered and fully compliant with the NPC requirements?

Answer to 11.5.1 Yes

If “No” will your organisation be NPC compliant prior to the commencement of this agreement?

11.6 Addenda to this RFT after issue

If there have been any Addenda by the Board to this RFT after the issue of this RFT, indicate below whether you have read and allowed for the Addenda in your Tender.

Answer to 11.6 Yes

If “NO”, provide reasons below

11.7 Tender Validity Period (needs to be at least 6 months)

The Tender will remain valid for acceptance within _____ months from the deadline for lodgement of tenders, in accordance with clause 4.9 of Part B.

11.8 Not Used.

11.9 Supply of Australian Business Number

If you do not currently have an ABN, state how and when you intend to obtain an ABN and register for GST.

Note: Tenderers that do not have an ABN cannot enter into an agreement with the Board.

Answer to 11.9

12 Tenderer Identification Details

- 1) If a company, Company Name
- 2) If a partnership, Partnership Name
- 3) If an individual, individual's name
- 4) Trading Name
- 5) Australian Business Number (ABN)
- 6) Registered Office (if a company)
- 7) Site Address (principal place of business)
- 8) Postal Address (principal place of business)
- 9) Alternative Address
- 10) Contract Administration Contact Name
- 11) Contract Administration Contact Telephone Number
- 12) Contract Administration Contact E-mail Address
- 13) Sales Order Contact Name
- 14) Sales Order Phone Number
- 15) Sales Order E-mail Address
- 16) Sales Order Fax Number
- 17) Management Fee Contact Person
- 18) Management Fee Contact Telephone Number
- 19) Management Fee Contact Fax Number
- 20) Management Fee Email Address
- 21) Chief Executive Officer's Name

22) Switch Board Telephone Number

23) Company E-mail Address

24) Company Website Address

13 Statement of Compliance with Specification

13.1 Compliance with Part F – Statement of Requirements

Do the tendered Deliverables fully comply with Specifications contained within Part F – Statement of Requirements?

Answer to 13.1 Yes

If “No” a full statement of deviations must be given, specifying the relevant clause/s or Deliverable/s and the extent of non-compliance to each.

13.2 Provision of Certificates of Compliance to Relevant Standards

Are you able to provide within 5 working days, when requested by the Board, Certificates of Compliance to relevant Standards?

Answer to 13.2 Yes

If “No”, please provide details.

14 Acknowledgement and Confirmation Of Tender

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 Standing Offer agreement.

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:

Agree

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 web site 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 D, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgement and acceptance is a necessary prerequisite to consideration of your Tender.

No

PART C2 Pricing Schedule

Please complete responses to the questions provided in the attached Excel Spreadsheet.

TENDERER'S INSTRUCTIONS FOR ELECTRONIC TENDERING

Remember to save the workbook often and check that your information has been saved properly.

DO NOT insert or delete any columns in the sheet. Inserting or deleting columns in any sheet will corrupt your bids for all items in that workbook.

Print the Tenderer's User Guide available within the Excel spreadsheet. Use this as a reference guide for completing information in each column.

DO insert rows wherever necessary.

Tenderer Responsibilities:

The tenderer has the responsibility to ensure the correctness of their answers / data.



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

Dated: <Insert Date>

NSW STATE CONTRACTS CONTROL BOARD

And

<Insert Contractor name>

AGREEMENT (REQUEST FOR TENDER, PART D) FOR

LABORATORY CONSUMABLES

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This Request for Tender document ("RFT") has been prepared by NSW Procurement – Contracting Services for the State Contracts Control Board for and on behalf of the Crown in right of the State of New South Wales. This RFT is protected by Crown copyright.

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

Other matters should be directed to:

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

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THIS AGREEMENT executed by DEED is made on the _____ day of _____ 20__

BETWEEN

NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD for and on behalf of the Crown in right of the State of New South Wales, of McKell Building, 2-24 Rawson Place, Sydney, in the State of New South Wales ("the Board") on behalf of NSW Health.

AND

[.....name of contractor.....] of [.....address.....] in the State of [.....] ("the Contractor").

BACKGROUND

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

NOW THE PARTIES AGREE:

1 Interpretation

1.1 Definitions

"Administrators" means Personnel of the Contractor who are responsible for managing Authorised Users within its organisation and receiving notices sent by the Board for purposes of complying with the Contractor's smartbuy® obligations.

"Adverse Event" means any unplanned event which may cause or causes patient injury through health care management in connection with the use of the Deliverables.

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

Agency Performance Indicator (API) means performance indicators in respect of the Contractor's performance of this Agreement and which are scored by the Customers.

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

"Authorised Users" means Personnel who the Contractor authorises to access and use smartbuy® on its behalf and who are given access to do so by the Board.

"Board's Material" means any material, document, or Information supplied by the Board, a Customer or any department or agency of the Crown to the Contractor by whatever means.

"Board's Delegate" means the Board's employee named in Schedule 1 item 11 responsible for the overall administration of this Agreement on behalf of the Board.

"Bulk Purchase Discount" means an increased bulk purchase discount provided by the Contractor under this Agreement in respect of a Customer Contract/s based, on the volume of Deliverables purchased by the Customer, the benefit of which discount must be made available to all Eligible Customers which purchase a substantially similar volume of Deliverables.

"Catalogue Information" means details and images and information about the Deliverables and pricing contained in a catalogue placed on smartbuy® by the Contractor or provided by the Contractor to the Board for such placement.

"Category" means generic categories comprising of multiple Products inclusive of the associated services for its supply.

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

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

“Circumstances Beyond the Control of the Contractor” include:

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

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

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

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

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

and any costs or expenses in connection with the foregoing.

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

“Contractor Information” means the information that must be provided by the Contractor in smartbuy® covering its own organisation and that of its Designated and Nominated Subcontractors and includes names, addresses and contact details.

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

“Contractor’s Insolvency” means any of the following:

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

“Cost Structure” means the individual tendered cost breakdown in accordance with the number of product categories specified in Part C (details of its labour costs, region of sourcing and cost of production in the identified region, cost of key inputs, shipping costs, fuel, margins and other relevant information) for specified Categories and/or Products which will be used when the Contractor seeks price variation or upon notification made by the Board to vary the Price).

“Customer” means NSW Health, and any other the Eligible Customer that places the order with the Contractor under the Agreement.

“Customer Contract” means the contract that is made between the Contractor and a Customer when that Customer places an order.

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

“Deliverables” means the goods and associated services or the goods only to be supplied by the Contractor and detailed in Schedules 2, 3, and 10.

“Designated Subcontractors” means the comprehensive list of subcontractors, resellers and distributors that the Contractor will use for the purposes of this Agreement and named in smartbuy® as such.

“Eligible Customer” means

- (a) any public sector service agency (the public sector service is defined in section 3(1) of the *Public Sector Employment and Management Act 2002* as amended from time to time);
- (b) a public body as defined by clause 18(4) of the *Public Sector Management (Goods and Services) Regulation 2000* being:
 - (i) a government trading enterprise (including a State owned corporation);
 - (ii) a public or private hospital (including an area health service);
 - (iii) a local government agency;
 - (iv) a charity or other community non-profit organisation;
 - (v) a public or private school or a college or university;
 - (vi) a public authority of this State, the Commonwealth or of any other State or Territory;
 - (vii) a contractor to a public authority (but only in respect of things done as such a contractor);
- (c) a Nominee Purchaser provided that it satisfies the requirements of clause 3.6; and
- (d) such other persons or entities, which the Board may from time to time in its discretion, determine through a customer registration process.

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

“Externally Hosted Catalogue” means Catalogue Information hosted in a system other than smartbuy®’s physical infrastructure which is accessible via smartbuy®.

“Financial Security” – Not Used

“Free to Desktop” means free delivery to individual floors, departments and sections of a department and is the basis for purchase of products under which the Contractor is responsible for supply, delivery, insurance and off loading of products at the Customer’s individual points of acceptance within a building, location, or site.

“FREE-INTO-STORE (FIS)” means free into store and is the basis for purchase of products under which the Contractor is responsible for supply, delivery, insurance and off loading of products at the Customer’s premises at the point of acceptance.

“GS1” refers to a not for profit global organisation which administers, and maintains the GS1 System.

“GS1 Australia” refers to the Australian member organisation of GS1.

“GS1 System” refers to a widely-used global standards system developed by GS1.

“Global Trade Item Numbers (GTIN)” refers to the identification keys used in the GS1 System to identify product items.

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

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

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

“Key Performance Indicators” means performance indicators in respect of the Contractor's performance of this Agreement, and which are scored by the Board.

“Key Personnel” means the personnel of the Contractor specified in Schedule 1 item 13.

“Management Fee” means the fee payable by the Contractor to the Board in accordance with clause 9.

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

“National Product Catalogue (NPC)” means a repository of product, pricing and other data for the healthcare industry for the purpose of data synchronisation, and is the single source of product master data for public health institutions in Australia seeking to purchase medicines, medical devices and other healthcare items.

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

“New Generation Product” means the development of innovative products or the adaptation of known products either singly or in combination to produce new products that have improved functionality and the potential for improved health care outcomes.

“Nominated Subcontractors” means a subcontractor that must be used by the Contractor and nominated by the Board and indicated in smartbuy® as such.

“Nominee Purchaser” means a contractor to a public sector service agency, nominated by the public sector service agency authorised to place Customer Contracts under Agreements for things done as such a contractor and registered by NSW Procurement – Contracting Services.

“NON FREE-INTO-STORE (NFIS)” or **“Ex Factory”** or **“Ex Works”** is the basis for purchase of Deliverables under which the Contractor is responsible only for providing the products in a suitable condition for transport to a single delivery point within the Greater Sydney Metropolitan Area. The Customer is responsible for transport, insurance, unloading and assembly if necessary from the on-line delivery point.

“NSW Health” means the NSW Department of Health, Public Health Organisations and NSW Health Support Service.

“NSW Procurement – Contracting Services” means a business unit of the NSW Department of Commerce, representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Order Units” means the unit(s) used when ordering Deliverables from the Contractor. An Order Unit may be “each”, “per box”, “per carton” or some other unit.

“Overall Performance Indicators” means the holistic performance indicators used by the Board to measure the performance of the Contractor under this Agreement and comprise indicators scored by the Customers (ie. API) and the Board (KPI).

“Payment Period” means each period nominated in item 6 of Schedule 1 or where this Agreement expires or is terminated before the conclusion of one such period, the period up to and including the date of expiration or termination.

“Parties” means the Board, Contractor, and the Customer.

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

“Personnel” of a Party means;

- (a) the officers, employees, agents and contractors of the Board and the Customer,
- (b) in the case of the Contractor, includes subcontractors, resellers, distributors, ie. Designated Sub-Contractors in smartbuy®;

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

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

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

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

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

“Relationship Manager” means the Contractor’s employee named in Schedule 1 item 13.

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

“Schedule” means a schedule to this Agreement.

“Service Levels” means the service levels which need to be met by the Contractor under this Agreement in accordance with Schedule 8.

“smartbuy®TRADE” means an entry level product for organisations new to eProcurement. It delivers a single source, easy to use, electronic product and service ordering system.

“smartbuy® CONNECT” means the electronic document exchange providing the security, connectivity, transformation, and trading partner management services.

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

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

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

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

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

“Substantial Breach” means:

- (a) in the case of this Agreement and a Customer Contract, a substantial breach of a condition of this Agreement or a Customer Contract by the Contractor and includes any breach of the following clauses:
 - (i) clause 3.6.3 (Nominee Purchaser),
 - (ii) clauses 5.1 to 5.9 (Pricing),
 - (iii) clause 8.3 (Punctual Delivery) without being granted an extension of time under clause 8.4,
 - (iv) clause 9 (Management Fee),
 - (v) clause 10 (Confidentiality),

- (vi) clause 12.6 (Notification of Adverse Events),
- (vii) clause 12.7 (Changes in Indications for Use),
- (viii) clause 12.8 (National Product Catalogue Requirements),
- (ix) clause 12.9 (Minimum Insurance Requirements),
- (x) clause 12.15 (Financial Security),
- (xi) clause 12.19 (Child Protection),
- (xii) clause 13.1 (Service Levels),
- (xiii) clause 13.6.1 (minimal or nil sales returns),
- (xiv) clause 18.1 (No Assignment or Novation); and
- (xv) clause 18.2 (Conflicts of Interests).

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

“Transaction” means any use of smartbuy® including sale or purchase of Deliverables available through smartbuy®.

“Transaction Data” means any data created or generated or derived from the use of smartbuy® by any participant in smartbuy® including any data about the purchase or sale of Deliverables that any participant in smartbuy® makes available or transmits to or through smartbuy® and includes any information which may identify the Customer from the smartbuy® database.

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

1.2 Rules for interpreting this Agreement

- 1.2.1 Headings are for convenience only, and do not affect the interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2.2 A reference to:
 - (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) software, document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) any thing (including a right, obligation or concept) includes each part of it.
- 1.2.3 Where:
 - (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
 - (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.
- 1.2.4 A singular word includes the plural, and vice versa.
- 1.2.5 A word which suggests one gender includes the other genders.
- 1.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

- 1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- 1.2.8 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:
- (a) Part E, Special Conditions to this Agreement, if applicable;
 - (b) Schedule 6 to this Agreement;
 - (c) The terms and conditions of this Agreement;
 - (d) Schedule 1 and 2 to this Agreement;
 - (e) Any other Schedules to this Agreement;
 - (f) The Customer Contract.

2 Term

2.1 Duration

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

2.2 Extension

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

3 Formation

3.1 Nature of the Agreement between the Board and the Contractor

- 3.1.1 This Agreement describes the terms and conditions between the Board and the Contractor under which the Contractor agrees with the Board that it will supply the Deliverables to Customers.
- 3.1.2 Not Used
- 3.1.3 The Parties agree that any Customer, although not a Party to this Agreement, may take the benefit of, and seek to enforce, this Agreement in its own name.

3.2 No Assurance of Orders and Non-Exclusive Supply

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

3.3 Customer Contract

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

3.4 Provisions of Agreement to apply to the Customer Contract

- 3.4.1 The provisions of this Agreement apply to the Customer Contract as if they were repeated in the Customer Contract.
- 3.4.2 Provided that in respect of the Customer Contract, “Agreement” and “Board” wherever appearing in the clauses described above shall be read as “Customer Contract” and “Customer” respectively.

3.5 Contractor must supply to all Customers

- 3.5.1 If a Customer enters into a Customer Contract with the Contractor during the Term, the Contractor must supply the required Deliverables to the Customer on the terms and conditions of the Customer Contract and in accordance with this Agreement.

3.6 Nominee Purchasers

- 3.6.1 Subject to clause 3.6.3, the Contractor must satisfy any Customer Contract placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser provides in its Customer Contract:
- (a) its NSW Procurement – Contracting Services Registration Number;
 - (b) the identity of the Eligible Customer nominating it;
 - (c) the Agreement Number, name and location of the contract in respect of which the purchase is being made;
 - (d) a statement that the Deliverables ordered are related to carrying out its obligations with the Eligible Customer; and
 - (e) any other requirements in clause 8.1.2 of this Agreement applicable to Nominee Purchasers as determined by the Eligible Customer.
- 3.6.2 If at any time during the Term of this Agreement, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Board. The Board may approve the request if there are genuine commercial reasons for the Contractor’s request. If approved by the Board, the details of the restrictions will be included in item 3, Schedule 1.
- 3.6.3 Where the Board does not approve a request of the Contractor under clause 3.6.2 and the Contractor refuses to deal with a Nominee Purchaser, the Board may consider it a Substantial Breach of this Agreement.
- 3.6.4 The Contractor may at any time lift the restrictions it has sought to be placed on its dealings with a Nominee Purchaser and shall notify the Board accordingly.
- 3.6.5 If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

3.7 Supply through Designated and Nominated Subcontractors

- 3.7.1 The Contractor must supply the Deliverables directly to Eligible Customers or through the Designated and Nominated Subcontractors indicated in smartbuy® or NPC in accordance with Schedule 6.
- 3.7.2 If a Customer Contract is placed by a Customer on a Designated or Nominated Subcontractor, the Contractor is deemed to have entered into a Contract with the Customer.
- 3.7.3 The Contractor must ensure that its Designated and Nominated Subcontractors supply the Deliverables in accordance with the terms of this Agreement.
- 3.7.4 The Contractor must ensure that the Designated Subcontractors in smartbuy® are consistently current and up to date. In the event of a change being required to smartbuy®, as a result of an addition or deletion of a Designated Subcontractor, the Contractor must give notice to the Board within 7 days of such event, in order that smartbuy® can be updated in a manner and format as required by the Board. If such can be achieved via the NPC then the Board may request the updated information be supplied via the NPC.

- 3.7.5 The Contractor's obligations under this Agreement are not affected in any way by the supply through Designated and Nominated Subcontractors.

4 The Deliverables

4.1 List of Products and Categories

- 4.1.1 The Deliverables to be supplied by the Contractor under this Agreement are listed in Schedule 3.

4.2 Variation of Product Description

- 4.2.1 The Contractor must notify NSW Procurement – Contracting Services in writing as soon as practicable of any variation to the description of a Product offered in Schedule 3.
- 4.2.2 A variation under clause 4.2.1 may include a variation to the description of the number or name of the Product but excludes a variation:
- (a) to the Price of the Product;
 - (b) that modifies or upgrades the Product; or
 - (c) that introduces a new Product to the Price Schedule.
- 4.2.3 NSW Procurement – Contracting Services will notify the Contractor of its acceptance or rejection of the variation to the description of a Product. If the variation is accepted, it shall be taken to be incorporated into Schedule 3.

5 Pricing

5.1 Contractor's Obligations

- 5.1.1 The Contractor must supply the Products on the basis of the Prices in Schedule 3.

5.2 Calculating the Contract Price

- 5.2.1 The Pricing for the Products in Schedule 3, includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads and profits, any Applicable Discounts, but is exclusive of GST.

5.3 Negotiation for increased Bulk Purchase Discounts

- 5.3.1 A Customer, or the Board acting on behalf of a Customer, may negotiate an increased Bulk Purchase Discount for a Customer Contract based on the volume of Deliverables purchased from the Contractor.
- 5.3.2 Following agreement with the Customer or the Board on the Bulk Purchase Discount to apply in respect of a particular volume of Deliverables, the Contractor must, within seven (7) days of receipt of the relevant order from the Customer, notify the Board of the details of the Bulk Purchase Discount and the conditions of its application.
- 5.3.3 The Contractor must make the Bulk Purchase Discount available to all Eligible Customers who place orders for substantially similar quantities of Deliverables from the date of notification of the discount to the Customer or the Board.
- 5.3.4 The Parties agree that notification of the new Bulk Purchase Discount under clause 5.3.2 shall be taken to be a variation of the Agreement in accordance with Schedule 3.

5.4 Price Variation

- 5.4.1 The Contractor may not seek to vary the Price of a Product and/or Category listed in Schedule 3 except in accordance with the frequencies and methodology nominated in Schedule 3. Subject to the Contractor having provided the Board with sufficient documentation to justify the application and subject to clause 13.2.2 (a), the Board may in writing, after consultation with NSW Health approve or reject the application within 6 weeks of lodgement.
- 5.4.2 Price variations approved by the Board shall apply to all Customer Contracts made on or after the date upon which the Board publishes the varied price on smartbuy®.

- 5.4.3 Where the Price variation is accepted, Schedule 3 will include the varied Price. The varied Price becomes the basis from which any future applications for Price variations will be calculated.
- 5.4.4 The Board reserves the right to delete a Product and/or Category from Schedule 3 if it considers a Price variation application to be unreasonable. The Board reserves the right to notify the Contractor of a Price decrease. The Board may notify a price decrease on a price variation basis whether that basis has been nominated by the Contractor at tender or not.
- 5.4.5 Notwithstanding any other provision in this Agreement, the Contractor may apply in writing to the Board to decrease its Prices at any time without any supporting documentation.

5.5 Transparency of the Contractor's Cost Structure

- 5.5.1 The Parties acknowledge that, if the Contractor has selected price variation options based on exchange rate, cost of production or cost of distribution, this Agreement requires the Contractor's Cost Structure and variations to it on a transparent and open approach. Where the Contractor's Cost Structure of any Category and/or Product undergoes any change to that specified in Schedule 3, the Contractor must notify the Board within 15 days of the change.
- 5.5.2 If requested by the Board, the Contractor must provide changes in components of its Cost Structure, including documentary evidence, copies of invoices from its own subcontractors or suppliers (including any sub suppliers) for specified Categories and/or Products during a specified period and the Contractor must ensure that the Contractor is able to comply with this clause for the Term (including not entering into any confidentiality agreements which prevent compliance with this clause).

5.6 Not Used.

5.7 Rebates

- 5.7.1 The Contractor warrants that if at any time during the Term of this Agreement, it receives any rebate, discount, commission or other subsidy on any Product that it purchases from its subcontractors or other third party suppliers, the benefit of such rebate, discount, commission or subsidy will be directly passed on to Customers under this Agreement.
- 5.7.2 For all Area Health Services the benefit passed on must be in the form of a direct discount on the goods being purchased. Rebate payments will not be acceptable.

5.8 Continuous Best Price

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

5.9 Goods and Services Tax

- 5.9.1 In this clause and Agreement:

"Consideration", "Tax Invoice", "Taxable Supply" and "Supply" have the same meaning as provided for in the GST Law.

"GST" is a goods and services tax and has the same meaning as in the GST Law.

"GST Law" means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.

- 5.9.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 5.9.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice is received.
- 5.9.4 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.
- 5.9.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 5.9.4.
- 5.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Board.

6 Payment

6.1 Payment of Contract Price

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

6.2 Invoices and Time for Payment

- 6.2.1 All claims for payment made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Customer, including consolidated monthly invoicing on behalf of its branches/business units.
- 6.2.2 Subject to this clause 6.2, the Customer shall make payment within 30 days from the end of the month after receipt of a valid Tax Invoice and documents necessary to evidence delivery to the Customer.
- 6.2.3 The parties agree the making of a payment is not intended to be an acknowledgment that the Deliverables have been supplied in accordance with the Customer Contract.
- 6.2.4 If the Customer disputes an invoice amount the Customer shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with the Customer Contract.
- 6.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by any Customer of money becoming due for the supply of the Deliverables.

6.3 Set-Off/Money Recoverable by Customer

- 6.3.1 The Customer may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Customer in connection with the supply of the Deliverables.
- 6.3.2 Without limiting clause 6.3.1, any damages, costs and expenses recoverable by the Customer from the Contractor in consequence of the Contractor's breach of the Customer Contract may be deducted from money then due to the Contractor under the Customer Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be:
- (a) set off against any other money due to the Contractor by the Customer under this or any other agreement between the Customer and the Contractor; or
 - (b) recovered from the Contractor by the Customer in an appropriate court.

- 6.3.3 For the purposes of this clause, the Board may act for and on behalf of any Customer for the purpose of assessing and certifying any damages, losses, costs and expenses sustained or incurred by the Customer as a result of the breach of the Customer Contract.

6.4 Suspension of Payments

Should the Contractor refuse or neglect to carry out the instructions or requirements of the Board in regard to any matter connected with this Agreement, a Customer may, when directed by the Board, suspend all payments to the Contractor until such instructions or requirements have been complied with by the Contractor and in complying with a direction of the Board, the Customer shall not be in breach of this Agreement or any Customer Contract.

7 Variations

7.1 Variations to Agreement

- 7.1.1 This Agreement may not be varied except in writing signed by both the Board and the Contractor.
- 7.1.2 At any time during the Term of this Agreement, the Board may, as variations to this Agreement, negotiate with the Contractor to include new items as Products in Schedule 3, being items which are logical inclusions to the overall Categories covered by this Agreement.

7.2 Restricted Tenders to Increase Contractors

- 7.2.1 The Board may at any time during the Term of this Agreement, conduct a restricted tender for the purpose of increasing the number of Contractors for Categories covered by the Request for Tender, but not included in this Agreement. Evaluation criteria for such restricted tender will be similar to those used to evaluate the Request for Tender. Should the Contractor be successful in being awarded additional Categories, it will be treated as a variation to this Agreement.

7.3 Changes or Additions to Products

- 7.3.1 During the Term of this Agreement, the Board may accept from the Contractor any changed or additional products in lieu of any Product included in Schedule 3, provided that it can be substantiated by the Contractor that:
- (a) The functional specifications of the changed or additional product/s do not differ in any substantial sense from the functional requirements in Schedule 2; and
 - (b) The cost effectiveness of the changed or additional product/s is not less than that of the Products in Schedule 3.
- 7.3.2 Where the Contractor proposes an additional product or change to any aspect of a Product in Schedule 3, including the country of manufacture, source of manufacture, composition, design or method of manufacture of the Product, its packaging, labelling, or any other factor, it shall notify the Board in writing, giving at least two (2) calendar months notice of the proposed change/addition. The request will consist of:
- (a) The current item number of the Product;
 - (b) The product code;
 - (c) The correct and full name (including brand name or marking) of the Product;
 - (d) The Order Unit in line with original tendered details;
 - (e) The price per Order Unit.
 - (f) Evidence of compliance with the Therapeutic Goods Act 1989 or other relevant Statutory Requirements;
 - (g) Information relating to the change or reason for the addition including sales levels, evaluation reports (if available);

- (h) Any other details as required by the Board.
- (i) GTIN number

The Board reserves the right to accept or reject any changes/additions proposed by the Contractor.

7.3.3 Upon receipt of the request from the Contractor under clause 7.3.1, the Board will at its sole discretion take one or more of the following actions:

- (a) institute trials of the proposed product and evaluate results;
- (b) evaluate the proposed product;
- (c) invite all existing contractors for similar products to tender for the proposed version;
- (d) invite a supplementary tender for the proposed product from all tenderers that have the capacity to supply the proposed product;
- (e) decline the request for inclusion of the changed or additional products in this Agreement; or
- (f) approve the request for inclusion of the changed or additional products to the Agreement by adding such products to Schedule 3, or replacing the Products listed in Schedule 3 with the changed or additional products.

7.4 New Generation Products

7.4.1 At any time after the commencement date of this Agreement indicated in Schedule 1 item 2, and at three 3 monthly intervals thereafter, the Board may accept, from the Contractor a New Generation Product/s provided that it can be substantiated that:

- (a) the functional specifications of the New Generation Product/s does not differ in any substantial sense from the broader requirements in Schedule 2 ; and
- (b) the cost effectiveness of the New Generation Product/s is not less than that of similar Products under this Agreement.

7.4.2 Where the Contractor implements, or is planning to implement improvement characteristics to a Product covered by this Agreement in order that it may become a New Generation Product, including:

- (a) changes to its formulation;
- (b) changes to its indication;
- (c) changes to its presentation;
- (d) changes to all or a combination of the above; or
- (e) improvement (whether as a result of technological advances, revised Australian Standards or Customer requirements);

The Contractor will submit a request in writing to the Board to include the New Generation Product/s in the Agreement. The request shall include:

- a) the correct and full name (including brand name or marking) of the New Generation Product/s;
- b) a full and detailed description of where the New Generation Product/s is used and how it is used;
- c) if, whether or not to the best of the Contractor's knowledge, any other Product/s are to be used in conjunction with the New Generation Product/s;
- d) a comparison table listing the characteristics of like Product/s and the characteristics of the New Generation Product/s; and
- e) the reason behind the changes or, what the improvement is, a description of the benefits that would accrue to Customers should the New Generation Product/s be included in the Agreement.

New Generation Product/s will meet all regulatory requirements.

- 7.4.3 Upon receipt of the request, the Board will have the sole discretion as to one or more of the following actions in relation to inclusion or otherwise of the proposed product as a New Generation Product in the Agreement:
- a) institute trials of the proposed product and evaluate results;
 - b) evaluate the proposed product;
 - c) decline the request for inclusion of the proposed product in the Agreement; and/or
 - d) approve the request for inclusion of the proposed product in the Agreement as a New Generation Product, either adding it to the Agreement or replacing an existing Product listed in Schedule 3.
- 7.4.4 In the event that the proposed product is not approved by the Board as a New Generation Product and any Product included in the Agreement can no longer be supplied by the Contractor, the Board reserves the right to remove the Product that can no longer be supplied by the Contractor from the Agreement.

8 Delivery

8.1 Customer Contracts

- 8.1.1 The Contractor must not supply the Deliverables unless the Customer issues a Customer Contract. Such Customer Contracts may be made by:
- (a) Written request to the Contractor by facsimile, email or by hand, containing the details outlined in clause 8.1.2;
 - (b) Electronic issue in accordance with the Customer's and/or the Contractor's ordering system and this Agreement;
 - (c) Any other method required by the Customer which is in keeping with the NSW Government's financial and audit policies.
- 8.1.2 A Customer Contract in whichever form it is issued, must provide the following details:
- (a) a description of the Deliverables;
 - (b) the Price for the Deliverables;
 - (c) this Agreement reference number;
 - (d) delivery date;
 - (e) delivery site;
 - (f) name of officer placing the Customer Contract;
 - (g) NSW Commerce Customer Number; and
 - (h) address to which the Contractor's invoice is to be sent for payment.
- 8.1.3 If the Customer Contract is issued in incomplete form, the Contractor must notify the officer placing the Customer Contract of the details required under clause 8.1.2 that have not been provided prior to supply of the Deliverables which are the subject of the Customer Contract.

8.2 Contractor to Fulfil all Customer Contracts

- 8.2.1 The Contractor must fulfil all Customer Contracts placed by Eligible Customers during the Term in accordance with this Agreement and the Customer Contract.
- 8.2.2 A Customer may place a single Customer Contract for the Deliverables to be supplied in a single delivery, or a single Customer Contract to be supplied in multiple deliveries, ie. "Blanket Orders".

8.3 Punctual Delivery

- 8.3.1 The Contractor must deliver the Products within the specified Guaranteed Delivery Times in Schedule 2, or by the delivery times specified in the Customer Contract.
- 8.3.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Customer in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay.

8.4 Extension of Time

- 8.4.1 Where there is likely to be a delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:
- (a) within 3 days of becoming aware of the possibility of such a delay, notify the Customer, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
 - (b) request a reasonable extension of time.
- 8.4.2 The Customer may consent to a request for extension of time under this clause 8.4.2 provided that:
- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
 - (b) where appropriate, the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.
- 8.4.3 The Customer may terminate the Customer Contract in accordance with clause 17.1 if the delay continues beyond the time consented to in this clause 8.4.
- 8.4.4 The Contractor will not be entitled to any increase in the Price or damages, costs or expenses in connection with the delay.

8.5 Packaging

- 8.5.1 The Contractor must ensure that all Deliverables are properly, safely and securely packaged and labelled for identification and country of origin. Packs must indicate details of contents.

8.6 Expenses of Delivery

- 8.6.1 The Contractor must pay for all packaging, freight, insurance, and other charges, in connection with the delivery of Deliverables, and the return of Deliverables wrongly supplied except where it is expressly provided in this Agreement.

8.7 Delivery and Acceptance

- 8.7.1 The Contractor must deliver the Deliverables to the place or places and within the Guaranteed Delivery Time and shall obtain a receipt of their delivery.
- 8.7.2 Delivery and receipt of the Deliverables shall not be taken to be an acceptance of the Products by the Customer.
- 8.7.3 Delivery may be either Free to Desktop, Free-Into-Store (FIS) throughout NSW and the ACT or Non-Free-Into-Store (NFIS) in accordance with Schedule 2 and in accordance with the Minimum Order Quantity specified by the Customer. Where the contract is awarded on the basis of NFIS pricing, the Contractor must hand over Products to the third party for delivery, as arranged by the Customer.
- 8.7.4 If the Contractor is unable to provide the Deliverables for any reason, the Contractor must arrange for the supply of equivalent items (meeting all specifications applicable) from an alternative supplier within the Guaranteed Delivery Time. The Contractor is to liaise with the Customer to ensure that the alternative item is acceptable and meets the Customer's needs. Any additional cost in arranging an alternative supply is to be borne by the Contractor.
- 8.7.5 The Contractor will replace Goods at no cost (including freight and handling charges) where stocks are delivered with unacceptable use-by dates. An unacceptable use-by date is one that is LESS THAN SIX (6) MONTHS from the date of delivery.

8.8 Rejection of Deliverables

- 8.8.1 The Customer may reject Deliverables which are not in accordance with the Customer Contract.

- 8.8.2 Upon rejection of any Deliverables the Customer shall notify the Contractor and may direct that the rejected Deliverables be removed and replaced or rectified at the Contractor's risk and expense within such reasonable time as the Customer may direct.
- 8.8.3 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Customer may have the rejected Deliverables re-delivered at the Contractor's risk and expense.
- 8.8.4 Where the Contractor fails to deliver the Deliverables within the Guaranteed Delivery Time, or such other time agreed by the Customer, or where Deliverables are rejected and the Contractor fails to replace the rejected Deliverables in conformity with the Agreement, the Customer may:
- (a) purchase from another supplier substitute Deliverables of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another supplier substitute Deliverables of the kind and quality ordered, the Customer may purchase Deliverables of a superior kind and quality to the Deliverables under this Agreement.
- 8.8.5 In both cases listed in clause 8.8.4 any extra cost or expense incurred over and above the Price, shall be a debt due from the Contractor to the Customer.

8.9 Risk and Title

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

9 Management Fee

9.1 Administration of Management Fee

- 9.1.1 The Contractor must pay to the Board a Management Fee in accordance with this clause.
- 9.1.2 The Contractor shall act in good faith in respect of all its obligations under this clause 9.1 and shall use its best endeavours to ensure that the obligations imposed on it in relation to the Management Fee are met including ensuring that:
- (i) all Eligible Customers use an Order for placing orders for Deliverables;
 - (ii) the Contractor, its agents, Designated and Nominated Subcontractors sell the Deliverables to Eligible Customers on the terms and conditions of this Agreement.
- 9.1.3 The Management Fee is the GST-exclusive cost of the Deliverables supplied to a Customer, multiplied by the percentage shown in Item 5 of Schedule 1 (the Management Fee Rate), plus the GST payable on this amount. The Management Fee is payable where the supply of Deliverables to the Customer was made under this Agreement.
- 9.1.4 The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.
- 9.1.5 The Parties agree that for the purpose of determining if an Order has been placed under this Agreement the following criteria shall apply, whether or not a customer number is quoted:
- (i) All New South Wales government departments and agencies are Eligible Customers and are required to place their Orders under this Agreement;
 - (ii) All other Eligible Customers located in or affiliated with New South Wales, including State owned corporations, councils established under the Local Government Act 1993 and not for profit organisations, will be treated as having placed their Orders under this Agreement unless the Contractor can provide evidence to the satisfaction of the Board that the purchase was made under another contract between the Eligible Customer and the Contractor;

- (iii) All Eligible Customers not located in or affiliated with New South Wales, including other State and Territory governments and the Commonwealth, will be treated as having placed their Orders under this Agreement only where they have so advised the Contractor at the time of placing their Order. The Board otherwise bears the onus of establishing that any such orders were placed under this Agreement.
- 9.1.6 All orders placed by an Eligible Customer (as described in clause 9.1.5(i) and (ii)) for Deliverables, howsoever placed, shall be treated as Orders placed under this Agreement, unless the Contractor can provide evidence to the reasonable satisfaction of the Board that the order was placed under another contract between that Eligible Customer and the Contractor. Further, the Contractor agrees to ensure that all Eligible Customers (as described in clauses 9.1.5(i), (ii), or (iii)) submit an Order in the required form in respect of all Deliverables acquired in accordance with this Agreement.
- 9.1.7 The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with its calculation and proof of payment of the Management Fee and compliance with this clause 9.1.
- 9.1.8 Within 7 days of the end of each Payment Period, the Contractor shall provide electronically through smartbuy® to the Board a sales report ("the Report") which relates to the relevant Payment Period reporting the:
 - (a) total amount, exclusive of GST, all Customers are liable to pay in respect of all Deliverables invoiced by or on behalf of the Contractor, to Customers under the Agreement; and
 - (b) the sales information as set out in Item 7 of Schedule 1 ("the Sales Information"); and
 - (c) such other relevant information as the Board may, by notice in writing to the Contractor, reasonably require.
- 9.1.9 In the event that the Contractor does not complete a Report within 7 days of the end of a Payment Period, the Contractor will be liable for interest, at the rate specified in item 8 of Schedule 1, on the outstanding Management Fee for the relevant Payment Period, calculated from 7 days after the end of the relevant Payment Period until the Management Fee is paid.
- 9.1.10
 - (a) After receipt of the completed Report from the Contractor, the Board shall then compile a Tax Invoice for the Management Fee payable based on the Report and forward that Tax Invoice to the Contractor.
 - (b) The Contractor shall then forward payment to the Board in accordance with the Tax Invoice compiled by the Board within fourteen [14] days of the date of the Tax Invoice.
 - (c) In the event that the Contractor does not provide payment within fourteen [14] days of the date of the Tax Invoice it will be liable for interest at the rate specified in item 8 of Schedule 1 on the invoiced amount, calculated from [14] days after the date of the Tax Invoice.
- 9.1.11 The Tax Invoice referred to in clause 9.1.10 will set out the Management Fee payable by the Contractor to the Board and the GST payable on the Management Fee.
- 9.1.12 The Board may alter the above procedure for the collection of the Management Fee as advised in writing from time to time during the Term.
- 9.1.13 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should advise the Board in writing. The Parties may then agree on the amount of any adjustment.
- 9.1.14 Where the Contractor has not issued an invoice to any Eligible Customer during a relevant Payment Period the Contractor must provide, within 7 days of the end of that Payment Period, a report stating that no Deliverables were provided by the Contractor to any Eligible Customer during that Payment Period.
- 9.1.15 The Contractor must set up and maintain a system which:

- (a) to the reasonable satisfaction of the Board is suitable for identifying all purchasers of the Deliverables under the Agreement that are Eligible Customers whether pursuant to Customer Contracts or otherwise.
- (b) enables monitoring by the Board of Customer Contracts placed with, and invoices issued, by the Contractor, on behalf of the Contractor, or by its Designated and Nominated Subcontractors.
- (c) enables the provision of Sales Information; and
- (d) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchase of Deliverables, and failure to establish such a system to the reasonable satisfaction of the Board shall constitute a breach of this Agreement and the Board may, at its discretion, terminate the Agreement.

9.1.16

- (a) The Board may, at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Board and the Contractor agrees to cooperate with the Board.
- (b) If the Board appoints an auditor, the Board will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with any auditor appointed by the Board, including providing, or providing access to, within 10 working days of the written notification from the Board that an audit will take place, information about all sales of Deliverables made to Eligible Customers (whether pursuant to an Order or otherwise), copies of all contracts, orders and invoices between the Contractor and any Eligible Customers. The Contractor agrees to provide the auditor appointed by the Board access for the purpose of this clause 9.1.16 on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form set out in Schedule 5.

9.1.17 If the measures taken in clause 9.1.16 verify that the Contractor has not paid in full the Management Fee that is actually due to the Board, the Contractor:

- (a) must pay the difference between the Management Fee paid to the Board and the Management Fee actually due to the Board within 30 days of a written direction from the Board; and
- (b) will be liable for interest at the rate specified in item 8 of Schedule 1 Agreement Details, on the additional amount calculated from 30 days after the expiry of the relevant Payment Period, and
- (c) will, at the discretion of the Board, reimburse the Board's costs and expenses of the measures taken (including any auditor's fees) under clause 9.1.16 to the Board in accordance with the sliding scale set out below to compensate the Board for the cost incurred in ensuring the correct Management Fee is paid:

Difference between management fee paid and payable:

- (a) 99% or more of Management Fee was paid
- (b) 90-98% of Management Fee paid
- (c) 75-89% of Management Fee paid
- (d) 50-74% of Management Fee paid
- (e) less than 50% of payable Management Fee paid

Portion of Audit costs to be borne:

- (a) \$0
- (b) 25% of Audit and other costs
- (c) 50% of Audit and other costs
- (d) 75% of Audit and other costs
- (e) 100% of Audit and other costs.

- 9.1.18 The Contractor shall during the Term of this Agreement and for a 12 month period after the Agreement has expired or is terminated, keep secure all relevant documents and information for the purposes of this clause and give any auditor appointed by the Board access to those documents and information at all reasonable times.
- 9.1.19 The Parties agree that a breach of this clause 9.1 (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 9.1.17) shall be a Substantial Breach of this Agreement which will entitle the Board to terminate this Agreement pursuant to clause 16.1.1 and this right of termination shall be in addition to the right of the Board to recover from the Contractor any sums payable to the Board under this Agreement or otherwise, or the right of the Board to deduct those sums from any money that may be or become payable by the Board to the Contractor on any other account.

10 Confidentiality

10.1 Obligations of Parties

- 10.1.1 Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement or a Customer Contract, unless the other Party gives its prior written consent.
- 10.1.2 Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement or a Customer Contract.
- 10.1.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement or a Customer Contract.
- 10.1.4 The Board or the Customer may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement or a Customer Contract to execute without delay a Deed of Confidentiality, substantially in the form of Schedule 4.
- 10.1.5 This clause will survive the termination of this Agreement.

11 Intellectual Property

11.1 Ownership

- 11.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Contractor upon their creation.
- 11.1.2 The Contractor irrevocably grants to the Customer a non-exclusive royalty free transferable licence to use the Intellectual Property in the New Contract Material for so long as the Customer may require.
- 11.1.3 Nothing in this clause 11.1 affects the ownership of Intellectual Property rights in Existing Contract Material.
- 11.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Deliverables.
- 11.1.5 Upon completion of the Customer Contract, or at such other time as the Customer may require, the Contractor must fully and promptly disclose to the Customer all New Contract Material created or developed under or in connection with this Agreement.

12 Specific Obligations of Contractor

12.1 Not Used.

12.2 Not Used.

12.3 Provision of Catalogue Information for E-commerce Initiatives

12.3.1 From time to time the Board may request the Contractor to supply information in the nature of catalogue information for use in e-commerce initiatives in NSW Government contracting.

12.3.2 The Contractor must promptly supply any such information that is reasonably requested by the Board in the format, and using the method of delivery, specified by the Board at the time of the request.

12.3.3 The Contractor consents to the use of such information, including any personal information, in any catalogue created by the NSW Department of Commerce to facilitate e-commerce in NSW Government contracting.

12.4 Licences and Approvals

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

12.5 Compliance with Laws and Standards

12.5.1 The Contractor must, in carrying out this Agreement, comply with:

- (a) all applicable Statutory Requirements;
- (b) the NSW Government codes, policies, guidelines and Standards listed in item 9 of Schedule 1 or any other codes, policies, guidelines and Standards specified in writing by the Board to the Contractor;
- (c) a particular Standard which has been agreed between the Contractor and the Board, and if that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time;
- (d) where Deliverables of therapeutic goods (both drugs and devices) are supplied to a Customer under this Agreement, the Contractor must ensure that such Deliverables are contained on the Australian Register of Therapeutic Goods (ARTG), unless exempted, in accordance with the Therapeutic Goods Act 1989 (Cth). The Contractor must comply in all respects with the Uniform Recall Procedure for Therapeutic Goods issued by the Therapeutic Goods Administration. The Contractor must also comply with the Therapeutic Goods Order 37 issued under the Therapeutic goods Act 1989 for the labelling of therapeutic goods; and
- (e) the obligations imposed on the Board by the Health Records and Information Privacy Act 2002 (NSW), and Privacy and Personal Information Protection Act 1998 (NSW) in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with the Contract. The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Board by the Health Records and Information Privacy Act and Privacy and Personal Information Protection Act as though the Contractor were, as far as reasonably practicable, the Board in relation to any such Personal Information. The Contractor will comply with any request of the Board in relation to Personal Information and will not do anything that would cause the Board to be in breach of its obligations under the Health Records and Information Privacy Act and the Privacy and Personal Information Protection Act.

12.5.2 Material Safety Data Sheets

Contractor must provide Material Safety Data Sheets to the Customer in accordance with Schedules 2 and/or 10.

12.6 Notification of Adverse Events

An “**adverse event**” is defined as an event that led to a death, or led to a serious injury to a patient, user or other person.

Serious injury (also known as serious deterioration in state of health) is:

- a) a life threatening illness or injury,
- b) a permanent impairment of a body function,
(The term “permanent” means irreversible impairment or damage to a body structure or function. The term excludes minor impairment or damage.)

- c) permanent damage to a body structure, or
- d) a condition necessitating medical or surgical intervention to prevent permanent impairment of a body function or permanent damage to a body structure.
(In this context, medical intervention is not in itself a serious injury. It is the reason that motivated the medical intervention that should be used to assess whether an event should be reported.)

A “**near adverse event**” is defined as an event that might have led to a death or serious injury. For an event to be defined as a near adverse event, it is sufficient that:

- a) an event associated with the device happened;
- b) if the event occurred again, it might lead to death or serious injury or;
- c) testing or examination of the device or the information supplied with the device, or scientific literature, indicated some factor which could lead to a death or serious injury.

12.6.1 The Contractor is required to notify in writing the Prescribed Notification Officer in accordance with *TGA Australian Medical Devices Guidelines, Guidance Document Number 11, Version 1.7*. <http://www.tga.gov.au/docs/html/devguid11.htm>

- (a) When a Contractor becomes aware of a near adverse event a report must be submitted no later than 30 calendar days from the date of becoming aware of the event.
- (b) If the event resulted in a serious injury or a death, the Contractor must submit a report no later than 10 calendar days from the date of becoming aware of the event.
- (c) If the issue represent a serious public health threat or concern, where there is imminent risk of death, serious injury, or serious illness and may require prompt remedial action a report must be submitted within 48 hours of the contractor having become aware of the event.

12.6.2 The Contractor shall use its best endeavours to ensure the written notifications includes the following, but the time requirement of notice shall be met where all details are not available with further details supplied once available:

- (i) Date of the Adverse Event
- (ii) Location of the Adverse Event
- (iii) Nature and circumstance of the Adverse Event
- (iv) Identification of the product involved
- (v) Names of any regulatory bodies notified
- (vi) Results of any action taken or proposed action and timescale plus any investigations or planned investigations to be undertaken by the Contractor
- (vii) Whether the Contractor is aware of any similar Adverse Event
- (viii) Prescribed Notification Officer where relevant

12.6.3 Requirement for provision of additional Information in regards to Adverse Events:

- (a) If requested by NSW Health the Contractor shall use its best endeavours to supply, or cause to be supplied, additional information in relation to Adverse Events, which may include the following:
 - i) Details of any similar occurrences.
 - ii) Details of any remedial or preventative actions taken or planned to be taken by the Contractor as a result of the Adverse Event.
 - iii) Results of any investigations or planned investigations to be undertaken by the Contractor after notification of the Adverse Event.
 - iv) Any statistical or other relevant information the Contractor may hold or have access to that is likely to demonstrate the likely occurrence of further similar adverse events.

12.7 Changes in Australian Product Information

12.7.1 The Contractor is required to notify the Prescribed Notification Officer within 72 hours of requesting to the TGA or the TGA directing a change to the following sections of the Product Information (prepared under the Australian Regulatory Guidelines for OTC Medicines or the Australian Regulatory Guidelines for Prescription Medicines):

- (a) Indications
- (b) Contraindications
- (c) Precautions
- (d) Adverse Events
- (e) Dosage and Administration

12.8 National Product Catalogue (NPC) Requirements

12.8.1 The Contractor is required to

- (a) Obtain and maintain membership with GS1 Australia;
- (b) Register for the National Product Catalogue and meet all of the National Product Catalogue requirements regarding product and pricing information; and
- (c) Assign Global Trade Item Numbers to all products, at all levels of packing, as the primary item identifier.

12.9 Minimum Insurance Requirements

12.9.1 The Contractor must hold and maintain, and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:

- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in item 12(a) of Schedule 1 in respect of each claim; and
- (b) products liability insurance for at least the amount specified in item 12(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover; and
- (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- (d) such other insurances as are specified in Schedule 1 item 12 of the Agreement Details.

12.9.2 All policies of insurance must be effected with an insurer rated A – or better by AM Best or an equivalent rating organisation.

- 12.9.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Board.
- 12.9.4 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Board in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Board is kept fully informed of subsequent action and developments concerning the claim.
- 12.9.5 The Contractor must, when requested in writing by the Board, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained".
- 12.9.6 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 12.9.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

12.10 General Indemnity

- 12.10.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Board and the Customers and their officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement.
- 12.10.2 The Contractor's liability in respect of, and indemnity given in, clause 12.10.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Board, its officers, employees or agents caused or contributed to the loss.

12.11 Contractor's Warranties for the Deliverables

- 12.11.1 In relation to the Deliverables, the Contractor warrants that:
- (a) at the time title to a Deliverable passes to the Customer, the Deliverable will be free from any charge or liability;
 - (b) during the Warranty Period, each Deliverable:
 - (i) shall be new and shall conform with the Statement of Requirements;
 - (ii) shall conform to the description, and sample (if any) approved by the Board or Customer in Schedules 2 and 3 (except that if a sample is inconsistent with the Statement of Requirements, the latter must prevail);
 - (iii) shall be free from defects; and
 - (c) it will provide the associated services in accordance with the requirements of Schedule 2 and the Customer Contract and with due care and skill.

12.12 Contractor's Warranties (General)

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

12.13 Warranty Period

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

12.14 Third Party Warranties

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

12.15 Not Used.

12.16 Mistakes in Information

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

12.17 Notification of Change in Control or Transfer of Ownership

- 12.17.1 During the Term, the Contractor must immediately notify the Board and any Customers under an existing Customer Contract in writing of any Change in Control or other action to reconstruct or amalgamate itself.

12.18 Notification of Contractor's Insolvency

- 12.18.1 The Contractor must immediately notify the Board in writing of the Contractor's Insolvency and disclose the details of any:
- (a) Action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement and any Customer Contracts;
 - (b) Existing Customer Contracts which the Contractor has entered into under this Agreement.
- 12.18.2 The Contractor must immediately notify all Customers under an existing Customer Contract of the Contractor's Insolvency.

12.19 Child protection

- 12.19.1 If any Customer Contract involves child-related employment, the Contractor must ensure that:
- (a) it complies with, and ensures that its sub-contractors comply with, the NSW Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People,
 - (b) it complies with its obligations, and ensures that its sub-contractors comply with their obligations, as an employer under the Child Protection (Prohibited Employment) Act 1998 ("Prohibited Employment Act") and the Commission for Children and Young People Act 1998 ("Children and Young People Act").
- Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "the working with children check." The guidelines are available at www.kids.nsw.gov.au.
- 12.19.2 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:
- (a) if any work under a Customer Contract is "child-related employment" under the Prohibited Employment Act (employment of specified kinds that primarily involves

direct contact with children where that contact is not directly supervised), the Contractor,

- (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
 - (ii) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
 - (b) if any work under a Customer Contract is “child-related employment” under the Children and Young People Act (any employment that involves direct contact with children where the contact is not directly supervised) the Contractor must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
- 12.19.3 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a “prohibited person” under the Prohibited Employment Act (persons who have committed a serious sex offence within the meaning of that Act) to perform work under any Customer Contract that is “child-related employment” under that Act.
- 12.19.4 If the work involves access to Department of Education sites, additional requirements relating to community expectations concerning child protection may be imposed as a condition of entry to that site.
- 12.19.5 The Board may require the immediate removal of a “prohibited person” or a person who is the subject of a child abuse allegation or investigation from performance of child-related employment under the relevant Customer Contract.

13 Performance Management

13.1 NSW Health Performance Requirements

- 13.1.1 NSW Health monitors the performance of this Agreement on behalf of the Board, through the use of a centralised electronic reporting system called “Health Quality Reporting System” (HQRS). HQRS enables all Public Health Organisations to electronically report, amongst others, any product quality issues, non-supply of Products and delay in delivery concerns to Contractors and where appropriate to authorities such as the Therapeutic Goods Administration (TGA). The HQRS system is accessible only to Public Health Organisation personnel who are appropriately trained and accredited.
- 13.1.2 The Contractor acknowledges that substantiated information contained in HQRS entries, may also be used by NSW Procurement – Contracting Services and/or NSW Health for the renewal process (i.e. future requests for tender to be issued and considered), in the review of the quality of the product supplied by a Contractor and/or the performance of the Contractor.

13.2 Service Levels

- 13.2.1 The Contractor must meet the specified Service Levels in Schedule 8 during the Term of this Agreement. Performance against the Service Levels must be tracked by the Contractor and reported to the Board’s Delegate in accordance with the frequencies and formats in Schedule 8.
- 13.2.2 Where the Contractor does not meet the Service Levels in Schedule 8, the Board may, at its discretion, take one or more of the following actions in relation to the Contractor:
- (a) refuse to agree to all or a portion of the price variation requested by the Contractor under clause 5.4.1,
 - (b) temporarily suspend the use of all or parts of this Agreement by all Customers, for a period not exceeding 12 months; and
 - (c) require the Contractor to undertake more frequent performance reporting in addition to those specified in Schedule 8, to ensure performance is improved;
- until such time as the Contractor has demonstrated its ability to meet the Service Levels in accordance with Schedule 8.

13.2.3 The remedies in clause 13.2.2 are in addition to any other provisions available to the Board to deal with the inability of the Contractor to meet its Service Level obligations under this Agreement and at law.

13.2.4 The measurements and tolerances in the Service Levels specified in Schedule 8 may be amended, added to, or deleted by the Board and the Contractor in writing during the Term of this Agreement.

13.3 Board's Delegate

13.3.1 The Board has nominated the Board's Delegate in Schedule 1 item 11 to oversee the performance of this Agreement. The Board may, by notice in writing to the Contractor, nominate a replacement Board Delegate.

13.4 Contractor's Relationship Manager

13.4.1 For the purpose of ensuring an efficient relationship with the Board the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 13. The Relationship Manager must:

- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
- (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
- (c) have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement;
- (d) meet with the Board's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement, with particular reference to the Service Levels in clause 13.2.1; and
- (e) answer the Board's queries and work with the Board to address issues relating to matters deemed urgent by the Board arising out of this Agreement.

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

13.4.3 The Relationship Manager must be supported by the Key Personnel in Schedule 1 item 13 in respect of Customers. The Relationship Manager and/or the Key Personnel named in Schedule 1 item 13 must be available to attend periodic meetings as required by Customers.

13.5 Innovation and Continuous Improvement

13.5.1 The Contractor must identify innovative solutions for mutual value enhancement in connection with this Agreement, with a view to achieving continuous improvement.

13.5.2 The Contractor must submit in writing to the Board, at its own cost, detailed proposals for changes to the Products and associated supply chain solutions which are likely to offer significant (including repeated and long term) benefits to the Board in accordance with the requirements of Schedule 2.

13.5.3 The Contractor must ensure that such solutions do not include anything which might adversely affect the quality of the Products and that any proposed changes are consistent with the purpose and intent of this Agreement.

13.5.4 The Board must consider the Contractor's proposals, but is not bound to accept any proposal. The Board may also accept the proposed changes subject to conditions. The Contractor shall have no claim arising out of the Board's failure to accept any proposal or proposed changes.

13.5.5 If the Board accepts any changes proposed by the Contractor, any direct savings in the cost to the Contractor of supplying the Products will be for the benefit of the Customer.

- 13.5.6 For the purposes of monitoring performance and providing incentives for the Contractor to improve its performance level, the Board will construct and maintain an Overall Performance Indicator (OPI).
- 13.5.7 Data input into the OPI will be provided by the Board which will monitor the Key Performance Indicators (KPI) and by the Customer which will monitor the Agency Performance Indicator (API).
- 13.5.8 The performance framework and the performance indicators are set out in Schedule 8.
- 13.5.9 Where the Contractor has consistently met the levels set out in Schedule 8, the Board, may in its absolute discretion:
- (a) extend the period of the Agreement with the Contractor subject to the original term and any relevant policy consideration, and/or
 - (b) reduce the level and frequency of the Board's reporting requirements.

13.6 Contractor Performance Monitoring

- 13.6.1 The Board will monitor the sales performance of the Contractor under this Agreement. Where after 12 months of operation of this Agreement the:
- (a) sales of the Contractor are minimal, or
 - (b) the Contractor consistently has nil returns,

It may be treated as unacceptable performance of this Agreement by the Board.

13.7 Exchange of Information Between Government Agencies

- 13.7.1 The Contractor authorises the Board and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Board and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 13.7.2 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.
- 13.7.3 The Board regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 13.7.4 The Contractor releases and indemnifies the Board and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Board 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.

14 Personnel

14.1 The Contractor's Personnel

- 14.1.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel.
- 14.1.2 The Contractor must:
- (a) employ only such persons as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables; and
 - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 14.1.3 The Board may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour.

Such named personnel so removed may not be re-employed by the Contractor under this Agreement.

- 14.1.4 Any replacement Key Personnel provided by the Contractor must be approved by the Board.

15 Conduct and Dispute Management

15.1 Co-operation

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

15.2 Duty not to Hinder Performance

- 15.2.1 Each Party must do all it reasonably can to avoid hindering the performance of the other under the Agreement and the Customer Contract.

15.3 General

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

- (a) Amicable Resolution (clause 15.4.);
- (b) Expert Determination (clause 15.5)

15.4 Amicable Resolution

- 15.4.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of the Agreement, Customer Contract or about any matter arising under or out of the Customer Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 15.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative, which in the case of the Board is to the Board's Delegate, and in the case of the Contractor is the Relationship Manager.
- 15.4.3 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 15.4.4 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 15.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.
- 15.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 15.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Customer and the Board.
- 15.4.8 If the Party giving the Referral Notice is the Customer, it must give the Referral Notice to the Contractor and the Board.
- 15.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

15.5 Expert Determination

- 15.5.1 If a Referral Notice is given under clause 15.4, the expert is to be agreed between the Board and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 15.5.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the parties;

- (b) a person who has been connected with the Agreement or the Customer Contract as the case may be; or
 - (c) a person who the Parties have been unable to agree on.
- 15.5.3 When the person to be the expert has been agreed or nominated, the Board, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for determination set out in Schedule 9;
 - (d) any other matter which is relevant to the engagement.
- 15.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 15.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Item 14 Schedule 1 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 15.5.6 Unless a party has a right to commence litigation under clause 15.5.5:
 - (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

16 Termination by the Board

16.1 Termination for Cause

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

16.2 Effect of Termination for Cause

- 16.2.1 If the Board terminates this Agreement for cause the Board may:

- (a) contract with any other person to complete the provision of the Products including but not limited to any order remaining to be filled;
 - (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Customer under any Customer Contract (which may be ascertained and certified by the Board), from any money due, or which may become due to the Contractor (whether under this Agreement or any Customer Contract) and/or from the Financial Security (if any); and
 - (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Board.
- 16.2.2 The Board's termination under this clause will not affect any Customer Contract unless the context requires it.

16.3 Termination for the Board's Convenience

- 16.3.1 The Board may terminate this Agreement in whole or in part at any time by giving 30 days written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.

16.4 Effect of Termination for Convenience

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

17 Termination by Customer

17.1 Termination of Customer Contract

- 17.1.1 Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Contractor ("Notice of Termination"):
- (a) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
 - (b) where the Contractor commits a Substantial Breach of the Customer Contract that is not capable of remedy;
 - (c) where the Contractor commits a Substantial Breach of the Customer Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
 - (d) where the Contractor assigns its rights and/or obligations, or subcontracts the Customer Contract otherwise than in accordance with the Customer Contract; or
 - (e) in the case of the Contractor's Insolvency.

17.2 Effect of Termination of Customer Contract

- 17.2.1 In the event of termination, the Customer:
- (a) may procure from any other source a reasonably similar alternative to the Product suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;

- (b) may, by notice in writing to the Contractor, require the Contractor at its expense to remove the specified Product not accepted by the Customer and to dismantle or remove specified work from the Customer's premises by a date specified in the notice;
 - (c) shall be liable under the Customer Contract to pay only for the Products delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
 - (d) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.
- 17.2.2 This clause will survive the termination of the Customer Contract.
- 17.2.3 If the Customer terminates this Customer Contract the Customer may:
- (a) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Contractor and/or from the Financial Security (if any); and
 - (b) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Customer.
- 17.2.4 The Customer's termination under this clause will not affect the Agreement, unless the context requires it.
- 17.2.5 Any termination by the Customer is without prejudice to any accrued rights or remedies of the Customer under the Customer Contract.

18 General

18.1 No Assignment or Novation

- 18.1.1 The Contractor must not assign or novate this Agreement or a Customer Contract without first obtaining the prior written consent of the Board or the Customer as applicable, which consent may be withheld at their absolute discretion.
- 18.1.2 The Contractor acknowledges that the Board may make financial checks and due diligence checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

18.2 Conflicts of Interest

- 18.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.
- 18.2.2 The Contractor must:
- (a) notify in writing, and consult with, the Board immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (b) comply with any direction given by the Board in relation to those circumstances designed to manage that conflict of interest.
- 18.2.3 For the purposes of this clause, a "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.

18.3 Records and Access to Records

- 18.3.1 The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.
- 18.3.2 During the Term, the Contractor must, within a reasonable time of a request from the Board, give the Board access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that the Board reasonably requires.

18.4 Waiver

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

18.5 Severability

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

18.6 Notices

- 18.6.1 Notices must be sent to the other Party at the address shown in items 15 or 16 of Schedule 1, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 18.6.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 18.6.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

18.7 Counterparts

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

18.8 Applicable Law

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

18.9 No agency/no employment/no partnership

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

18.10 Disengagement Period

- 18.10.1 For 6 months following the expiry or termination of a Customer Contract (or part thereof) the Contractor will provide such assistance as is reasonably requested by the Customer for the supply of the Deliverables to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider or to the Customer. Such assistance includes (without limitation):
- (a) providing reasonable co-operation with a third party supplier nominated by the Customer, and
 - (b) providing the Customer data, information and materials that may be required to enable transacting with a new provider as requested by the Board or Customer.

18.11 Pricing Information

The Contractor agrees that product pricing information (including discounts, commissions and rebates as appropriate) may be disclosed to interested parties by the Board at its sole discretion in the form of a User Guide or in any medium of communication it deems appropriate.

18.12 Samples and Clinical Trials of provisional Deliverables

- 18.12.1 The Board may request samples of Deliverables that have been allocated a provisional status ("provisional Deliverable") to assess the final suitability of the provisional Deliverable.
- 18.12.2 If a request to provide samples of a provisional Deliverable, the contractor present the samples at a location designated by the Board, for clinical inspection, examination, trial and/ or assessment. The contractor will provide all reasonable stocks of samples for such purposes, and provide any requested documentary or expert professional support to help with the assessment. All costs arising from compliance with this clause shall be borne by

the contractor. Failure to comply with such requests may rule out the supply of any provisional Deliverable under the contract.

18.12.3 The Board shall at its own discretion use appropriate expertise and resources to evaluate the provisional Deliverables and shall make decisions as to the suitability of the provisional Deliverable at a time of its choosing. The Board will act in good faith to try to finalise such decisions as soon as possible after contract commencement, but it does not make any undertaking as to the timing of its decision on the provisional Deliverable, and the contractor shall not be entitled to compensation or cost of any kind in the event that of delays in any such evaluation or assessment process.

18.12.4 The Contractor may not, under any circumstances supply a provisional Deliverable under the contract. The provisional status of, or removal of that status from, any provisional Deliverable is to be determined solely by the Board in its discretion.

18.12.5 If a formal request for samples is made, instructions will be made as to the labelling and delivery of said samples, these are to be complied with in full.

18.12.6 All costs incurred in relation to the preparation, delivery, product support and subsequent collection of samples shall be borne by the Contractor and will not be reimbursed by the Board, regardless of the final decision to include a Deliverable in the contract or not.

Schedule 1 Agreement Details

Item 1	Contractor's Name:
Item 2	Term: (clause 2.1.1) Commencement Date: Expiry Date: Period of extended term (if any): (clause 2.2.1) Commencement Date: Expiry Date:
Item 3	Restrictions on Nominee Purchasers (clause 3.6)
Item 4	Not Used
Item 5	Management Fee Rate (clause 9.1.3) 1%
Item 6	Payment Period of Management Fee (clause 9.1.8 & 9.1.10)
Item 7	Sales Information (clause 9.1.8 & 9.1.14)
Item 8	Interest for Late Payment of Management Fee (clause 9.1.8, 9.1.9 and 9.1.17) Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Board in accordance with the clause 9.1.8, 9.1.9 and 9.1.17.
Item 9	Codes and Standards (clause 12.5.1) 1. Code of Practice for Procurement 2. Implementation Guidelines NSW Government Procurement 1999 3. Environmental Management Systems Guidelines 4. Occupational Health and Safety Management Systems Guidelines 5. Code of Behaviour (for the protection of children and other vulnerable people)
Item 10	Financial Security (clause 12.15): Amount: Form:
Item 11	Board's Delegate (clause 13.3)
Item 12	Insurances (clause 12.9) a) Public Liability Insurance Limit of Indemnity: \$AUS_M b) Products Liability Insurance Limit of Indemnity: \$AUS_M
Item 13	Key Personnel (clause 13.4) Relationship Manager (clause 13.4.1) Name: Address:

	Position: Telephone: Facsimile:
Item 14	Expert Determination Amount (clause 15.5.5): Guide Note: If this Agreement is worth more than \$50M annually, the Expert Determination Amount should be \$1.0M. If it is worth less than this, the Expert Determination Amount should be \$100,000. AUD:
Item 15	Notices to: (clause 18.6) The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile:
Item 16	The Board's contact name and address: Name: Chairman, SCCB Address: Level 15 McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000 Telephone: 9372 8818 Facsimile: 9372 8803

Schedule 2 Statement of Requirements

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

Pricing and List of Products

Price Variation Mechanism

If Price variation is based on foreign exchange, the following formula will apply:

Exchange Rates

- (i) If the Prices are variable only in respect of rates of exchange, the actual difference between rates paid and the rates upon which the Tender was based will be allowed subject to production of satisfactory documentary evidence.
- (ii) The nominated foreign currency and associated exchange rate found in Schedule 3, which is based on the Westpac Bank's relevant selling rate as published in the *Sydney Morning Herald* seven days prior to the RFT closing date and time.
- (iii) The nominated exchange rate will be used as the basis for any future price variation request.

If Price variation is based on Publish Price List, the following formula will apply:

Publish Price List Formula:

$$RP = \left[\frac{TP * (PLP)}{(PLPo)} \right]$$

(Note: * = means multiplication)

Where:

RP = Revised contract price.

TP = Tendered price (or latest revised price)

PLPo = Published list price effective on the date 7 days before tender closing (the base date), or the published list price upon which the latest revised contract price is based.

PLP = Published list price effective at date price variation application is lodged.

Where the supplies are imported, and the published price list is in an overseas currency, the above formula shall be modified as follows:-

$$RP = \left[\frac{TP * (PLP)}{(PLPo)} * \frac{Eo}{E} \right]$$

(Note: * = means multiplication)

Where:

Eo = The exchange rate as published in the Sydney Morning Herald on the base date, expressed as selling price A\$=

E = The exchange rate most recently published in the Sydney Morning Herald at an exact monthly interval from the base date, expressed as selling price A\$=

Schedule 4 Deed of Confidentiality – Optional NSW Health

THIS DEED DATED THE _____ day of _____ 200__

BETWEEN (insert name of Principal) of (insert address of Principal), in the State of New South Wales ("the Principal")

AND [Name and address of Contractor] ("the Contractor ")

RECITALS:

- A. In the course of the Contractor supplying certain Deliverables for the Principal (whether directly or indirectly) pursuant to the Agreement, the Contractor will have access to and may become aware of Confidential Information belonging to or in the possession of the Principal.
- B. Improper use or disclosure of the Confidential Information would severely damage the Principal's ability to perform its governmental/statutory functions and would severely damage the commercial interests of the NSW Government.
- C. The Principal requires, and the Contractor agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's Confidential Information is kept confidential and that the Contractor provides the Deliverables faithfully and without any conflicting interest.
- D. This Deed sets out the terms on which the Contractor will have access to the Confidential Information

OPERATIVE PROVISIONS:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

2. Interpretation

2.1 Definitions

In the interpretation of this Deed unless a contrary intention appears requires the following expressions will have the following meanings:

"Agreement" means the Agreement between the Board and the Contractor dated [insert date] for the supply of the Deliverables as defined in the Agreement.

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

"Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Contractor knows or ought to know is confidential;

and includes but is in no way limited to:

- (d) the Contract Material;
- (e) The Principal's Material including the financial information, the corporate information and the commercial information of the Principal or any Customer;
- (f) any material which relates to the affairs of a third party;
- (g) information relating to the policies, strategies, practices and procedures of the NSW Government and any information in the Contractor's possession relating to the NSW Public Service.

"Contractor" means *[insert name of Contractor]*

"Contract Material" means:

- (a) any material created, written or otherwise brought into existence as part of, or for the purpose of performing the Deliverables including but not in any way limited to all Records, working papers, programs, flow charts, reports, including documents, equipment and information and data stored by any means ("New Contract Material");
- (b) any material which is existing at the date of this Agreement and which is incorporated with the New Contract Material ("Existing Contract Material").

"Customer" has the same meaning as in the Agreement;

"Express Purpose" means the Contractor performing the obligations under the Agreement.

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

"Notice" means notice in writing given in accordance with this Deed; and

"Principal" means *[insert name of Principal]*.

"Principal's Material" means any documentation, information or material supplied by or on behalf of the Principal, or a Customer to the Contractor

"Records" includes the Contract Material and any other information, documents or data brought into existence by any means and stored by any means in connection with the performance of the Agreement;

2.2 General

- 2.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- 2.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.2.3 If this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.2.4 A singular word includes the plural, and vice versa.
- 2.2.5 A word which suggests one gender includes the other genders.
- 2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1.1 The Contractor must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.1.2 The Principal may grant or withhold its consent in its discretion.
- 3.1.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Contractor procure the execution of a Deed in these terms by the person to whom the Contractor proposes to disclose the Confidential Information.
- 3.1.4 If the Board grants consent subject to conditions, the Contractor must comply with those conditions.
- 3.1.5 Despite clause 3.1.1, the Contractor may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Contractor or in accordance with this Deed.
- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Contractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Contractor or the permitted recipients without the expressed prior written permission of the Principal, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.1.8 The Principal may at any time require the Contractor to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.

- 3.1.9 If any person being any director, officer, contractor or employee of the Contractor, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Contractor then the Contractor will ensure that that person does not do or permit to be done anything which, if done or permitted to be done by the Contractor, would be a breach of the obligations of the Contractor under this Deed.
- 3.1.10 The requirements of this Deed do not affect the obligation of the Contractor to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

- 4.1 The Contractor must use the Confidential Information only for the Express Purpose and must not without the prior written consent of the Principal use the Confidential Information for any purpose other than the Express Purpose.
- 4.2 The Contractor must, unless otherwise authorised by the prior written consent of the Principal:
- (a) treat as confidential and secret all of the Confidential Information which the Contractor has already acquired or will acquire from the Principal;
 - (b) take proper and adequate precautions at all times and enforce such precautions to preserve the confidentiality of the Confidential Information and take all necessary action to prevent any person obtaining access to the Confidential Information other than in accordance with this Deed;
 - (c) not directly or indirectly use, disclose, publish or communicate or permit the use disclosure, publication or communication of the Confidential Information to any person other than in accordance with this Deed;
 - (d) not copy or disclose to any person in any manner any of the Confidential Information other than in accordance with this Deed; and
 - (e) ensure that the permitted recipients comply with the terms of this Deed and keep the Confidential Information confidential and not use or disclose the Confidential Information other than as permitted by this Deed.

5. Survival

This Deed will survive the termination or expiry of the Agreement.

6. Rights of the Board

6.1 Production of Documents

- 6.1.1 The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Contractor containing the Confidential Information.
- 6.1.2 The Contractor must immediately comply with a demand under this Clause 6.
- 6.1.3 If the Principal makes a demand under this clause 6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.

- 6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

The Principal may take legal proceeding against the Contractor or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

7. Indemnity and release

- 7.1 The Contractor is liable for and agrees to indemnify and keep indemnified the Principal or a Customer in respect of any claim, damage, loss, liability, cost, expense, or payment which the Principal or a Customer suffers or incurs as a result of:

- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- (b) the disclosure or use of the Confidential Information by the Contractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

This Deed does not exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

9. Waiver

- 9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2 None of the provisions of this Deed will be taken to have been varied, waived, discharged or released by the Principal unless by its express consent in writing.

10. Remedies Cumulative

10.1 Cumulative

The rights and remedies provided under this Deed are cumulative and not exclusive of any other rights or remedies.

10.2 Other Instruments

Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and do not derogate from any other right or obligation between the parties under any other deed or agreement to which they are parties.

11. Variations and amendments

No term or provision of this Deed may be amended or varied unless reduced to writing and signed by the parties in the same manner as this instrument.

12. Applicable law

This Deed will be governed and construed in accordance with the law of New South Wales and the Commonwealth of Australia.

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

Executed as a Deed

SIGNED, SEALED AND DELIVERED)
)
 by)
 [insert name of Principal]) (signature of the Principal)
)
)
 in the presence of)
)
 [insert name of Witness]) (signature of Witness)

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

Schedule 5 Management Fee Audit Confidential Disclosure Deed of Agreement

Effective Date:

Auditor (Company):

This Confidential Disclosure Deed of Agreement is entered into by and between the Contractor ("Contractor") ABN and the "Auditor", which has been engaged by the State Contracts Control Board ("Board") under an Agreement with the Contractor to carry out a review of the Contractor's records and systems in connection with the Agreement dated.....for the supply of.....

1. In accordance with the clause 9 of the Agreement the Contractor will disclose to the Auditor all information that the Auditor may reasonably require to enable the Auditor to determine the amount of the Management Fee payable by the Contractor.
2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:
On behalf of the Contractor:
Name:
Title:
The Contractor's address:
Other officer:
On behalf of Auditor:
Name: -----and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.
Title:
Work Address of Auditor's representative above:
3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.
4. **Disclosure Period and Term.** The information disclosed by the Contractor to the Auditor will remain confidential for a period of 2 years from the date of this Deed.
5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.
6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the Confidential Information was disclosed. The Auditor shall take all reasonable steps to prevent the unauthorised use, dissemination or publication of the Confidential Information. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.
7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:
 - (a) is or becomes a matter of public knowledge through no fault of the Recipient;
 - (b) is required to be disclosed under operation of law; or
 - (c) is disclosed by the Recipient with the Discloser's prior written approval; or
 - (d) is disclosed to a party's legal adviser in connection with the Audit or this Deed of Agreement.
8. **Proprietary Rights.** Neither party to this Deed of Agreement acquires any intellectual property rights or any other rights under this Deed of Agreement except the limited right to use set out in paragraph 5 above.
9. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Deed of Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or

contemporaneous agreements concerning such Confidential Information, whether written or oral. All additions or modifications to this Deed of Agreement must be made in writing and must be signed by both parties.

This Deed of Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

Signed sealed and delivered by the parties:

CONTRACTOR:	AUDITOR:
ABN/ACN:	ABN/ACN:
Authorised Signature: _____	Authorised Signature: _____
Name: _____	Name: _____
Title : _____	Title : _____
Date: _____	Date: _____

Schedule 6 smartbuy® Requirements

1. smartbuy® Licence

- 1.1 The Board grants to the Contractor a non-exclusive, non-transferable, revocable licence to use smartbuy® for the performance of its obligations under this Agreement.

2. Authorised User

- 2.1 The Board may approve a person nominated by the Contractor and allow such person to access or use smartbuy® and become an Authorised User or an Administrator.
- 2.2 The Board may in its discretion decline to accept a person nominated by the Contractor as an Authorised User or an Administrator, without stating its reasons.

3. Contractor Obligations

- 3.1 The Contractor must provide any information that is reasonably required by the Board for use by smartbuy® including Contractor Information. The Contractor must ensure that all information provided to the Board (including maintaining information in the smartbuy® system) is current, correct, and complete at all times. The Contractor must immediately notify the Board of any changes required to the Contractor Information.
- 3.2 The Contractor agrees that Contractor Information will be published on smartbuy® by the Board. Contractors are responsible to ensure that Designated and Nominated Sub-Contractors are aware that their information will be published by the Board on smartbuy® as a part of Contractor Information.
- 3.3 The Contractor must:
- a) conform to the Board's current password policies;
 - b) comply with all directions given by the Board in relation to the Contractor's access and/or use of smartbuy®; and
 - c) ensure that Transactions are only made for and on behalf of the Contractor and in accordance with this Agreement
 - d) provide the Board with an appropriate number of dedicated personnel to ensure the appropriate use of smartbuy®.

4. Catalogues

- 4.1 The Board requires the Contractor (unless otherwise specified by the Board) to take responsibility to update and actively maintain Catalogue Information provided by the Contractor on smartbuy® or its Externally Hosted Catalogue.
- 4.2 The Contractor is responsible for the accuracy and completeness of Catalogue Information including any images supplied by the Contractor. Notwithstanding the Catalogue Information is provided by the Contractor to the National Product Catalogue, all clauses relevant to this Schedule are applicable.
- 4.3 The Contractor is required to provide Catalogue Information to an acceptable data standard, approved by the Board. Catalogue Information must include all required item attributes including United Nations Standards Products & Services Codes (UNSPSC). The Contractor may either provide developed Catalogue Information to the Board or may request the Board to provide it with assistance, at a fee.
- 4.4 The Board may transform data provided by the Contractor in order to load it into smartbuy® however the values and meaning of the data will not be modified without the prior agreement of the Contractor.
- 4.5 If the Board produces formatted Catalogue Information for the Contractor, then the Contractor must ensure that the formatted Catalogue Information is current, correct, and complies with its obligations under this Agreement.
- 4.6 The Board may review any Catalogue Information and require the Contractor from time to time to update or take off-line its existing Catalogue Information, add new Catalogue

Information and/or verify that the Catalogue Information is accurate, current and in accordance with its obligations under this Agreement or applicable Codes and Standards.

- 4.7 The Board reserves the right to audit the Contractor's Externally Hosted Catalogue Information from time to time for compliance with this Agreement.
- 4.8 The Contractor may only make available information or data, including any Catalogue Information in an Externally Hosted Catalogue to NSW agencies with the Board's prior written consent. Where such approval is given the Contractor will provide the Board with administrator access to its Externally Hosted Catalogue to enable the Board to conduct audits as required.
- 4.9 When approved to connect an Externally Hosted Catalogue, the Contractor must set up accounts for Eligible Customers within two working days from receipt of lodgement of a completed request and ensure that all Eligible Customers can access Catalogue Information.
- 4.10 Externally Hosted Catalogues shall not provide functionality that allows Eligible Customers to directly place orders for Deliverables. The Contractor agrees that, after an Eligible Customer has finished its browse activities, the Customer Contract for the Deliverables in Externally Hosted Catalogues must be transmitted via smartbuy®.
- 4.11 The Contractor's Externally Hosted Catalogue(s) should be available 7 days a week excluding any scheduled maintenance. Contractors must, in relation to their Externally Hosted Catalogues, give the Board reasonable prior notice of any scheduled maintenance and the time it will occur. The Contractor agrees to monitor the performance of its system and notify the Board immediately of any outage of its Externally Hosted Catalogue, except for any scheduled maintenance that the Contractor has notified the Board about.
- 4.12 The Contractor agrees to nominate in writing to the Board within 2 days of entry into this Agreement a person who can be contacted between 9am and 5pm during normal business days to receive and respond to enquiries relating to its Externally Hosted Catalogues.
- 4.13 The Contractor agrees to include on its webpage a customised error message confirming that the error is with the Externally Hosted Catalogue and not with smartbuy®.

5. Provision and Updating of Catalogue Information

- 5.1 The Contractor is required to provide electronic Catalogue Information in a smartbuy® or National Product Catalogue format acceptable to the Board no later than 30 days from the commencement of this Agreement, inclusive of Catalogue Information specific to particular Eligible Customers.
- 5.2 All Catalogue Information including that pertaining to particular Eligible Customers must be updated in strict accordance with the frequency and conditions outlined in this document from the date on which the Catalogue Information is initially hosted on smartbuy® as per clause 4 above.

6. Availability

- 6.1 The Board may in its discretion limit or suspend the Contractor's access or use of smartbuy® during the Term of this Agreement.
- 6.2 Unless otherwise notified by the Board, smartbuy® will be accessible 7 days a week except during any necessary scheduled maintenance, unscheduled maintenance or unavailability caused by a circumstance beyond the reasonable control of the Board or its third party suppliers.
- 6.3 The Board will endeavour where reasonably practicable to notify the Contractor of any:
- a) changes or upgrades to smartbuy®'s functionality that materially affect the Contractor's use of smartbuy®;
 - b) changes in equipment or configuration requirements of smartbuy® that materially affects the Contractor's ability to access and use smartbuy®.
- 6.4 The Board agrees to make available the NSW Procurement Client Support Centre to assist the Contractor in relation to any defects it experiences in the operation or functionality of smartbuy®. The Contractor agrees to report any issues or defects to the Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@commerce.nsw.gov.au Unless

the Contractor is otherwise notified by the Board, the Client Support Centre will be available from 8.30 am to 5.00 pm Monday to Friday, excluding public holidays. The Board may change the times during which the Client Support Centre is available from time to time.

7. smartbuy® Security

7.1 smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy®.

7.2 Key elements of the security regime include:

- a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
- b) Robust firewalls;
- c) Multi level system design;
- d) Virus protection;
- e) Password protection and restricted access permissions;
- f) Intrusion detection systems;
- g) Audit trails of user activities;
- h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;
- i) Programme of system upgrades to ensure security compliance.

7.3 The Contractor must:

- a) have in place procedures to prevent any unauthorised use of smartbuy® by any person on its behalf (including Administrators, Authorised Users or an unauthorised third party) and these procedures must include provision to ensure its Administrators and Authorised Users are prevented from accessing or using smartbuy® upon them ceasing to be authorised to do so;
- b) make all reasonable efforts to ensure that any information (including documents) that it transmits via smartbuy® will be free from viruses, worms or trojan horses or any other malicious program that is capable of causing damage to smartbuy® or smartbuy®'s users;
- c) make all reasonable efforts to ensure that its systems are secure and are kept up to date with adequate anti-virus software;
- d) notify the Board immediately of any significant security breaches that it suffers or threats that it is aware of.

7.4 The Contractor acknowledges that user logins and passwords used to access smartbuy® are transmitted using HTTPS protocol. Delivery of business documents (such as purchase orders and/or Invoices) is done through the following mechanisms, depending on the election of the Contractor:

- a) Facsimile;
- b) Unencrypted emails;
- c) SFTP: File Transfer Protocol over Secure Sockets Layer (SSL) (Secure Shell (SSH) available on request);
- d) HTTPS protocol: Hypertext Transport Protocol over Secure Sockets Layer (SSL).

7.5 While the Board will make reasonable endeavours at all times to make smartbuy® secure, the Board does not guarantee:

- a) the security of smartbuy®, the internet, and any other system, including the system used by the Board to access or use smartbuy®;
- b) that the delivery of business documents will be uninterrupted or secure;
- c) that smartbuy® will be uninterrupted, timely, secure or error-free;
- d) that smartbuy®, the internet, and any other system, including the system used by the Contractor, will be free of viruses or errors.

The Contractor must immediately notify the Board if it suspects, becomes aware, or has knowledge of any unauthorised use of smartbuy® by another person.

- 7.6 The Board may provide access and password details (“Passwords”):
- a) to Administrators to be supplied to Authorised Users; and/or
 - b) directly to the e-mail addresses of Authorised Users who are acceptable to the Board.
- 7.7 The Contractor must take all reasonable steps to protect and keep secret any Passwords that the Board provides to it as per clause 7.6. The Contractor acknowledges and agrees that Board will rely on their use of a Password as conclusive evidence of their identity and authority, without further investigation. The Contractor must immediately notify the Board if it suspects, knows about or has knowledge that a Password has become compromised or known to another person and/or of any unauthorised use of a Password by another person has occurred.

8. Minimum Configuration

- 8.1 To access and use smartbuy® TRADE the Contractor must have the following minimum configuration and the Contractor warrants that it has:
- a) Windows 95, 98, 2000 or XP, IE 5.5 or later, a recommended video resolution of 1024X768; and
 - b) will configure its web browser to use SSL3.0 and ensure that the auto-complete or similar function is switched off for “Contractor name and passwords on forms”.
- 8.2 These configurations may be varied by the Board due to changes or upgrades to smartbuy® from time to time. The Board will, wherever practicable, notify the Contractor of any variations to the configurations. The Contractor acknowledges that any access speed to smartbuy® and the performance of smartbuy® is limited by the Contractor’s Internet service or other infrastructure and equipment.
- 8.3 If the Contractor has any queries in relation to these configuration requirements it may contact the Client Support Centre .

9. Improper Use of smartbuy®

- 9.1 The Contractor must not intentionally, recklessly or negligently interfere with any other parties’ use of smartbuy®. The Contractor must not use smartbuy® or any service provided by the Board to post or transmit any information or provide a link to any third party website that:
- a) defames, threatens or menaces any person;
 - b) breaches any law or regulation or infringes a third party’s rights;
 - c) is indecent, pornographic or obscene;
 - d) knowingly transmits any virus, computer programme, code, device, product, components or other disabling feature that prevents, inhibits or impairs the performance of smartbuy®;
 - e) is an unsolicited commercial electronic message promoting the supply of goods or services.
- 9.2 The Contractor must ensure that its employees, officers and agents view or access any material published or made available on smartbuy® TRADE and/or smartbuy® CONNECT in accordance with this Agreement.
- 9.3 The Contractor must not use smartbuy® to sell, buy or dispose of, or attempt to sell, buy or dispose of any goods or services that are not specified by the Board under this contract, are unlawful or unauthorised.

10. Disclaimer

- 10.1 The Board makes no warranties in relation to the condition, fitness, merchantability, quality and title of the Deliverables purchased by the Customer using smartbuy®. To the extent permitted by law, the Board expressly excludes all conditions, warranties and terms whether express, implied, or statutory, which would otherwise be implied by law, conduct or otherwise into this Agreement.

11. Privacy

- 11.1 The Contractor warrants, in respect of any personal information provided in connection with the use of smartbuy®, that the information is accurate, up to date and complete, and that individuals to which the personal information refers authorise its collection and are aware:
- a) that personal information is being collected, and will be held by the Board at the address shown in smartbuy® or by its third party suppliers;
 - b) that the information is being collected for the purpose of managing smartbuy®, and the administration of this Agreement, and may be made available to Eligible Customers for those purposes;
 - c) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and
 - d) of the existence of any right of access to, and correction of, the information.
- 11.2 The Contractor acknowledges that its use of smartbuy® indicates its knowledge and acceptance of the privacy policy displayed on smartbuy®. smartbuy® may contain links to other websites. The Board is not responsible for the privacy practices or the content of such sites. The Board requires the Contractor to read the privacy statements in these linked sites, as their privacy policies may differ from those of the Board.

12. Integration with smartbuy® CONNECT

- 12.1 All electronic documents transmitted through smartbuy® TRADE are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Eligible Customers and Contractors, without passing through the smartbuy® TRADE.
- 12.2 The following Transmission Types and Document Types are supported by smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

Transmission Type	Document Type	Trading Channel
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
SFTP	CSV	SFTP/CSV
Email (SMTP)	PDF	Email/PDF
Fax	PDF	Fax/PDF

- 12.3 smartbuy® CONNECT supports the following business documents via the Trading Channels outlined above.
- a) PO
 - b) PO Change
 - c) PO Acknowledgement
 - d) Receipt
 - e) Receipt Change
 - f) Advanced Shipping Notice
 - g) Invoice
 - h) Technical Message Acknowledgement
- 12.4 Contractors must adhere to the smartbuy® Transmission specifications and smartbuy® Document specifications for the Trading Channel selected (specifications available on request. If you require more information contact the NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@commerce.nsw.gov.au). For all documents implemented, Contractors must be capable of reading and actioning all mandatory and optional fields as defined in the document specifications.
- 12.5 The Board may assist in the development of an estimate of the costs of any integration to smartbuy® CONNECT. Firm pricing cannot be determined until the conclusion of a specific

implementation planning study. Costs will vary depending upon the level of integration and their capability. Any integration of their systems with smartbuy®, including any Externally Hosted Catalogues may only take place with the Board's prior consent. The Contractor acknowledges that they will support and fund the establishment, maintenance and regular content update costs associated with integrating their systems with smartbuy® CONNECT. The Contractor is responsible and liable for any damage or claim that the Board suffers or incurs resulting from or in connection with the integration or interoperation of their systems with smartbuy®.

13 Invoices

13.1 It is a requirement that the Contractor provides an electronic copy of each invoice to smartbuy® for all purchases by all NSW Government agencies against this Agreement - irrespective of how the purchase order is received (for example, via fax, telephone, mail, vendor online ordering system, etc). Contractors must send invoices via one of three channels:

a) Via the HTTPS/xCBL3.0 Trading Channel adhering to the smartbuy® HTTPS Channel Specification and the smartbuy® xCBL3.0 Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.

b) Via the SFTP/CSV Trading Channel adhering to the smartbuy® SFTP Channel Specification and the smartbuy® CSV Invoice Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.

c) Via a hosted web-portal provided by smartbuy® that allows Contractors to enter invoices online.

14 Externally Hosted Catalogues

14.1 Where Contractors are required to provide an Externally Hosted Catalogue the catalogue must utilise the OCI v3.0 protocol over HTTPS for both inbound and outbound requests.

Schedule 7 Not Used

Schedule 8 Performance Management

Monitoring of Performance

7.1.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement (including Customer Contracts) by the Contractor on the basis of the KPI metrics to be agreed by the Parties. The KPI metrics to be agreed upon may include:

- *Quality of good/service delivered;*
- *Sales Performance;*
- *Marketing Performance;*
- *Management Fee management and reporting compliance;*
- *Time management ;*
- *Management and suitability of personnel;*
- *Management of sub-contractors, consultants and other service providers;*
- *Contract administration and management;*
- *Environmental management;*
- *Management of employees and industrial relations;*
- *Industry and workforce management;*
- *OH&S Management.*

NSW Health monitors and resolves performance of this Agreement, specifically on the criteria listed above, through the use of a centralised electronic reporting system called "Health Quality Reporting System" (HQRS). HQRS enables all Public Health Organisations to electronically report, amongst others, any product quality issues, non-supply of products and delay in delivery concerns to Contractors and where appropriate to authorities such as the Therapeutic Goods Administration (TGA), the Principal through NSW Procurement – Contracting Services and NSW Health through Health Procurement. The HQRS system is accessible only to Public Health Organisation personnel who are appropriately trained and accredited.

The Contractor acknowledges that substantiated information contained in HQRS entries, may also be used by NSW Procurement – Contracting Services and/or NSW Health for the renewal process (i.e. future Request for Tenders to be issued and considered), in the review of the quality of the product supplied by a Contractor and/or the performance of the Contractor.

7.1.2 The Contractor and the Principal are to agree on KPI metrics relevant to monitoring performance of the Agreement. On the basis of the agreed KPI metrics, the Contractor will be required to submit electronically to NSW Procurement – Contracting Services, by the 20th of every month, a Monthly Performance Scorecard. Regular meetings are to be established between the Contractor and the Principal, at a frequency to be agreed, to review the submitted KPI metrics and to agree on a final monthly score. The Format of the Performance Scorecard is subject to review during the term of the contract.

- 7.1.3 A formal bound report is to be tabled by the Contractor at a regular review meeting. The Principal at its sole discretion is to decide on the dates and times of these meetings. This report can be developed as part of implementation and may include the following:
- (a) Sales trends in tabular and graphical forms;
 - (b) Customer – sales profiles;
 - (c) Customer – top product summaries;
 - (d) Any relevant benchmarks against your customer base / best practice;
 - (e) Improvement ideas / innovation / initiative;
 - (f) Action log and tracking status;
 - (g) Annual summary of achievements;
 - (h) List of savings;
 - (i) Any other data that Contractors feel would be useful to highlight or grow value.
- 7.1.4 The performance of the Contractor as measured by sales, product suitability, market trends and new technology may be reviewed by the Principal after the first twelve months from the date of the Agreement.
- 7.1.5 Having regard to any performance report prepared for the purposes of clauses 7.1.2, 7.1.5, the Principal may terminate this Agreement in accordance with clause 16 of Part D, if the Contractor is not performing the Agreement to the reasonable satisfaction of the Principal including where the:
- (a) total sales returns of the Contractor are relatively minimal under the Agreement, or
 - (b) the Contractor consistently has nil returns over the Term.
- 7.1.6 The Contractor will be required to provide to NSW Procurement - Contracting Services, on a quarterly basis, 'granular usage data' of all sales to NSW Area Health Services. This data shall be in a Microsoft Excel format under the following headings:
- 1. Customer Account Code
 - 2. Customer Account Name (e.g.: Hospital Name)
 - 3. Name of Area Health Service
 - 4. Supplier Name
 - 5. Supplier's Product Code
 - 6. Supplier's Item Description
 - 7. Brand /Manufacturer
 - 8. Manufacturer's Product Code
 - 9. HIMF
 - 10. Sales period
 - 11. Order Unit of Measure
 - 12. No. of Sales Units expressed in Order Unit Measure
 - 13. Actual Sales (\$) excluding GST
 - 14. Quantity of Each per Order Unit of Measure
 - 15. Contract Number
 - 16. Contract Name
 - 17. Item No. as per Contract
 - 18. Item No. Description

Nil sales should also be reported. The Principal will supply the data template as part of contract implementation, and Contractors will be notified of changes to the template, where necessary.

Granular usage data is in addition to the Management Fee return and should be forwarded separately via email to Vendor Management and Performance Reporting (VM& PR). Contractors will be advised of the VM& PR contact at the time of contract implementation.

The information provided by the Contractor under this clause may form the basis of the performance report prepared for the purposes of clauses (7.1.2 & 7.1.3).

Schedule 9 Expert Determination Procedure Optional for Health

1. Questions to be determined by the Expert

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

2. Submissions

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

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

3. Conference

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

4. Role of Expert

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

LABORATORY CONSUMABLES

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PART F Statement of Requirements

1 Specifications

- 1.1 Global Trade Identification Numbers (GTIN) must be submitted.
- 1.2 TGA Certification of Compliance must be submitted for each product tendered. Therapeutic Goods Act (1989), (TGA) certificates of compliance must be available for submission to the Board, if requested by Contact Officer. Five (5) working days notice will be provided and certificates for each product tendered may be requested.
- 1.3 Laboratory Consumables must comply with the relevant codes, regulations and standards which include but are not limited to:
- (a) Therapeutic Goods Act 1989.
 - (b) Therapeutic Goods Act (TGA) Registration/Listing.
 - (c) Medical Device Standards Order No. 3.
 - (d) National Committee for Clinical Laboratory Standards (NCCLS) H1-A4 Vol. 16 #13 December 1996.
 - (e) Any relevant Australian or International Standards or codes and regulations not covered by the above (a), (b), (c) and (d).

2 Packaging

- 2.1 All packaging shall comply with TGO 37 or Therapeutic Goods (Medical Devices) Regulations 2002. Packaging being:
- (a) Sufficiently robust packaging to protect the contents from damage and contamination during normal storage, transport and handling.
 - (b) The product's sterility shall be indicated on each unit.
 - (c) Inner packaging to provide safe protection from accidental injury to user.

3 Additional Items

- 3.1 Tenderers have the opportunity to offer additional items not listed under any of the 12 specific categories being called for under the RFT. Additional items can include whole of range of products, being Laboratory Consumables and are to be listed at the Category of the Pricing Schedule Part C2.
- Tenderers are not permitted to offer products that are covered under an existing NSW State contract, other than Contract 646 – Laboratory Consumables.

4 Item Specifications and Pricing Schedule Listing

- 4.1 Tenderers are to offer products in accordance with the item specifications listed in each category of the Pricing Schedule, Part C2.
- 4.2 Listed are the specific item descriptions that have been included in this RFT.

Item No	Item Product Description
Category 1 – Blood Collection Equipment	
1.01	Blood gas sampling device, pre-heparinised, with cap

1.02	Blood gas sampling device, pre-heparinised, non-syringe
1.03	Tubes, paediatric blood collection.
1.04	Tubes, blood collection, safety closure. Non evacuated.
1.05	Tubes. Blood collection, non-evacuated.
1.06	Tubes, blood collection, evacuated, glass.
1.07	Tubes, blood collection, evacuated, plastic.
1.08	Tube holders.
1.09	Specialty Tubes (e.g. Trace Metal Analysis)
1.10	Multiple sample single use needles, safety.
1.11	Multiple sample single use needles, non safety.
1.12	Multiple sample single use needles, winged sampling set with holder, safety.
1.13	Multiple sample single use needles, winged sampling set without holder, safety.
1.14	Multiple sample single use needles, winged sampling set with holder, non safety.
1.15	Multiple sample single use needles, multi sample luer adaptors.
1.16	Alcohol wipes for blood collection
1.17	Cotton wool wipes
1.18	Bandaid spots
NOTE:	For Category 1, Tenderers must submit the following information as part of this specification schedule:
Current Users	
a	List of institutions currently using the items offered. Include assessed and contact names in Australia and overseas.
b	Number of beds (if a hospital) and number of tubes purchased each year.
Anticoagulant Used	
a	Form (liquid, powder, pellet, sprayed) and amount of mixing recommended.
b	Quantity per mL of blood.
c	Minimum amount of blood required to ensure anticoagulation and analyte integrity.
d	Average expiry life.
Serum Tubes	
a	Time required for clot retraction.
b	List additives added to enhance clotting.
c	Mixing time if required.
d	Average expiry life.
Gel Tubes	
a	Amount of gel per tube.
b	Type of gel (acrylic, silicone, polyester, other).
c	Recommended centrifugation conditions (speed {RPM}, time).
d	Suitability of tube as a primary storage container (indicate maximum time and conditions).
e	Evidence of Gel inertness (independent publications).
f	List of analytes shown not to be affected by passing through the Gel (independent publications).
g	List of instruments shown not to be affected by Gel tubes (independent publications).
h	Average expiry life.
i	Temperature range for storage purposes
Container	
a	Make (type of glass, plastic).
b	Label (indicate information on labels.
c	Type of closure (screw cap, rubber stopper, etc).
d	Sides (parallel or tapered).
e	Base (flat or round).

f	External dimensions (with or without cap).
g	List of analysers already using the tube as the primary sampling container.
h	Is the tube air evacuated?
	Blood Collection System
a	Fully describe components required.
b	Indicate safety features.
c	List re-useable components.
d	Needle handling (disposal).
e	Compatibility with other blood collection systems.
f	Multi-sampling ability.

Category 2 – Haematology Supplies

2.01	Applicators, plastic, westergen.
2.02	Applicators, wooden, westergen.

Category 3 – Histology Supplies

3.01	Specimen container, histology, labelled formalin, red cap.
3.02	Specimen container, histology, labelled formalin, red cap with logo.
3.03	Specimen container, histology, buffered formalin filled, red cap.
3.04	Specimen container, histology, buffered formalin filled, red cap with logo.
3.05	Biopsy pad, foam, range of sizes.
3.06	Embedding cassette.
3.07	Blades, disposable, microtome.
3.08	Blades, disposable, mortuary.
3.09	Handles, mortuary blade.
3.10	Embedding wax.

Category 4 – Internal Laboratory Tubes and Racks

4.01	Cryotubes, sterile/non-sterile.
4.02	Tubes, plain, plastic, screw-cap, push on cap.
4.03	Tubes, borosilicate.
4.04	Tubes, centrifuge, plastic graduated, sterile/non-sterile.
4.05	Micro-centrifuge, plastic, snap-on cap.
4.06	Tube rack, non foam.

Category 5 – Microbiology Supplies

5.01	Microbiology loops, disposable.
5.02	Microbiology transport swabs.
5.03	Microtitre plates.
5.04	Prepared microbiological culture media.
5.05	Blood culture media.
5.06	Blood culture media with Safe Transfer System

Category 6 – Microscopy Supplies (also see clause 4.3 of Part F)

6.01	Slide mailers.
6.02	Slides, compartment, micro-urine, with grid.
6.03	Slides, microscope.
6.04	Cover slips.

Category 7 – Non Blood Specimen Containers, Kits and Tubes (Solvent Resistant)

7.01	Specimen container, plastic, urine/universal.
7.02	Specimen container, 24 hour collection, plastic, urine.
7.03	Container, plastic, water, with sodium thiosulphate.
7.04	Specimen container, kit, plastic, urine, adult.
7.05	Specimen container, kit, plastic, urine, paediatric.
7.06	Tubes, CSF collection set, sterile.
7.07	Tubes, 10ml, plain, labelled, with boric acid.

Category 8 – Petri Dishes

8.01	Petri dishes, plastic, sterile/non-sterile.
8.02	Petri dishes, plastic, tissue culture, sterile.

Category 9 – Pipettes (also see clause 4.3 of Part F)

9.01	Disposable pipette sampler tips.
9.02	Plastic transfer pipettes, sterile/non-sterile.
9.03	Plastic pipette, serological, graduated, plugged.
9.04	Plastic pipette, serological, graduated, unplugged.

Category 10 – Specimen Transport Bags and Containers

10.01	Transport containers for diagnostic.
10.02	Specimen transport bag, leak proof, with label and symbol.
10.03	Specimen transport bag (including 2 pockets, different colours), leak proof, with label and symbol and logo. (with section on bag for instructions in pen)
10.04	IATA complaint transport containers.

Category 11 – Tissue Culture Equipment

11.01	Tubes.
11.02	Flasks.
11.03	Microtitre plates.

Category 12 – Laboratory Chemicals

12.01	Solvents (AR, LR and histology grades).

4.3 (a) Category 9 (Pipettes)

The following specifications apply to Category 9 (Pipettes):

- (i) Graduated 1 mL Large Bulb 15.5 cm 4.6 mm 5.8 m 3.4 mL
- (ii) Polyethylene Transfer Pipettes feature:
 - sterile and non-sterile
 - low-affinity surface
 - attached bulb
 - shatterproof, low-density polyethylene which is non-toxic and inert
 - can be frozen in liquid nitrogen

(b) Category 6 (Microscopy Supplies)

The following specifications apply to Microscopy Supplies:

- (i) Slides must be clean with finely ground edges and packaged in lint-free, moisture-proof containers.

Parameter	Specification
Slide Material	Soda lime glass
Surface Wettability	Contact angle < 10 degrees
Edge Roughness	< 200 peaks / in., RA < 8
Frosting Thickness	0.00125in. +/- 0.00025 in

- (ii) The slides are to have a frosted section at one end. The frosted areas are to be a deposition coating and are not to be created by sandblasting or acid etching.

(iii) Material

The material composing the slide should be clear transparent glass, free from imbedded foreign material, bubbles, blisters, striae and internal cloudiness. The type of glass chosen for slide construction shall have strength, hardness and brittleness characteristics, which will minimise slide cracking and breakage as well as the formation of ground glass residue and glass chips.

(iv) Colour and Optical Properties

The faces of the microscope slide (re: colourless) when judged by the unaided eye are: The slide may possess a slight greenish tint when viewed edgewise, but this colouration must not materially affect the colour of light transmitted through the slide faces.

(v) Precleaning

Slides are to be precleaned and when tested in accordance with sections 4.4.1.1 and 4.4.1.2 of NNN-S-450B45 and demonstrate uniform dispersion of liquid and an absence of smears on both surfaces. The precleaned slides are to be free of all traces of moisture, cloudiness, detergent and oily, waxy or syrupy film.