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STATE PROPERTY AUTHORITY

RFT Id. 0900488

REQUEST FOR TENDER

in respect of

Formation of a Panel to provide Property Valuation Services

Closing Time & Date: 9:30am Wednesday 29 April 2009 (NSW time)

Place for Lodgement: Electronic Tender box:
<https://tenders.nsw.gov.au>

Alternative physical Tender Box
McKell Building
Level 3 (ground floor west)
2-24 Rawson Place
Sydney NSW 2000

Contact Officer: David Nalty
Senior Property Advisor (Analysis); Planning &
Strategy
State Property Authority
Level 1
4-6 Bligh Street
Sydney NSW 2000
Tel: (02) 9338 7072

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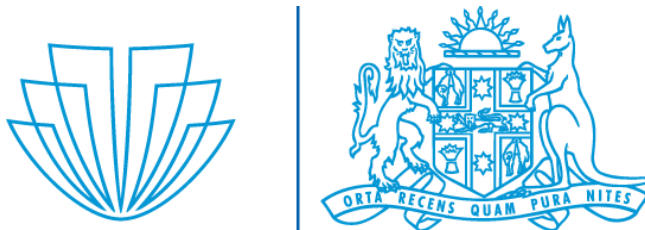
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STATE PROPERTY AUTHORITY

RFT NO. 0900488

REQUEST FOR TENDER

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PART A - PREAMBLE

PART A PREAMBLE**A1 PREAMBLE**

- A1.1** The State Property Authority (“the Authority”) is a statutory authority established to improve operational efficiencies in the use of government properties. The Authority works with NSW Government agencies to manage property more effectively and efficiently, allowing agencies to focus on delivery of their core services. The integrated approach which the Authority brings to planning, strategy and property management supports government agencies in the delivery of improved economic, environmental and social outcomes for the people of NSW. This is achieved through providing more efficient and effective service delivery, thereby assisting to reduce operating expenses.
- A1.2** The Authority is currently vesting ownership of all office properties that are owned by the NSW Government and will be responsible for coordinating valuations for a range of purposes.
- A1.3** The purpose of this Request for Tender is to obtain tenders from organisations that possess the necessary skills and capabilities to perform a range of valuation exercises. The valuations will be used for the purposes of preparing financial statements, rent reviews, general financial analyses of asset performance, insurance purposes, acquisition purposes, divestment purposes, and to support strategic and asset planning by Government.
- A1.4** Tenders will be assessed on the experience and capacity of tenderers to perform the Services and their understanding of the Authority’s requirements.
- A1.5** Part A of this Request for Tender provides background information and is not to be relied upon by Tenderers. It is subject to the detailed requirements in Parts B - F of this Request for Tender. Without limitation, the proposed Scope of Services may be subject to amendment in accordance with Addenda issued under Clause B9.3 of the Conditions of Tendering.

A2 INTRODUCTION

- A2.1** The Authority is inviting Tenders for the Formation of a Panel for Property Valuation Service Providers (Services), as specified in the following Request for Tender.
- A2.2** It is intended that the Authority will appoint a panel comprising a number of property valuation firm(s) who are suitably qualified, experienced, provide best value for money and have the relevant expertise and resources. The Authority also reserves the right not to appoint any provider to undertake the work. The Panel will operate for an initial period of 3 years.
- A2.3** Only one Panel will be created and Tenderers will be chosen for inclusion on the Panel based on evaluation of tendered submissions. Preference will be given to Tenderers who can demonstrate significant relevant experience in valuations of Government assets or valuations for Government clients.
- A2.4** Tenders must be prepared and submitted in accordance with the requirements of this Request for Tender.
- A2.5** Inclusion of a Tenderer on the Panel has the effect of approving the use of that Tenderer. It does not guarantee or imply an undertaking by the Authority that any or

any quantity of work of any particular nature will necessarily be required from a successful Tenderer, although it is intended that work will be distributed equitably, subject to satisfactory performance and such other criteria as the Authority may determine. Allocation of work to successful Tenderers will be at the absolute discretion of the Authority and may be of a routine nature or assignment of a one off project.

- A2.6** The Authority reserves the right to obtain property valuation services from non Panel members on specific matters. The engagement for these matters may be done by means of tender, direct engagement or other suitable method. Under legislation the Valuer General determines compensation for compulsory acquisitions.

A3 STATE PROPERTY AUTHORITY ORGANISATION

- A3.1** State Property Authority is a statutory authority established under the *State Property Authority Act 2006* (NSW). The Authority has the power to enter into commercial contracts and arrangements of the type contemplated by this Request for Tender.

- A3.2** The role of the Authority is:

- (a) to improve operational efficiencies in the use of properties of government agencies particularly generic properties (such as offices, warehouses, depots and car parks);
- (b) to manage properties of government agencies in a way that supports the service delivery functions of those agencies
- (c) to provide advice and support within government on property matters
- (d) to operate at least as efficiently as any comparable business, consistently with the principles of ecologically sustainable development and social responsibility for the community (including the indigenous community).

- A3.3** The Authority wishes to receive Tenders containing efficient and cost effective approaches to its requirements.

A4 NEW SOUTH WALES GOVERNMENT POLICIES

- A4.1** The attention of all Tenderers is drawn to the requirements of Clause B15 and all Tenderers, by submitting their Tenders, acknowledge their willingness to comply with such policies to the extent that they are relevant and applicable to this Tender.



STATE PROPERTY AUTHORITY

RFT NO. 0900488

REQUEST FOR TENDER

in respect of

Formation of a Panel to provide Property Valuation Services

PART B - CONDITIONS OF TENDER

PART B CONDITIONS OF TENDER

B1 INVITATION AND COMPLIANCE

- B1.1** The Tenderer is invited to submit a Tender in accordance with this RFT for the performance of the Services.
- B1.2** Submission of a Tender does not in any way create an agreement for the Services, nor does it create an obligation to accept any Tender. There will be no binding agreement between the Authority and a Tenderer in relation to the Services until a Letter of Acceptance has been issued by the Authority and an Agreement executed by the Tenderer.
- B1.3** Further, Tenderers acknowledge that no agreement has been formed between the Authority and a Tenderer as a result of the tender process such that the Authority is limited or constrained in the way in which it can deal with Tenderers other than as set out in this RFT.

B2 INTERPRETATION

- B2.1** In these Conditions of Tendering and in the RFT all words and expressions will (unless the context otherwise requires) have the meanings assigned to them in the Agreement or the meanings assigned to them below:

"Addenda" means addenda to the RFT issued under clause B9.3.

"Closing Date" means 29 April 2009

"Complying Tender" means a Tender that, in the Authority's reasonable opinion, substantially complies with the requirements of this RFT.

"Contact Officer" means:

David Nalty

Senior Property Advisor (Analysis); Planning & Strategy

State Property Authority

Level 1, 4-6 Bligh Street

Sydney NSW 2000

Telephone No: (02) 9338 7072

Facsimile No: (02) 9338 7066

"RFT" or "Request for Tender" means:

- (a) the Preamble in Part A;
- (b) these Conditions of Tendering in Part B;
- (c) the Conditions of Agreement in Part C;
- (d) the Service Requirements in Part D;
- (e) the Tender Form in Part E; and

(f) the Tender Schedules in Part F.

"Services" means the valuation services and requirements stated in Part D to this RFT.

"Service Requirement" means the requirements for the performance of the services set out in Part D.

"Tenancy Schedule" means the tenancy schedules provided by the Authority to the successful Tenderer.

"Tender" means the documents comprising the Tender Form and Schedules duly completed and executed by or on behalf of the Tenderer and received by the Authority in accordance with these Conditions of Tendering.

"Tenderer" means the individual, partnerships, company or companies identified as such on the Tender Form and includes all persons on whose behalf the company or companies named in the Tender Form may be deemed to have lodged the Tender.

"Tender Form" means Part E.

B2.2 Any reference to one of the documents described in the definition of **"RFT"** in this clause B2 is a reference to the document so entitled, which is included in this Request for Tender.

B3 COMPLIANCE

B3.1 Any Tender, which is not a complying Tender, may be rejected by the Authority. The Authority may, in its absolute discretion and without having any obligation to do so, consider and accept any Tender, offer or proposal notwithstanding such Tender, offer or proposal is not a Complying Tender.

B3.2 Alternative Tenders may be considered, but must:

- (a) meet the objective and intent of the RFT; and
- (b) offer increased benefits to the Authority.

In addition to the above, alternative Tenders must:

- (c) include a separate and properly completed Tender Form (Part E) and all Schedules (Part F);
- (d) be clearly marked "Alternative Tender" on each page;
- (e) highlight details of where the alternative Tender varies from the requirements of the RFT; and
- (f) demonstrate how the alternative Tender would provide increased benefits to the Authority.

B3.3 Whether or not an alternative Tender:

- (a) complies with the requirements of this clause B3; or
- (b) has been submitted with a Complying Tender,

The Authority may, in its absolute discretion, accept or reject an alternative Tender.

- B3.4** Tenderers may submit Tenders for the whole or part of the Services, however preference will be given to Tenderers who can demonstrate they have a strong property and commercial valuation expertise.

B4 LODGEMENT OF TENDERS

- B4.1** Tenders must be lodged by 9:30 am on the Closing Date.

- B4.2** If a Tenderer wishes to lodge a correction or additional information following submission of a Tender, the correction or additional information must be submitted before the Closing Date. The Authority may, in its absolute discretion, either consider or reject any such correction or additional information.

LODGING TENDERS BY HAND

- B4.3** Tenders must be lodged in a sealed envelope, clearly endorsed with the Tender Number and Closing Date. Tenderers must submit one (1) original and two (2) complete copies of the Tender for evaluation. The original must be signed and marked "Original". The copies must be initialled and marked "Copy Only". The Tenderer is to ensure that the copy is a true copy of the original in all respects. Should any discrepancy be discovered, the "Original" will take precedence over the copy.

- B4.4** Subject to clause B4.1, Tenders must be lodged:-

- (a) By hand in the Physical Tender Box at McKell Building, Level 3 (ground floor west) 2-4 Rawson Street, Sydney, NSW 2000 between the hours of 8:30 am and 4:00 pm on normal working days; or

- B4.5** The Authority may, in its absolute discretion, either consider or reject late Tenders. Including by taking into account that the integrity and competitiveness of the tendering process has not been compromised.

- B4.6** Tenders received through the post will be deemed late unless the envelope bears a Postal authority postmark clearly indicating that the time and date of posting were prior to the stipulated Closing Date. The imprint of a privately operated franking machine is not acceptable evidence of time and date of posting.

LODGING TENDERS BY ELECTRONIC TENDERING

- B4.7** The NSW Government, has adopted an electronic tendering system, using the Internet, which has the capacity to allow viewing of documents, downloading or ordering of requests for tender and the lodgement of such requests in appropriate circumstances.

- B4.8** Tenderers are required (unless other methods are specifically allowed by this Request for Tender), to obtain the Request for Tender electronically and to lodge their Tender electronically, through the Government Tenders website at:

<https://tenders.nsw.gov.au>

- B4.9** Tenders lodged electronically will be treated in accordance with the NSW Electronic Transactions Act 2000 and given the same level of confidentiality, probity and attention as a tender lodged by other methods.

- B4.10** Tenderers, by electronically lodging the Tender, are taken to have accepted any conditions shown on the *eTendering* web site.
- B4.11** The evaluation committee may decline to assess the Tender if it cannot be effectively evaluated because it is incomplete, corrupt or both.
- B4.12** The Request for Tender for which electronic lodgement is available can be identified by the blue 'LODGE A RESPONSE' link at the foot of the specific page on the tenders website.
- B4.13** To lodge the Tender electronically the files containing the Tender must be up-loaded to the e-tendering system through the website. Access to the up-loading process is through the blue 'LODGE A RESPONSE' link. Tenderers can then follow the steps and instructions on screen.
- B4.14** On receipt, the Tenders will be encrypted and stored in a secure 'electronic tender box'. For reasons of probity and security, the Authority is prevented from interrogating the electronic system to ascertain whether tenders have been received, or for any other reason, until after the Closing Time & Date.
- B4.15** "The Part F Schedules must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 2003. All other lodged tender response documents must be lodged in Microsoft Word 2003 or in a pdf file format that can be read, displayed, printed and copied from Adobe Acrobat Reader 8.0."
- B4.16** Tenderers may compress the Tender in any format that can be decompressed by WinZip. Tenderers shall not lodge self-extracting (*.exe) zip files.
- B4.17** Signatures are not required on a Tender lodged electronically. Tenderers shall ensure that electronically lodged Tenders are authorised by the person who may do so on behalf of the Tenderer, and appropriately identify the person and indicate the person's approval of the information communicated. The lodging of a tender electronically will be deemed to be a tender duly authorised.
- B4.18** Electronically lodged Tenders may be made corrupt or incomplete by computer viruses. To reduce the likelihood of viruses, Tenderers shall not include any macros or executable code / executable files, unless required to by this Request for Tender.
- B4.19** Tenderers shall ensure electronically lodged Tenders are free from viruses by checking files with an up to date virus-checking program before lodgement.
- B4.20** If Tenderers experience any difficulties with accessing the e-tendering website when lodging Tenders they shall contact the Tender Section at NSW Department of Commerce.
- B4.21** If there is a known defect or failure of the *eTendering* system, or the tenders website, the Contact Officer may grant an extension to the Closing Time & Date, which will be communicated by addendum.
- B4.22** When Tenders are received through the *eTendering* system, a unique receipt acknowledgment number shall be displayed on screen and an e-mail confirming receipt shall be sent to the e-mail address shown in the proponent's login.

B5 SUBMISSION OF TENDER

- B5.1** All Tenders must be completed in indelible ink (where submitted by hand) and submitted in English. Any alterations or erasures in the Tender must be initialled by the Tenderer, where lodged by hand.
- B5.2** All prices must be submitted in Australian Currency unless otherwise noted in, or expressly required by, the RFT.
- B5.3** Compliance with the requirements set out in the Request for Tender will be an important consideration in the Tender evaluation process. In addition the Tenderer must submit all additional information required in support of the Tender.
- B5.4** Where the Tender is submitted by hand, all Tenders must be executed by the Tenderer as indicated below:
- (a) In the case of a corporation, executed in accordance with Section 127 of the *Corporations Act 2001*.
 - (b) In the case of a partnership or an individual, by signature of each partner or the individual as the case may be (with the full name printed under the signature) or by a partner duly authorised to sign the Tender on behalf of all partners.
- B5.5** Where the Tender is submitted by hand, the foot of each page of the Tender Form and each Schedule must be signed by the Tenderer or, if the Tenderer is a corporation, by a person authorised to execute documents in accordance with Section 127 of the *Corporations Act 2001*.
- B5.6** The order of documentation in the Tender must reflect the order of documents in this Request for Tender.

B6 VALID OFFER

- B6.1** All Tenders must be valid and are deemed to be irrevocable for a period of 60 days from the Closing Date. SPA in its discretion may unilaterally extend this validity period for a further 30 days by notice in writing.
- B6.2** Tenders may not be withdrawn or, subject to clause B4.2, varied by Tenderers before the expiration of that period without the Authority's prior written consent.
- B6.3** The prices included in Part F, Schedule 10 are to be firm and fixed prices for the Agreement period and should include provision for all costs, including but not limited to attendance at client liaison and performance meetings.

B7 TENDERERS TO INFORM THEMSELVES

- B7.1** Each Tenderer must:
- (a) acquaint and satisfy itself with all aspects of the RFT and all other documents included or referred to in it;
 - (b) examine all other information provided by the State Property Authority to Tenderers in connection with this RFT.
 - (c) examine all other relevant information available on reasonable enquiry;

- (d) obtain all necessary information as to the risks, contingencies and other circumstances which is obtainable by the making of reasonable enquiries and could have an effect on the performance and cost of executing the Services; and
- (e) satisfy itself as to the correctness and sufficiency of the Tender and that the Tender prices cover the cost of complying with all the requirements of the RFT and of all matters and things necessary for the due and proper performance and completion of the Services, before submitting its Tender.

B7.2 Where Tenderers have made assumptions in preparing Tenders or where a Tender includes qualifications or exclusions in relation to specified requirements or conditions, these must be clearly defined in the Tender.

B7.3 By submitting a Tender, the Tenderer will be deemed to have complied with the requirements of the RFT.

B8 OPENING OF TENDERS

Neither Tenderers nor their representatives will be permitted to attend the opening of Tenders.

B9 FURTHER INFORMATION

B9.1 Requests by prospective Tenderers for further information or queries regarding the RFT should be directed in writing to the Contact Officer.

B9.2 Any errors, omissions or inconsistencies noted by Tenderers in the Request for Tender or any questions or enquiries the Tenderer wishes to make in relation to the Request for Tender must be communicated immediately in writing to the Authority. The response to any such communication from any Tenderer may be sent to all Tenderers.

B9.3 The Authority may amend the RFT at any time prior to the Closing Date. Any amendment to the RFT will be issued in the form of Addenda and will be issued to all Tenderers before the Closing Date. No explanation or interpretation of the RFT may be relied upon by the Tenderer as an amendment to the RFT unless given in the form of Addenda. Such Addenda will become part of the RFT.

B9.4 Tenderers must nominate a person for the purpose of responding to clarifications which may arise during the evaluation of Tenders. The name, and contact details of this person must be supplied in Part F, Schedule 2.

B10 EVALUATION

B10.1 In the course of the evaluation process, the Authority may request additional information from Tenderers by way of clarification or otherwise. The cost of providing any additional information must be borne by the Tenderer.

B10.2 Tenderers are advised that the Authority reserves the right to seek clarification, verification and additional information from third parties, and the Tenderer authorises the Authority to do so.

- B10.3** As part of the evaluation process, selected Tenderers may be invited to make a presentation to the evaluation committee which will be set up by the Authority.
- B10.4** Any Tender which the Authority evaluates will be evaluated in accordance with the criteria set out below, and such other criteria as the Authority in its absolute discretion, considers appropriate. The criteria are not listed in any special order, may not be accorded equal or any weight and are not exhaustive. However, Tenderers should recognise and take into account the importance that the Authority attaches to obtaining a high level of service and value for money.
- B10.5** Tenderers may tender for all of the Property Groups described in Schedule 10 or for only some of the Property Groups...
- B10.6** Submissions will be assessed by determining the best value for money having regard to the following criteria:
- 1) Compliance with this Request For Tender
 - 2) Level of professional indemnity (minimum of \$5 million required for capital valuations and minimum of \$1 million required for valuations for disposals and acquisitions)
 - 3) Level of public liability insurance (minimum of \$20 million required for capital valuations and minimum of \$10 million required for valuations for disposals and acquisitions)
 - 4) Demonstrated ability to efficiently and effectively manage and perform Services, in particular:
 - The Tenderers' understanding of the Services required
 - The previous experience and performance of the Tenderer in the implementation, management and provision of similar services
 - The Services offered by the Tenderer, including the range and quality of the Services and proposed methodology, systems and processes
 - The Tenderers' proposed service team, key personnel, current commitments and demonstrated resource capacity
 - The Tenderers' evidence of technical expertise including where relevant responses to questions about valuation in Schedule 5
 - The Tenderers' financial viability to provide the Services
 - The Tenderers risk management policies and procedures
 - 5) Competitiveness of fee proposals (costing proposal including disbursements)
 - 6) Value added services

TENDERERS MUST ADDRESS ALL SELECTION CRITERIA IN THEIR PROPOSAL.

Tenderers must provide the Authority with proof of all insurance required to be maintained.

The Authority reserves the right to engage more than one tenderer to provide the Services.

The evaluation criteria may be accorded different weightings. The Authority is not bound to accept submissions with the lowest proposed cost and disbursement structure.

- B10.7** The Authority may engage the services of external organisations to assist with the evaluation of Tenders.

B11 CLARIFICATION/NEGOTIATION WITH TENDERERS

- B11.1** Clarification of Tenders and negotiation of Tenders may be carried out by the Authority and, if so, will be carried out in accordance with the New South Wales Government Code of Practice for Procurement. The purpose of any such negotiations will be to achieve a tender that is acceptable to the Authority.

- B11.2** Tenderers by lodging a Tender agree to engage in this process and offer to do so at no cost to the Authority. Commencement of negotiations by a Tenderer will be legal acceptance of that offer to participate in the negotiations at no cost to the Authority. The Authority will not consider claims for costs or damages as a result of participating in the negotiation process and the Authority has no liability for any such claims.

- B11.3** At the Authority's sole discretion, one or more Tenderers may be requested to submit a revised Tender as a formal record of the outcome of any such clarification or negotiation process.

- B11.4** Tenderers may be required to execute a negotiation deed on terms required by the the Authority.

B12 ACCEPTANCE OF TENDERS

- B12.1** A Tender will be accepted when a Letter of Acceptance is sent by the Authority to the Tenderer. No binding agreement shall arise between the Authority and any Tenderer for the provision of any Services unless and until a formal Agreement is entered into.

- B12.2** The Authority is not bound to accept the lowest priced or any Tender.

- B12.3** The Tenderer, in submitting a Tender, acknowledges and agrees that the decision of the Authority in relation to its Tender and that of any other Tender received by Authority pursuant to this Request for Tender will be final and not subject to challenge, dispute, explanation or further correspondence.

- B12.4** Within 10 days of the date of the Letter of Acceptance the successful Tenderer must enter into a written Agreement with the Authority. Should the successful Tenderer fail or decline to do so, the Authority will be free to enter into negotiations and contract with any other Tenderer without the successful Tenderer or any other Tenderer having any right of recourse against the Authority and without prejudice to the rights of the Authority against the successful Tenderer.

- B12.5** If requested, The Authority will notify unsuccessful Tenderers of the name of Tenderers with whom the Authority will enter into an Agreement.

- B12.6** SPA may accept the whole or a part of a Tender for the Services.

B13 DISCLOSURE

B13.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Authority may publish the following information about the Agreement awarded as a result of Tenders received in response to this RFT:

- (a) details of the Agreement (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the Agreement; the period of the Agreement);
- (b) the full identity of the successful Tenderer including details of cross ownership of relevant companies;
- (c) the price payable by the Authority and the basis for future changes in this price;
- (d) the significant evaluation criteria in Tender assessment; and
- (e) provisions for re-negotiation (where applicable).

B13.2 Tenderers may request that the Authority not disclose information included in their Tender that would place the Tenderer at a substantial commercial disadvantage with its competitors but must give the reasons for requesting this. Tenderers must identify any information within their Tender which is considered Commercial-in-Confidence by marking such information "Commercial-in-Confidence". The Authority will advise a Tenderer in contention for the Agreement what information it agrees not to disclose. The Authority's decision is however final and is at the Authority's absolute discretion and Tenderers will not make any claim against Authority in relation to any action taken under this clause B13. A decision by the Authority under this paragraph is not a decision, which falls within any dispute resolution procedures specified in the Agreement being tendered for.

B13.3 The Authority may publish the identities of all Tenderers' but will not disclose other information included in an unsuccessful Tender unless the Tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required. For contracts valued at over \$150,000, the Authority will normally publish the names of Tenderers when Tenders close, and other information specified above, within 60 days after award of the Agreement. For other contracts the Authority will disclose the specified information on request.

B14 JOINT UNDERTAKINGS AND JOINT VENTURES

B14.1 Any Tender which is submitted by a combination of two or more organisations, as a joint venture, a consortium or otherwise, must clearly state the nature of the association between the organisations and the basis upon which they propose to contract with the Authority. This information must be provided in the Tender Form, Part E.

B15 NEW SOUTH WALES GOVERNMENT POLICIES

B15.1 The attention of all Tenderers is drawn to the New South Wales Government policies, codes, NSW Government Preference Scheme and purchasing policies that may apply to this Request for Tender.

B15.2 Tenderers must comply with the New South Wales Government Code of Practice for Procurement. A copy of the Code is available on the Treasury website

www.treasury.nsw.gov.au. The ability of a Tenderer to demonstrate compliance with the Code is an essential condition.

- B15.3** Lodgement of a Tender will itself be an acknowledgement and representation by the Tenderer that it is aware of the requirements of the Code, that the Tenderer will comply with the Code, and that the Tenderer agrees 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.
- B15.4** If a Tenderer has failed to comply with the Code, this failure will be taken into account by the Authority when considering its Tender and may result in the Tender or any subsequent Tender being passed over without prejudice to any other rights of action or remedies available to the Authority.
- B15.5** The Authority is committed to acting with integrity and probity and expects all participating parties to act with integrity and probity in relation to the tender process. The Authority requires that Tenderers have due regard to probity throughout all processes undertaken pursuant to this Request for Tender.

B16 CHECKLIST

- B16.1** Tenderers should ensure that the following information is included in the Tender. All schedules must be completed signed and dated.
- A. Tender Form
 - B. Schedule 1 – Tenderer's Declaration
 - C. Schedule 2 – Tenderer's Details
 - D. Schedule 3 – Compliance Statement
 - E. Schedule 4 – Confidential Information
 - F. Schedule 5 – Previous Experience
 - G. Schedule 6 – Service Delivery and Methodology
 - H. Schedule 7 – Personnel
 - I. Schedule 8 – Risk Management
 - J. Schedule 9 – Financial Viability
 - K. Schedule 10 – Pricing
 - L. Schedule 11 – Value Add Services

B17 COSTS

- B17.1** No payment will be made by the Authority to any Tenderer for any costs, expenses, losses or damages suffered or incurred by the Tenderer arising out of, or in any way in connection with, the tender process including any costs or expenses in preparing its Tender or in respect of any discussions, negotiations, enquiries or site inspections or any services performed by the Tenderer after its Tender is submitted.

B18 TAXES

- B18.1** The Tenderer must include an allowance in its Tender for all taxes (excluding GST), duties, levies, imposts and charges which may be payable in connection with the Services.



STATE PROPERTY AUTHORITY

RFT NO. 0900488

REQUEST FOR TENDER

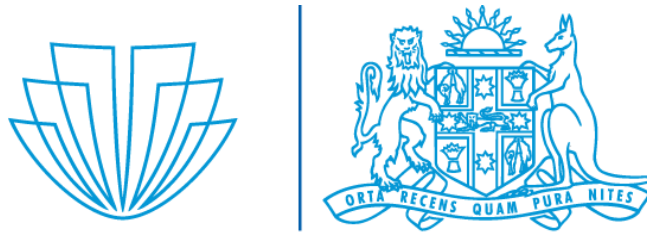
in respect of

Formation of a Panel to provide Property Valuation Services

PART C – AGREEMENT FOR VALUATION SERVICES

PART C AGREEMENT FOR VALUATION SERVICES

PLEASE REFER TO SPA'S STANDARD CONSULTANCY AGREEMENT.



STATE PROPERTY AUTHORITY

RFT NO. 0900488

REQUEST FOR TENDER

in respect of

Formation of a Panel to provide Property Valuation Services

PART D – SERVICE REQUIREMENTS

PART D SERVICE REQUIREMENTS

D1 INTRODUCTION

As part of carrying out its functions, the Authority requires property valuations for a range of uses including:

- General purpose financial reporting
- Insurance purposes
- Acquisitions and disposals
- Rental assessments / lease negotiations
- Analysis and Portfolio Management
- Compensation under the NSW Land Acquisition (Just Terms Compensation) Act 1989: pre- acquisition valuations and post acquisition statutory determinations
- GST Margin Scheme assessments
- Business valuations

The Authority has issued this tender with the intention of establishing a panel of valuation firms to provide property valuation services.

D2 SCOPE OF SERVICES

The Authority invites Tenderers to tender to provide Property Valuation Services. for one or more of the specified types of valuation. The table below outlines the type of valuations required by the Authority, the frequency of valuation and key standards.

Firms are encouraged to specifically address, where appropriate, their expertise in each type of valuation and experience in the nominated geographic markets.

As the Authority is progressively vesting into its ownership all office properties that are owned by the NSW Government the number of properties valued as part of any mass valuation exercise will vary.

Furthermore, the number of disposal and acquisition valuations and rent review valuations required will vary depending on the requirements of agencies. The Authority has provided an indicative list of properties to be valued as part of the capital valuation exercise, for financial reporting purposes, which will be conducted in early 2009.

Tenderers may tender for all categories of valuations and geographic areas. Alternatively, tenderers may tender for any category of valuation or relevant geographic area whether individually or in combination.

Valuation Type	Details / Frequency	Valuation / accounting standards	Property Details (Jan 09)
Capital valuation for financial reporting (all owned property)	<p>A full speaking valuation will be prepared every 5 years (values for land and improvements and values for building components). The next full speaking capital valuations will need to be completed before June 2009.</p> <p>Annual revaluations will be prepared for all SPA properties (i.e. statement of valuations or asset pro-forma templates depending on degree of movement in fair value)</p> <p>Full speaking valuations will be prepared for buildings being constructed which are near completion or when appropriate and for properties being vested in the year of vesting.</p>	Treasury Policy Paper (TPP 07-1) and Property, Plant and Equipment (AASB 116), Investment Property (AASB 140) and	See Schedule 10
Insurance valuation	Insurance valuations will be prepared at the same time as the full speaking valuations for a property.	Properties requiring insurance cover	As above
Property subject to a finance lease	Annual revaluations will be prepared.	AASB 117	2 properties
Rental valuation (rental assessment for all owned property)	A rental valuation (assessment) will be prepared every two years.	SPA MOU with agencies	Completed for over 100 properties in Jan 09
Rental valuation (major lease negotiation for clients)*	Where SPA is acting on behalf of a client a valuation will be prepared prior to negotiations where the gross passing rent is expected to be over \$1 million pa	Market rent valuation for property leases with gross passing rent over \$1 m pa	N/A
Rental valuation - when required in a lease document	A valuation will be prepared at the date specified in the lease (for example where the lease requires a valuation for rent review purposes)	SPA Valuation Procedures	N/A
Property disposals for clients	'Market value' valuations will be prepared on individual properties prior to marketing	SPA Valuation Procedures	Based on client needs
Property disposals GST Valuation	Market valuations as at 01/07/2000 for sales using Margin Scheme	Properties being disposed	Based on client needs
Property acquisitions – for clients	'Market value' valuations will be on individual properties prior to negotiations	Properties being acquired (except those acquired under Land Acquisition (Just Terms Compensation) Act	Based on client needs
Property acquisitions - under Land Acquisition (Just Terms Compensation) Act	A Valuation assessment will be prepared for negotiations on compensation for land or interests in land acquired under the LA(JTC) Act. Compensation under Section 55 LA(JTC) Act	LA(JTC) Act.	Based on client needs

D2.1 INSTRUCTIONS

SPA will provide detailed instructions to valuers for each assignment. The section below outlines key instructions and valuation bases to assist tenderers in preparing a tender submission.

Type of valuation	Basis of Valuation	Outline of instructions
Capital valuation	<p>(1) Fair Value assuming: - 5 year lease - 10 year lease</p> <p>(2) Fair Value "As Is": separated between - Land - Improvements</p> <p>(3) Fair Value "Vacant Possession" separated between - Land - Improvements</p> <p>(4) Reinstatement value for insurance purposes</p> <p>(5) Segmentation or componentisation of assets within a building</p>	<p>Refer to capital valuation report templates and sample letter of instructions (see Section D 2.2) outlining the required content of valuation reports:</p> <ul style="list-style-type: none"> - Full speaking valuation report template (D2.2.1) - Statement of value template (D2.2.2) - Asset pro-forma template (for material variations) (D2.2.3) <p>Fair value to be assessed in line with Treasury Policy Paper 07-01. Current market rentals will be used. The valuer is expected to use the DCF and Income Capitalisation method. The DCF will need to detail cashflows on a lease-by-lease basis. All assumptions and calculations are to be provided electronically to SPA.</p> <p>The estimated length of tenure will be provided by SPA for all properties/agencies. The value must be split between land and improvements. Further improvements must be split between structure, lifts and air conditioning (see D2.2.4)</p> <p>Valuers will be required to segment the assets within a building on an annual basis in accordance with the template provided. Only properties with a lift are required to be segmented.</p>
Mass rental valuation exercise (rental assessment for all owned property)	Current market rental	<p>Assess gross effective market rentals for each (a) individual suite; (b) any common facilities areas and (c) car parking spaces.</p> <p>Assume leases are to be for a two-year term with market rental reviews every two years. For some properties both a gross and net rent will be required.</p>

Type of valuation	Basis of Valuation	Outline of instructions
Property disposals for clients	Current market value	Refer to sample letters and instructions to valuers for disposals (see D2.2.5) outlining the required content of valuation reports Assess current market value under its existing zoning on the basis of highest and best use.
Property acquisitions-under the Land Acquisition (Just Terms Compensation) Act 1991	Market value on the date of acquisition	Refer to sample letters and instructions to valuers for acquisitions (see D.2.2.5) outlining the required content of valuation reports. Determine compensation payable to the owner for the interest being acquired based on the heads of compensation described in Part 3, Division 4 of the Land Acquisition (Just Terms Compensation) Act

All valuation reports for office buildings (Groups 1-4 in Schedule 10) are required to assess all basis of valuation outlined under capital valuations.

With regards to the bases of valuation required for the Miscellaneous Assets (Group 5 in Schedule 10), Tenderers are required to have regard to the basis of valuation listed below:

- (1) Current fair value assuming that all existing tenancies are subject to lease agreements for:
 - (a) five; and
 - (b) ten years
- (2) Fair value of the subject property "as is".

If the property is occupied, the market valuation will reflect the actual lease, licence or tenancy agreement in place as at the date of valuation.

Where the current use is not the "highest and best use", the valuation will state this, and a further valuation will be made on a "highest and best use" basis.

- (3) Same as "2" above except that no improvements are owned by the Lessor.
- (4) Fair value subject to vacant possession.
- (5) Value of Lessor's interest for freehold properties where a long-term leasehold interest has been granted.

- (6) Reinstatement / Replacement value of improvements for insurance purposes, in the form of the template which State Property shall provide to the successful valuer. The template requires the valuer to allow for Professional fees, Demolition, Removal fees and any other costs deemed appropriate. Treatment of car levies, where applicable should also be identified.
- (7) The market rental value of the premises if the premises were to be leased on the open market to a commercial tenant at normal commercial terms.

The bases of valuation required for each asset in Group 5 are outlined in Schedule 10.

D2.2 FORMAT AND CONTENT OF VARIOUS REPORTS REQUIRED

D2.2.1 Recommended 'FULL SPEAKING' asset valuation report pro-forma to satisfy financial reporting requirements

The following information is to be considered (and included where relevant) when preparing valuation reports:

Location

- A general description of the location of the property, the availability of public transport and transport access
- Comments on surrounding development and land use. Location description, including comment on the nature of surrounding development. For Government Office Buildings (GOB's) the number and nature of competitive accommodation.
- Special features relating to the property such as views, adjoining developments, recreational facilities, etc.

Site Description and Services

- A comprehensive description of the site/land and improvements thereon and should include the following estimates or actuals.
 - (a) Size of the building (NLA) according to PCA measurements
 - (b) Description of the building services/finishes and other applicable points of interest.
- Comment on the nature of the site and the location.
- Identify the services connected and available to the property (water, electricity, sewerage etc)
- Comment on potential flooding or landslip problems.
- Comment on site accessibility, roads and the nature of the traffic in the area.
- Visually identify any site problems such as any readily visible drainage problems, obvious encroachments, filled ground.
- Comment on any other relevant factors such as alternative access, impact on property of adjoining development, etc.
- Land and title description including reference to any easements or encumbrances. If not on title to be noted from inspection
- Details of all statutory and municipal service expenses relating to the property or an estimation of such changes as government does not normally pay these.

Environmental Planning

- The report must provide details on the current zoning or draft zonings and development control plans. If zoned special uses, comment on alternative zoning.
- Comment if the use of the property constitutes a non-conforming use under the Town Planning guidelines and whether the property has the benefit of existing use rights. Comment, if possible, on any intention of council to amend the planning scheme and if the property is affected by any detrimental or beneficial planning proposals.
- Comment on whether improvements constitute the highest and best use of the land or if not, what the highest and best use is.
- Comment on development codes, site ratios, development guidelines and densities where appropriate.
- If the building was destroyed would there be any restrictions on rebuilding a similar structure for similar use.
- Comment on any relevant development consents on surrounding properties.

Improvements

- A description of the improvements including the materials used in construction, and accommodation provided.
- Age and condition including method and quality of construction, finish and fitout.
- Design characteristics and appeal, including unique or specialised features that may detract (or enhance) from the viability, marketability and value of the property.
- Present state of repair including outstanding work to be completed, or any modification or maintenance work required.
- Economic obsolescence and the need for upgrading e.g. foyer refurbishments.

Environmental Risks

- Comment on the effect of any apparent environmental concerns or contamination. Specifically whether any present, past or proposed use of land may create potential liabilities under environmental protection legislation.
- Possible impact of natural disaster events on asset values (where applicable)

Tenancy Details

- Where available SPA will provide original or copies of all executed leases which should be sighted, reviewed and correctly reflected in the tenancy schedule.
- The latest Tenancy Schedules of the respective buildings will be provided and should be annexed to each valuation report. If there is any anomaly between the tenancy schedule and the lease, this should be referred to SPA for further instructions prior to issuing valuation.

Outgoings

- Itemised list of statutory charges and market operating expenses assuming private ownership. Income and Expenditure Statements will be provided for the previous completed financial year as well as year to date.

Comment on State and Repair of Building/Grounds

- All valuation reports must comment on the adequacy of the maintenance of the property having regard to its age, and the purpose for which it is used. An opinion of

capital works required should also be provided.

Market Overview

- Any market commentary should include reference to the local economy and likely impact of current and future, social, political, and economic issues.
- Please give an overview of competitive properties in the market place either for lease or for sale in the particular sector be it industrial, commercial or retail.

Valuation Methodology

- Valuations should be determined using the capitalisation method. A 10 year discounted cashflow should also be provided as a secondary valuation method. Should these approaches be inappropriate, please adopt and justify the correct approach. All valuation calculations are to be disclosed in the valuation or annexed to the valuation.
- A reference to the treatment of tenant incentives and building vacancies (both current and future) should be provided.

Comparable Evidence

- Rental Evidence - Details of comparable rentals are to be provided in a table format and should be appropriately analysed to support the valuation (photographs would be desirable).
- Sales Evidence - Similarly, details of comparable sales should be provided.

Additional Valuation Requirements

- Reasonable selling period should be estimated
- Statement that the valuation is made in accordance with AASB 116 and Treasury Policy Paper TPP 07-1
- Apportionment of Fair Value between land and building component for accounting purposes
- Future value prospects

Contact Details**Appendices to the report should include:**

- Copy of Letter of Instruction
- Copy of Current Title Search
- Copy of Deposited Plan
- Copy of Building Plans
- Sales Analysis Sheets

D2.2.2 Recommended 'STATEMENT OF VALUE' report template to satisfy financial reporting requirements

This Statement of Value is an Addendum to the <Valuation firm> valuation as at 1 January 200X and the Statement of Value as at 30 July 200X.

All terms, qualifications and conditions applying to that report and statement apply to this Statement of Value.

We certify that we have made appropriate enquiries in regard to the circumstances of the property and we are of the opinion that the carrying amount of \$X,XXX,XXX as advised by the State Property Authority on <date> reflects fair value for the premises. Further to this, we do not believe if the property were to be re-valued as at <date> at fair value, there would be any material increase or decrease to the carrying amount.

We also confirm that the carrying amount of the land as advised by State Property Authority being \$X,XXX,XXX is considered to reflect fair value.

We also confirm that the carrying amount of the building as advised by State Property Authority being \$X,XXX,XXX is considered to reflect fair value.

The values for the building components, as advised below, are considered to reflect fair value:

- Structure:
- Lifts:
- Air conditioning:

In arriving at this conclusion we have had regard to the following:

- Carrying amount of the assets compared to our original valuation.
- Changes to market and economic conditions that have occurred since the date of our original valuation
- Changes to forecasts that were contained in our original valuation

(THE ABOVE IS SUBJECT TO INDEPENDANT AUDIT BUREAU REVIEW)

Yours faithfully,

<Valuation Firm>

D2.2.3 Recommended 'ASSET PRO-FORMA' report template to satisfy financial reporting requirements

MRI Asset No :		
Address – City/Town:		
Street & No:		
Property Description – (Lot/DP):		
Area:		
Zoning (including any draft amendments):		
Date of Inspection:		
Brief Description of Improvements:		
Is the development considered to be the highest and best use? If no, list the highest and best use.		
Existing income from property (if applicable)		
Remarks:		
Market Evidence:	Sale 1	
	Address:	
	Area:	
	Contract date:	
	Sale Price:	

	Comment:	
	Analysis:	
	Sale 2	
	Address:	
	Area:	
	Contract date:	
	Sale Price:	
	Comment:	
	Analysis:	
Fair Value of Land on Existing Use as at 30 June 200X:		
Fair Value of Improvements as at 30 June 200X:		
Fair Value as at 30 June 200X:		

Valuer's Signature:			
Valuer's Name:			
Registration No.		Date:	2/6/2008

- The above pro-forma takes into consideration SPA's Valuation Policy and the relevant accounting standards.

D2.2.4 Recommended 'SEGMENTATION' report template to satisfy financial reporting requirements

PROPERTY NAME: Example House

PROPERTY ADDRESS: Example Street, Sydney

Description of Components	MRI Asset Number	Asset M'ment Class	Unit Type	Quantity	Estimated Useful Life	Remaining Useful Life	Replacement Cost	Accumulated Depreciation	Fair Value (WDRC)	% of Building Value
Land										
Land										NA
Building										
Structure										
Lifts										
Air conditioning										
TOTAL										

Note: As all SPA property is revalued annually, accumulated depreciation will be netted off to the asset each year. Therefore the accumulated depreciation will not reconcile with SPA's financial statements.

IMPORTANT:

PLEASE NOTE THAT SEGMENTATION OF ASSETS IS ONLY REQUIRED WHERE A PROPERTY HAS A LIFT

D2.2.5 Sample letter's instructions and briefs to valuers for "DISPOSAL AND ACQUISITION" Valuations

BRIEF FOR THE PROVISION OF VALUATION SERVICES – DISPOSAL

[Insert site address]

The *[name of property]* has been declared surplus to the requirements of the Department *[name of owner department]*. The State Property Authority (SPA) has been engaged to project manage the proposed disposal of the site.

Your firm is invited to submit a proposal for the provision of valuation services in relation to the sale of the property. This brief sets out SPA's requirements for completion of the valuation exercise and invites your firm to submit a proposal to provide the services outlined.

BASIS OF VALUATION

SPA is seeking to dispose of the site by a competitive sale process, public tender or expression of interest, in accordance with Government Guidelines and will be seeking to offer the property to the market within this calendar year.

To assist in the sale process we require a current market valuation of the property on the following basis:

- Current market value of the property under its existing zoning on the basis of highest and best use.
- A Valuation range including a upper and lower limit that the valuer considers would not be unreasonable to accept, taking into account current market conditions and/or any other factors affecting the property.
- *[Include any other types of valuations required]*

The valuation report should include:

- The current market value of the site on the basis listed above as at the date of valuation, **exclusive of GST** (the valuation is to be carried out in accordance with API Guidelines);
- A list of the major assumptions used in determining the valuations;
- Details of parties contacted and their comments;
- Where relevant, a description of any legal, planning or other constraints to development of the site (the valuer will be required to research all relevant public records including title searches and planning legislation);
- An outline or indication of the reasoning or method used to determine the valuations made together with supporting evidence;
- A list and full details of any comparable sales evidence used, (sale price, date of contract, dimensions, description of land, etc);

- Application of data from the analysed sales to the subject valuations;
- Logical reasoning for opinion where sufficient evidence from sales is not available;
- A complete description and the condition of the improvements on the land;
- Any other information upon which the valuations are based; and
- A market commentary.

PROPOSAL REQUIREMENTS

Please provide the following in your response to this invitation:

- Nominated personnel to be involved;
- **Nominate the main contact to be responsible to SPA;**
- Nominate your entire team to be involved in the valuations and their specific roles and experience with valuations of this type;
- Confirmation that you have no conflicts of interest with respect to this valuation, and confirm that you will advise immediately of any conflict of interest, whether actual or perceived, during the course of the appointment. If appointed, you will not be able to advise any other clients regarding this property until completion of the sale;
- A fixed fee for the provision of the valuation report;
- An hourly rate for each of the team members for the provision of services not included in the lump sum, should a variation to the scope of works and attendance at meetings be required;
- Confirmation that the above services can be provided within the required time frame; and
- All rates and prices are to be inclusive of GST.

ASSESSMENT CRITERIA

Submission of the lowest fee will not guarantee appointment. Among the factors that will influence the appointment of the Valuation firm are:

- Demonstrated experience in property valuation, *particularly development sites*;
- Appreciation of the probity and transparency requirements of NSW Government business practices; and
- Professionalism in representing the interests of SPA and our client.

BRIEF FOR THE PROVISION OF VALUATION SERVICES – ACQUISITION

[Insert Property Name / site address / Lot No DP No]

The above property is proposed to be acquired for the purposes of the Department [name of owner department]. The State Property Authority (SPA) has been engaged to project manage the proposed acquisition.

Your firm is invited to submit a proposal for the provision of valuation services in relation to the acquisition of the property. This brief sets out SPA's requirements for completion of the valuation and invites your firm to submit a proposal to provide the services outlined below.

BASIS OF VALUATION

The proposed acquisition *[will fall / will not fall]* under the terms of the Land Acquisition (Just Terms Compensation) Act 1991. I have attached an information sheet relating to the property to assist you in preparing your proposal.

[Insert 'A' or 'B' as Required]

A - Under the Land Acquisition (Just Terms Compensation) Act 1991:

To assist in the acquisition process SPA requests a valuation of the compensation payable to the owner for the interest being acquired based on the heads of compensation described in Part 3 Division 4 Land Acquisition (Just Terms Compensation) Act 1991, broadly outlined as follows:

- (a) the market value of the land on the date of its acquisition,
- (b) any special value of the land to the person on the date of its acquisition,
- (c) any loss attributable to severance,
- (d) any loss attributable to disturbance,
- (e) solatium,
- (f) any increase or decrease in the value of any other land of the person at the date of acquisition which adjoins or is severed from the acquired land by reason of the carrying out of, or the proposal to carry out, the public purpose for which the land was acquired.

B - Not Under the Land Acquisition (Just Terms Compensation) Act 1991:

To assist in the acquisition process SPA requires a current market valuation of the property on the following basis:

- Current market value of the property under its existing zoning on the basis of highest and best use.
- A Valuation range including an upper and lower limit that the valuer considers would not be unreasonable to accept, taking into account current market conditions and/or any other factors affecting the property.
- *[Include any other types of valuations required]*

The valuation report should include:

- The *compensation assessed / current market value of the site* on the basis listed above as at the date of valuation, **exclusive of GST**(the valuation is to be carried out in accordance with API Guidelines);
- A list of the major assumptions used in determining the valuations;
- Details of parties contacted and their comments;
- Where relevant, a description of any legal, planning or other constraints to development of the site (the valuer will be required to research all relevant public records including title searches and planning legislation);
- An outline or indication of the reasoning or method used to determine the valuations made together with supporting evidence;
- A list and full details of any comparable sales evidence used, (sale price, date of contract, dimensions, description of land, etc);
- Application of data from the analysed sales to the subject valuations;
- Logical reasoning for opinion where sufficient evidence from sales is not available;
- A complete description and the condition of the improvements on the land;
- Any other information upon which the valuations are based; and
- A market commentary.

PROPOSAL REQUIREMENTS**Please provide the following in your response to this invitation:**

- Nominated personnel to be involved;
- **Nominate the main contact to be responsible to SPA;**
- Nominate your entire team to be involved in the valuations and their specific roles and experience with valuations of this type;
- Confirmation that you have no conflicts of interest with respect to this valuation, and confirm that you will advise immediately of any conflict of interest, whether actual or perceived, during the course of the appointment. If appointed, you will not be able to advise any other clients regarding this property until completion of the sale;
- A fixed fee for the provision of the valuation report;
- An hourly rate for each of the team members for the provision of services not included in the lump sum, should a variation to the scope of works and attendance at meetings be required;
- Confirmation that the above services can be provided within the required time frame; and
- All rates and prices are to be inclusive of GST.

ASSESSMENT CRITERIA

Submission of the lowest fee will not guarantee appointment. Among the factors that will influence the appointment of the Valuation firm are:

- Demonstrated experience in property valuation, *particularly development sites*;
- Appreciation of the probity and transparency requirements of NSW Government business practices; and
- Professionalism in representing the interests of SPA and our client.

CONSULTANCY AGREEMENT

It is proposed that this appointment will be on the basis of the terms and conditions set out in the standard State Property Authority Consultancy Agreement.

With regards the "Agreement Information" attached to the Consultancy Agreement, the following information will be applicable:

Item 4: Time by which Consultant must provide program or plan: Not applicable

Item 5: Time to complete the services: Six (6) weeks.

Item 14: Professional indemnity insurance: \$1,000,000

Item 15: Public liability insurance: \$20,000,000.

It is noted that the above will vary depending on the area tendered for.

D3 CONTRACTOR REPORTING

- a. Where requested, the Contractor must during the performance of the Services, provide the Authority with monthly costs and matter reports that include:
 - i. The progress of the performance of the Service
 - ii. The costs for the month of each matter
 - iii. A progressive total of costs to date for each matter; and
 - iv. A summary of all costs for all the Authority matters to date for the current financial year
- b. The Contractor must also consult and liaise with the Authority at least six monthly, at the end of the Term and at such time as the Authority reasonably requests. Items for discussion shall include:
 - i. The progress of the performance of the Services
 - ii. The standard of the performance of the Services
 - iii. The management of any conflicts of interest
 - iv. The delivery of training and seminars on areas of law relevant to the Authority
 - v. And such other matters which the Authority identifies



STATE PROPERTY AUTHORITY

RFT NO. 0900488

REQUEST FOR TENDER

in respect of

Formation of a Panel to provide Property Valuation Services

PART E – TENDER FORM

PART E TENDER FORM – RFT ID 0900488**PARTICULARS OF TENDERER**

The Tenderer must provide in legible print the following details

Name of Tenderer:

Name of Tenderer's Representative:

If the Tenderer is a corporation/partnership/individual proprietor:

A.B.N :

Registered office:

.....

.....

.....

Business Service of Notice Address:.....

.....

.....

.....

Contact Telephone No: (.....)

Facsimile No: (.....)

Mobile No:

Email Address:

TENDER

1. The Tenderer tenders to perform the Services for the price set out in the Price Schedule (Part F Schedule 10) as qualified by the further provisions of the Request for Tender and Schedules. This Tender is lodged upon the following conditions:
 - 1.1 The Tender is submitted as an offer in accordance with and subject to all the provisions of the Request for Tender and may be accepted by the Authority issuing a Letter of Acceptance to the Tenderer.
2. The Tender will remain open for acceptance by the Authority for 60 days from the Closing Date unless extended by 30 days at the Authority's discretion and will not be withdrawn or amended without Authority's prior written consent.
3. The Tenderer acknowledges that:
 - 3.1 the Tender comprises the Request for Tender and this completed Tender Form and all Schedules attached and listed on this Tender Form;
 - 3.2 no information provided by or on behalf of the Tenderer to the Authority at any time in relation to the Tenderer or this Tender is or will be false or misleading; and
 - 3.3 this Tender is governed by the provisions of the Conditions of Tender read with the other documents comprising the Request for Tender.
4. The Tenderer warrants that:
 - 4.1 neither the Tenderer nor any of its servants or agents have entered into any contract, arrangement or understanding to pay moneys or provide any other consideration or benefit to any trade association apart from the normal amount (annual subscription, turnover or contract fee) imposed by that trade association, in the event that it is the successful Tenderer;
 - 4.2 neither the Tenderer nor any of its servants or agents had any knowledge of the price of any other Tenderer prior to submitting this Tender nor has the Tenderer or any of its servants or agents disclosed to any rival Tenderer the Tenderer's price prior to the closing of Tenders;
 - 4.3 the Tenderer submits this Tender in good faith and has not deliberately set its Tender price above the level of rival Tenderers;
 - 4.4 neither the Tenderer nor any of its servants or agents has entered into any contract, arrangement or understanding having the result that, in the event that it is successful in this Tender, it will pay to any unsuccessful Tenderer any moneys or provide any other consideration or benefit in respect of or in relation to the Tender or any contract arising there from;
 - 4.5 It does not have or is aware of any actual or potential conflict of interest; and
 - 4.6 it has otherwise complied with the requirements of the RFT.
5. The Tenderer will keep confidential and will not disclose to any third party any information, whether oral or recorded, provided to or obtained by the Tenderer concerning the Authority or this Tender, which is not in the public domain (or which is

in the public domain as a consequence of a breach of this provision). The Tenderer may, however, make disclosure to a bona fide independent consultant retained by the Tenderer for the purposes of preparing or submitting this Tender provided that the consultant has furnished a written undertaking of confidentiality to the Authority on terms similar to this Clause. Without limitation no Tenderer will in any way publicise its Tender or proposed Tender.

Schedule 1 – Tenderer's Declaration

Schedule 2 – Tenderer's Details

Schedule 3 – Compliance Statement

Schedule 4 – Confidential Information

Schedule 5 – Previous Experience

Schedule 6 – Service Delivery and Methodology

Schedule 7 – Personnel

Schedule 8 – Risk Management

Schedule 9 – Financial Viability

Schedule 10 – Pricing

Schedule 11 – Value Add Services

If the Tenderer is a corporation, complete Part A;

If an individual or partnership, complete Part B.

PART A

Executed by

.....
(Company name)

(Affix Common Seal here)
(If applicable)

in accordance with Section 127

of the *Corporations Act 2001*.

.....
Director

.....
*Director/Sole Director/Secretary
(*delete as applicable)

.....
Name of signatory
in block letters

.....
Name of signatory
in block letters

Dated:

PART B

.....
Trading Name

1.
(signature)

2.
(signature)

.....
Name of signatory
in block letters

.....
Name of signatory
in block letters

.....
(capacity)

.....
(capacity)

3.
(signature)

4.
(signature)

.....
Name of signatory
in block letters

.....
Name of signatory
in block letters

.....
(capacity)

.....
(capacity)

Dated:

(Note: If required by the Authority, the Tenderer will provide evidence of the authority of the designated signatory to sign)



RFT NO. 0900488

REQUEST FOR TENDER

in respect of

Formation of a Panel to provide Property Valuation Services

PART F – SCHEDULES

NOTE:

Tenderers are to ensure that all Schedules are fully completed, signed and dated and that sufficient information is provided to enable the Authority to fully assess your Tender. Failure to do so may result in your tender being excluded from further consideration

SCHEDULE 1: TENDERER'S DECLARATION**Instructions to Tenderers**

The person authorised to submit the Tender on the Tenderer's behalf must ensure that her/his full details are included on this Tenderer's Declaration and lodge it as part of the Tender in accordance with clause B4 of this Request for Tender.

The person so authorised should ensure that they have read and fully understand the Tenderer's obligations under the Request for Tender and taken appropriate commercial and legal advice.

Terms not otherwise defined in this Schedule 1 will have the meaning set out in clause B2.1 of this Request for Tender.

Offer

The Tender constitutes a formal offer by the Tenderer to provide the Services at the Tender Price and in accordance with the terms and conditions of the Request for Tender including the Agreement and the Service Requirement, which provides the description of the subject matter of this Request for Tender.

Acceptance

The Tenderer acknowledges that this Tender remains valid and open for acceptance for the period specified at clause B6 of the Request for Tender.

Conflict of Interest

The Tenderer represents and warrants that, having made diligent inquiry, the following represents the only actual or potential conflicts of interest which have arisen or appear likely to arise in respect of the Request for Tender, the subject matter of the Request for Tender or its Tender:

Tenderers must list actual or potential conflicts of interest or, where there is no actual or potential conflict of interest, state **"No actual or potential conflict of interest has arisen or appears likely to arise in respect of the Request for Tender, the subject matter of the Request for Tender or this Tender"**.

The Tenderer undertakes to immediately notify SPA in writing if, at any time during the Tender process or the term of the Agreement, an actual or potential conflict of interest arises or appears likely to arise.

Improper Assistance

The Tenderer represents and warrants that the Tender has been compiled without the improper assistance of employees or former employees of the SPA, the NSW Government or the Commonwealth and without the use of illegally or improperly obtained information.

Compliance with the Request for Tender

The Tenderer otherwise represents and warrants that it is compliant and agrees with all provisions of the Request for Tender and the Agreement except and to the extent specified at SCHEDULE 3: COMPLIANCE STATEMENT attached to and forming part of this Tender.

The Tenderer agrees and understands that State Property Authority have received and will evaluate this Tender in reliance upon the representations, warranties, undertakings, acknowledgments and other statements agreed in the Request for Tender, including this Declaration.

The Tenderer acknowledges that the State Property Authority may suffer loss should such representations, warranties, undertakings, acknowledgments or statements be untrue.

Signature of Tenderer or person duly authorised to make the Tender on behalf of the Tenderer. (Note: if made on behalf of the Tenderer, full details of the official position held, eg. Director, Manager, CEO, must be included).

Signature:

Date of signature:

Name (block letters):

Official position held:

Signature of witness:

Address of witness:

SCHEDULE 2: TENDERER'S DETAILS

Tenderer's full name:
Person who is authorised to represent and legally bind the Tenderer: Name: Official Position: Address: Phone: Facsimile: Email:
To enable clarifications (if any) of the Tender, the Authority will contact the person identified as Tenderer's Representative as set out in Schedule 1.
If Tenderer is a company: (Attach copy of Certificate of Incorporation)
Company's registered office:
Company's registered trading or business name (including registration number):
Company's principal place of business:
Australian Company Number (ACN):
Australian Business Number (ABN):
Date and place of incorporation:
Shareholders holding 20% or more of the company's issued share capital (please list):
Name, registered office, place of business, ACN, ABN, date of incorporation of "related companies" within the meaning of section 50 of the <i>Corporations Act 2001</i> (Cth):
(Tenderers may provide a group organisational chart illustrating ownership (%) links)
If Tenderer is a trustee: (Attach copy of Deed of Trust together with copies of any Deeds of Variation varying the Deed of Trust)
Name of Trust:
Name of Trustee:

Trust ABN:
If Tenderer is a partnership: (Attach copy of Deed of Partnership together with copies of any Deeds of Variation varying the Deed of Trust)
Full name of each person comprising the partnership:
Trading Name of Partnership:
Partnership ABN:
Proposed subcontractors:
Tenderers must include full details of any proposed subcontractors, including company names and ABNs, the tasks the subcontractor would perform, any past/present relationship between the subcontractor and the Tenderer and the subcontractor's particular expertise or experience in relation to the subject matter of this Request for Tender.
(Please refer also to SCHEDULE 7: PERSONNEL)
<i>Equal Opportunity for Women in the Workplace Act 1999 (Cth):</i>
Is the Tenderer or any of its proposed subcontractors currently named as non-compliant under the <i>Equal Opportunity for Women in the Workplace Act 1999 (Cth)</i> ?
Yes/No (please circle)
(If yes, you must obtain a letter of compliance from the Equal Opportunity for Women in the Workplace Agency to be eligible for Commonwealth business. The letter of compliance should either accompany the Tender or be provided to SPA prior to the date by which offers are due for acceptance.)
Illegal Workers:
Tenderers must provide a statement confirming that they do not and will not engage illegal workers (For more information refer to "A Guide on Work Rights" available at www.immi.gov.au/employers/):

SCHEDULE 3: COMPLIANCE STATEMENT**Instructions to Tenderers**

Using the same format, order and headings as shown below, the Tenderer must **either**:

1. confirm that it accepts and complies with all the terms and conditions of this Request for Tender including the Service Requirements and Agreement; **or**
2. by reference to the relevant page, clause or paragraph number:
 - indicate each and every part of the Request for Tender (including the Service Requirements) with which the Tenderer does not comply or only partially complies; **and**
 - state the reasons why it does not comply or only partially complies; **and**
 - state proposed alternative wording.

Note:

The extent of non-compliance will be considered by the State Property Authority as part of the evaluation process.

The Tenderer will be taken to be assessed as compliant with any clause which it does not list in the Compliance Statement. Tenderers may group clauses where the response is the same for each individual clause. Eg. "Clauses X.X to X.X - Does not comply".

Interpretation

In completing the Compliance Statement, "complies", "does not comply" and "partially compliance" will have the following meanings:

"Complies" means:

- in the case of a clause which provides information only - the Tenderer has read and understood the information;
- in the case of a clause which imposes a contractual condition or obligation upon the Tenderer - the Tenderer agrees with that contractual condition or obligation
- in the case of a clause which directs that an action be taken - the Tenderer has taken that action.

"Does not comply" means:

- in the case of a clause which imposes a contractual condition or obligation upon the Tenderer - that the offer made by the Tenderer as represented by its Tender does not accord with that contractual condition or obligation;
- in the case of a clause which directs that an action be taken - the Tenderer has not or will not take that action.

"Partially complies" means:

- in the case of a clause which imposes a contractual condition or obligation, that the Tenderer can meet the contractual condition or obligation subject to specific qualifications.

Format:

Part / Schedule	Clause / Page / Paragraph	Non-compliance/partial compliance	Reason (Non- compliance/partial compliance)	Suggested alternative wording

SCHEDULE 4: CONFIDENTIAL INFORMATION
Tenderer's Confidential Information**Instructions to Tenderers**

The Tenderer must, in the table below:

- clearly identify below any information it will provide in the course of the tender process that it considers should be protected as confidential information for the purposes of any Agreement between the Tenderer (if successful) and State Property Authority; **and**
- provide reasons as to why this information should be protected as confidential information, including any commercial or other harm or detriment that the Tenderer (or any other person) may suffer if the information is not protected as confidential information; **and**
- indicate the period (in years) during which the information is to remain confidential. and
- complete the Confidentiality Deed attached.

Confidential information	Reasons for confidentiality	Period of confidentiality

CONFIDENTIALITY DEED

THIS DEED is made this _____ day of _____ 2008.

Between

And

[##Insert full business name, ABN and address of the relevant company] (**Confidant**)

RECITALS

- A. The State Property Authority has released the Request for Tender for the Formation of a Panel for Property Valuation Service Providers (**Services**) for the benefit of the Client.
- B. During the course of the tender process, the Confidant may become aware of information relating to, or in connection with, the Request for Tender which belongs to the State Property Authority.
- C. The State Property Authority requires the Confidant, and the Confidant agrees, to take all steps (including the execution of this Deed) to ensure that the State Property Authority's confidential Information (including Government confidential information) is kept confidential.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1. For the purposes of this Deed, the following terms have the following meaning:

Agreement means the draft agreement in the Request for Tender for Formation of a Panel for Property Valuation Service Providers (and any subsequent amendments to it).

Authority includes any governmental, semi-governmental or local government authority, administrative or judicial body, tribunal or court, department, commission, public authority, Minister, statutory corporation, authority or instrumentality, and includes any self-regulatory organisation established under statute or any stock exchange.

Client has the meaning given to that term in Item 1 in Schedule A of this Deed.

Deed means this confidentiality deed between the State Property Authority and the Confidant and includes all schedules and attachments to it.

Intellectual Property means all existing copyright and future copyright and neighbouring rights including all rights in computer programs, documentation and drawings, all rights in relation to inventions including patents and patent applications, modifications or improvements to the same, registered and unregistered trade marks, registered and unregistered designs, rights in relation to trade secrets, know-how, business names and business methodologies, all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and all other intellectual property rights as defined in Article 2 of the *Convention establishing the World Intellectual Property Organisation* of July 1967, including Moral Rights.

Loss means all costs (including legal costs and expenses on a solicitor and own client basis), fees, expenses, losses, damages, charges, taxes, outgoings, claims, liabilities, causes of action, proceedings, awards and judgments.

Material means the subject matter of any Intellectual Property rights.

Moral Rights includes the following rights of an author of copyright Material:

- a) the right of attribution of authorship;
- b) the right of integrity of authorship; and
- c) the right not to have authorship falsely attributed.

Nominated Persons means the persons (if any) to whom the State Property Authority's Confidential Information may be disclosed for the Purpose or to such other persons as otherwise agreed between the parties in writing from time to time provided always that such persons have completed a written confidentiality undertaking in accordance with 2.2 of this Deed.

Privacy Act means the *Privacy Act 1988* (Cth).

Purpose means the purpose of tendering for the Formation of a Panel for the Property Valuation Service Providers under the Request for Tender and as more particularly specified in Item 2 in Schedule A of this Deed.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Related Person means any employee, officer, agent, adviser or subcontractor of a party or the Client, and in the case of the Confidant, includes any Specified Personnel and any Nominated Person.

Request for Tender has the meaning given to that term in Item 3 in Schedule A of this Deed.

Services has the meaning given to that term in Item 4 in Schedule A of this Deed.

Specified Personnel means personnel engaged by the Confidant as personnel required to perform all or part of the work constituting the provision of Services.

State Property confidential information means information that:

- a) is by its nature confidential;
- b) is designated by the State Property Authority as confidential from time to time;
- c) the Confidant knows or ought to know is confidential;
- d) is comprised in or relates to State Property Authority's Material;
- e) is confidential information of the Client (whether or not that confidential information is held by SPA or disclosed directly to the Confidant);
- f) is any other information relating to State Property Authority's customers, clients, suppliers, subsidiaries, Related Bodies Corporate, Related Persons or other third parties;
- g) is State Property Authority's work or business procedures, marketing or business plans, technical knowledge, concepts, ideas or designs;
- h) is personal information under the Privacy Act;
- i) is this Deed and the Request for Tender (including the Agreement),

in any format whatsoever (including original versions and copies, hardware and software) regardless of whether the Confidant or any of its Nominated Persons become aware of the information before or after the date of this Deed,

but does not include information which:

- a) is or becomes public knowledge other than by breach of this Deed or any other confidentiality obligations; or
- b) has been independently developed or acquired by the Confidant as established by written evidence.

State Property Authority Material means any Material provided by the State Property Authority to the Confidant for the Purpose or which is copied or derived from the Material provided for the Purpose, including, but not limited to, documents, equipment, information and data stored by any means.

1.2. In this Deed, unless the context clearly indicates otherwise:

- a) a reference to a person or party includes any individual, firm, body corporate, partnership, joint venture, an unincorporated body, association, government agency or Authority and any executor, administrator, substitute, successor or permitted assignee of that person or party;
- b) a word that is derived from a defined word has a corresponding meaning;
- c) "includes", "including" and "include" are not words of limitation;
- d) the singular includes the plural (and vice versa) and a gender includes each other gender;
- e) references to legislation include amendments to, and re-enactments of that legislation;
- f) a reference to a party is to a party to this Deed;
- g) headings do not form part of this Deed and are to be ignored in any interpretation of it; and
- h) the recitals form part of this Deed.

2. NON-DISCLOSURE

- 2.1. The Confidant must not use, reproduce or disclose any Confidential Information without the prior written consent of the State Property Authority, which consent SPA may grant or withhold in its absolute discretion.
- 2.2. Without limiting clause 2.1, the Confidant may disclose Confidential Information to the Confidant's Nominated Persons but only for the Purpose and provided the Confidant obtains a written confidentiality undertaking in a form approved by the State Property Authority relating to the non-disclosure, use and reproduction of Confidential Information from each Nominated Person with obligations no less onerous than the obligations imposed on the Confidant by SPA under this Deed. The Confidant must make any such undertakings available to SPA immediately.
- 2.3. The Confidant acknowledges and agrees that the Confidant is responsible for any unauthorised use, reproduction or disclosure of the State Property Authority's Confidential Information by any of the Confidant's Related Persons.
- 2.4. Without limiting any provision of this Deed, the Confidant may disclose Confidential Information to the extent required to comply with any applicable law or legally binding order of any court or judicial body provided the Confidant gives SPA notice immediately when it learns that it must do so (but prior to any such disclosure). Such notice must be in writing and must contain full details of

the circumstances of the proposed disclosure and the Confidential Information to be disclosed. Where directed by SPA, the Confidant must defend the release of any Confidential Information (or part of it) in the manner directed by SPA at its sole discretion.

3. RESTRICTION ON USE

- 3.1. The Confidant must use Confidential Information only as is strictly necessary for the Purpose or to otherwise comply with the provisions of this Deed.

4. SECURITY

- 4.1. If requested by SPA, the Confidant must undergo and cooperate with any security checks SPA wishes to make in relation to the Confidant (including the provision of any information and all reasonable assistance).

5. DELIVERY UP OF DOCUMENTS

- 5.1. SPA may, at any time and without notice, demand, either orally or in writing, the delivery to SPA of all documents in the possession or control of the Confidant which contain SPA, at the Confidant's expense.
- 5.2. The Confidant must return or destroy (and provide evidence of such destruction) any Confidential Information (including any copies) in the power, possession or control of the Confidant or its Related Persons on receiving notice that its tender has been unsuccessful or at any other time at the request of SPA.

6. CONFLICT OF INTEREST

- 6.1. The Confidant warrants that no conflict of interest exists or is likely to arise in relation to SPA's Confidential Information while the Confidant is in receipt of SPA's Confidential Information.
- 6.2. The Confidant warrants that it will not permit any situation to arise or engage in any activity which may result in a conflict of interest in relation to the Confidant's receipt of SPA's Confidential Information.

7. INDEMNITY

- 7.1. The Confidant indemnifies the SPA (and its Related Persons) and the Government of State of NSW (together "those indemnified") from and against all Losses incurred by or sustained by those indemnified (including Losses incurred or sustained as a result of a third party claim against those indemnified) which is caused or contributed to (directly or indirectly) by:
- 7.1.1. any breach of this Deed or any express or implied representation or warranty by the Confidant or its Related Persons; or
 - 7.1.2. any act or omission of the Confidant's Related Persons in relation to SPA's Confidential Information.

8. DAMAGES AND RELIEF

- 8.1. The Confidant acknowledges and agrees that damages alone would be an inadequate remedy in respect of any unauthorised use, reproduction or disclosure of SPA Confidential Information and that the granting of injunctive or other equitable and/or interlocutory relief would be necessary to protect SPA's rights and interest in the Confidential Information. The Confidant must

immediately reimburse the SPA for all costs and expenses (including legal costs and expenses on a solicitor and own client basis) incurred by SPA in enforcing its obligations under this clause 8.1.

9. INTELLECTUAL PROPERTY AND OWNERSHIP

- 9.1. The Confidant acknowledges and agrees that all Intellectual Property rights (including any copyright, trademarks, patents, designs, trade or business names and Moral Rights (if any)) derived from SPAs confidential information are assigned on creation to SPA and will vest in and remain the sole and exclusive property of SPA and the Confidant has no rights in and to SPAs Confidential Information. The Confidant must do all things necessary (including executing any document) in order to give effect to this clause 9.1.

10. GENERAL

- 10.1. The obligations in this Deed are perpetual and the terms of it continue in full force and effect until such time as the State Property Authority becomes public knowledge other than by a breach of this Deed.
- 10.2. This Deed shall be governed by the laws applicable in the Australian Capital Territory, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory, Australia.
- 10.3. No right under this Deed is waived or deemed to be waived except by notice in writing signed by the party waiving that right. A waiver by one party pursuant to this clause 10.3 does not prejudice its rights in respect of any subsequent breach of this Deed by the other party.
- 10.4. Where any clause of this Deed is deemed void, illegal or unenforceable it may be severed from this Deed without affecting any other part of this Deed.
- 10.5. Nothing in this Deed derogates from any obligation which the Confidant may have, either under the Privacy Act, this Deed or the Agreement in relation to the protection of Personal Information (as defined in the Privacy Act).
- 10.6. Each party shall bear its own legal and other costs and expenses arising out of the negotiation, preparation and execution of this Deed, except for any applicable stamp duty which shall be borne by the Confidant.
- 10.7. Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed.

EXECUTED AS A DEED**SIGNED SEALED AND DELIVERED**

by a duly authorised Officer for and)
on behalf of [##insert full name and)
ABN of Confidant], in the presence of:)
)
)

.....
(Signature of Witness)

.....
(Signature of authorised Officer)

.....
(Name)

.....
(Name)

.....
(Date)

.....
(Date)

SIGNED SEALED AND DELIVERED

by a duly authorised Officer for and)
on behalf of the State Property)
Authority, in the presence of:)
)
)
)
)

.....
(Signature of Witness)

.....
(Signature of authorised Officer)

.....
(Name)

.....
(Name)

.....
(Date)

.....
(Date)

SCHEDULE A – CONFIDENTIALITY DEED

Item 1

Client means State Property Authority.

Item 2

Purpose means for the purpose of tendering for the Services under the Request for Tender and more particularly for the State Property Authority.

Item 3

Request for Tender has the same meaning as specified at Clause B2.

Item 4

Services has the same meaning as specified at Clause B2.

Item 5

Nominated Persons means the following persons:

1. _____ [##insert full name and title]
2. _____ [##insert full name and title]
3. _____ [##insert full name and title]
4. _____ [##insert full name and title]
5. _____ [##insert full name and title]
6. _____ [##insert full name and title]

SCHEDULE 5: PREVIOUS EXPERIENCE AND TECHNICAL EXPERTISE

Tenderers must address under separate headings the criteria below:

1. Previous similar Services

Detail any demonstrated previous experience on a similar sized or similar type of Services, with particular reference to Services to similar organisations.

2. Examples of relevant previous Services including referees

In the table below, provide details of a minimum of three (3) examples of relevant past Services (including client references), stating why the examples are considered relevant to the subject matter of this Request for Tender.

Referee name, position and company	Postal address, phone number and email	Description of supply	Number of properties	Basis of valuation	Why relevant	Contract period	Estimated contract value p/a

3. Operational, management and other technical issues

Describe how you have previously resolved operational, management and other technical issues including details of such as:

- relevant service innovations;
- problems and how the problems were overcome; and
- achievement of time and cost budgets.

4. Value-adding

Provide examples of any value adding to the examples you have provided above.

5. Leading technology, industry standards and best practice

Briefly describe use of leading technologies, industry standards or best practice and steps taken to keep pace with it.

6. Technical expertise

All firms are required to give an explanation of their specific valuation expertise.

Firms tendering for capital and rental valuation exercises (excludes valuations for acquisition and disposal purposes) are required to address the following questions:

- Provide an example of income capitalisation approach and discounted cash flow approach, prepared by your firm, used to value office buildings.
- Describe how you propose to split 'fair value' between land and improvements, explain how you propose to do this if the 'highest and best use' of the property is an alternate use.
- Describe how a lessee's interest in a finance lease would be valued? (i.e. Colonial State Bank Centre, 52 Martin Place, Sydney and GOB Tamworth, 155-157 Marius Street, Tamworth)
- Describe how an asset classified as a privately financed project would be valued? (i.e. Opera House Carpark) Provide a list of properties that have been valued by your firm.

Tenderers may be appointed to the Panel based on their responses to the above questions.

SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY

SCHEDULE 6: SERVICE DELIVERY AND METHODOLOGY

Tenderers must clearly demonstrate their understanding of the Services and address under separate headings the criteria below:

1. Nature, scope and issues

Demonstrated understanding of the nature, scope and issues important to the successful supply of services/goods (as relevant).

2. Methodology

Demonstrated methodology for undertaking the management of the Services, including an understanding of all issues associated with time, cost and quality objectives.

3. Response times

Clear indication of response times for general queries, requests for additional services/goods (as relevant), account management queries and emergency call-outs during and after usual business hours.

It is important the tender also describes how they intend to respond to ad-hoc queries raised by stakeholders after the valuations are completed. For example, NSW Audit Office may raise issues regarding valuation methodology.

4. Management and reporting systems

Management and reporting systems in place to ensure the timely and effective delivery of quality services/goods (as relevant).

5. Management methodology

General methodology for managing this Services.

6. Transition In and Transition Out

Detailed Transition In and Transition Out program including timelines

Signed: _____

Dated: _____

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY**

SCHEDULE 7: PERSONNEL

Tenderers must address under separate headings the criteria below:

1. Service Team

Team structure for supply of deliverables (including organisations comprising the team and relationships).

2. Key Personnel

Identify key personnel, listing their:

- Position title
- roles and responsibilities;
- recent relevant experience;
- qualifications
- current workload; and
- proposed commitment and location for duration of the supply.

The Contractor must use its best endeavours to ensure that the Personnel nominated by the Contractor and accepted by the Authority are engaged by the Contractor to undertake the Services. In the event that the Contractor is unable to provide the nominated Personnel and where the Authority agrees to the use of alternative Personnel, such Personnel must have equivalent qualifications and experience to those originally nominated to provide the Services.

3. Resource Capacity

Identify staff resource capacity and backup resources indicating:

- percentage of staff who will be used to provide the Services;
- any need to appoint additional management and/or administration staff.

4. Recruitment

Identify requirements for recruitment of staff including:

- how staff will be recruited;
- competencies to be met by potential staff;
- training programs to be undertaken before commencing employment;
- frequency of training reviews; and
- availability of on-going training.

5. Management of responsibilities

The Tenderer should clearly specify how any resultant Agreement will be administered and the allocation of responsibility managed, including:

- liaison between all parties;
- responsibility for decision-making for the term of the Agreement; and
- responsibility for the successful implementation, coordination, management of the Services.

Signed: _____

Dated: _____

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY**

6. Account Manager

Nominate one (1) representative as the Account Manager providing summary of relevant experience and attaching recent curriculum vitae.

7. Subcontractors

The successful Tenderer must:

- ensure that any subcontractor notified at SCHEDULE 2 or otherwise engaged as part of the Services, meets the requirements of this Request for Tender and the Agreement;
- seek to include in all subcontracts all specified or relevant conditions of the Agreement between SPA and the successful Tenderer including, where applicable, access to documentation, data, cost records, controls, etcetera of the subcontractor; and
- be liable to SPA for the acts and omissions of any subcontractors as if those were the acts and omissions of the successful Tenderer.

Signed: _____

Dated: _____

SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY

SCHEDULE 8: RISK MANAGEMENT

Tenderers must address under separate headings the criteria below:

1. Certification and Accreditation

Details of:

- any certification or accreditation in relation to quality management systems, risk management, OH&S and/or environmental management systems;
- any plans to seek any such or other accreditation; and
- if you are not in the process of seeking accreditation, provide details of how you intend to ensure that the deliverables meet SPA's requirements and industry standards for quality.

2. OH&S policy and management

Details of the Tenderer's OH&S policies and procedures including:

- any documented policy or procedure; and
- an explanation of how management keeps up to date with changes to OH&S policies or procedures.

3. Safe work practices and procedures

Details of the Tenderer's safe operating practices and procedures including any:

- specific safety instructions relevant to its operations;
- permit work systems; and
- documented incident investigation procedures.

4. OH&S training

Description of how OH&S training is conducted in your organisation, providing any documentary evidence of such training.

5. OH&S workplace inspections

Description of how OH&S inspections are conducted at worksites including any documentation and reporting methods.

Has your organisation ever been convicted of an OH&S offence?

6. OH&S workplace inspections

Description of OH&S consultations within your organisation including:

- any formal committees; and
- employee involvement in relevant decision-making.

7. Ability to manage industrial relations

Place a **tick** in the box to the right of each item if you can provide, on request, documentary evidence of compliance.

Place a **cross** in the box to the right of each item if you cannot provide, on request, documentary evidence of compliance.

Signed: _____

Dated: _____

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY**

Any box **not** completed will be deemed to be a **cross** signifying that the Tenderer **cannot provide** documentary evidence of compliance.

Item Descriptions	√ or ×
Industrial Relations Statement	
<u>Do you have a policy statement on industrial relations management which:</u>	
1. Has Chief Executive Officer / senior management support?	
2. Sets enterprise goals for industrial employee relations?	
3. Identifies responsible personnel for managing industrial and employee relations, and provides contact details?	
4. Outlines communication processes with workers, unions, other contractors and subcontractors?	
5. Outlines measures for assessing subcontractors' compliance with industrial relations and employment obligations?	
Industrial Relations Obligations	
<u>Do you have a statement of your legal and other obligations relating to industrial relations and employment, including the names and details of applicable:</u>	
1. Awards?	
2. Enterprise, workplace or other relevant enforceable agreements?	
3. Federal or state legislation?	
Industrial Relations Management and Responses	
<u>Do you have an industrial relations management plan that:</u>	
1. Identifies the industrial relations issues that are relevant to your enterprise?	
2. Details the actions that you will take in the event of such incidents as:	
▪ grievance disputes?	
▪ inclement weather, site issues, threatened or actual industrial action?	
▪ other unforeseen risks?	
Compliance	
<u>Can you provide a signed declaration or statement verifying compliance in the preceding 12 months with all employment and legal obligations including:</u>	
1. Payment of remuneration to employees including the location of time and wage records?	
2. Annual leave?	
3. Long service leave/payment scheme registration?	
4. Workers' compensation insurance?	
5. Superannuation fund membership and contributions?	
6. Over award payments (for example: redundancy fund contributions)?	
Subcontractors	
<u>Do you have a procedure that provides an outline of:</u>	
1. The measures that you will take to select subcontractors who comply with industrial relations law and employment obligations?	
2. How your dealings with subcontractors and other contractors are managed?	
3. How you will monitor and assess ongoing subcontractor compliance with industrial relations requirements?	

Signed: _____

Dated: _____

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY****8. Insurance**

Tenderers must complete the table below and attach valid Certificates of Currency for each category of insurance:

Insurance	Insurer	Policy No	Expiry date	Maximum Sum insured	Limit of liability	Exclusions
Workers' Compensation						
Public and Product Liability						
Professional Indemnity						
Plant and Equipment						
Motor vehicle						

The successful Tenderer must hold insurance complying with the monetary levels and wording (including any required policy extensions) specified at clause 9 of the Agreement.

Certificates of Currency will be forwarded to the State Property Authority insurance broker for approval before any preferred Tenderer is selected or any Agreement executed.

Signed: _____

Dated:

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY**

SCHEDULE 9: FINANCIAL VIABILITY

For the purpose of determining the Tenderer's financial viability, please place a **tick** in the appropriate box and, if the answer is yes, provide details of all such events relevant to the Tenderer, its Office Bearers and Related Bodies Corporate during the **past five years**.

For the purposes of this Schedule 9, "Office Bearers" means persons concerned with the management of the Tenderer and/or its Related Bodies Corporate and having the potential to exert influence over the Tenderer and/or its Related Bodies Corporate and its supply under this Request for Tender, including but not limited to directors, partners, presidents, executive directors and project managers.

Issue	Yes	No	Details
1. Has the Tenderer, its Related Bodies Corporate and/or their Office Bearers been involved with a business failure (eg. liquidation, voluntary administration)?			
2. Has any Office Bearer been declared bankrupt?			
3. Has the Tenderer, its Related Bodies Corporate or any Office Bearer been the subject of a Commonwealth government investigation?			
4. Has there been any significant recent change in the Tenderer's financial position?			
5. Has any contract or agreement to which the Tenderer is a party, been terminated for cause (eg. breach)?			
6. Is there or has there been any past, current, pending or finalised litigation against the Tenderer, its Related Bodies Corporate or Office Bearers?			
7. Are there or have there been any collections by debt collection agencies on behalf of creditors of the Tenderer, its Related Bodies Corporate or Office Bearers?			
8. Is the Tenderer and its Related Bodies Corporate trading solvently in the sense that they are able to pay their debts as and when they fall due?			
9. Are there any actual or threatened insolvency (including voluntary administration, application to wind up etc.) proceedings against the Tenderer or its Related Bodies Corporate?			

Tenderers must promptly provide information in support of the above upon request.

Tenders must submit Financial Documents for the past two trading years. The documents must include Profit and Loss Statements and Balance Sheets.

Signed: _____

Dated: _____

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY**

SCHEDULE 10: PRICING**Instructions to Tenderers**

- All pricing details must be completed.
- Pricing schedules must be completed in the MS Excel Spreadsheet provided.
- All prices are to be inclusive of all deliverables stated in the Service Requirements.
- All prices must include GST and be inclusive of all travel costs, co-ordination fees and all other out of pocket expenses.
- All prices are fixed and firm for the term of the Agreement.

Each Tenderer is to provide a fixed fee proposal on the basis of an annual fee for Property Groupings in accordance with the Excel Spreadsheet provided. Pricing can be provided for only one Property Grouping or a combination of Property Groupings.

The fees provided should take into consideration that the Agreement will be for a minimum three-year period. SPA will increase all fees payable to successful tenderers at the rate of 3% per annum above the base rate provided.

Note: SPA reserves the right to make amendments to the property list at any time which may or may not impact upon the total fee payable to the successful tenderer.

Signed: _____

Dated: _____

**SUFFICIENT INFORMATION IS TO BE PROVIDED TO ENABLE ASSESSMENT BY THE
AUTHORITY**

SCHEDULE 11: VALUE ADD SERVICES

(no more than 1 page)

Describe the value added services, relevant to the Authority that the Tenderer proposes to offer together with the Services.

If these services are additional costs, please provide information that will assist in SPA in determining whether or not this represents value for money.

Signed: _____

Dated:

VALUATIONS FOR ASSET REPORTING PURPOSES AND RENTAL VALUATIONS

GROUP 1: SYDNEY CBD AND METROPOLITAN AREA

COST TO UNDERTAKE VALUATIONS FOR EXISTING PORTFOLIO (FIXED PRICE CONTRACT)

Agency Name	Building Name	Street Address	Locality Name	Approx *Gross Office Area / NLA	Comment	Full speaking valuation report (\$)	Statement of value (\$)	Asset Valuation (\$)	Rental Valuation (\$)
Commerce, Department of (OPW&S)		236 Richmond Rd	Doonside	1317					
Community Services, Department of		357 Glebe Point Rd	Glebe	3321					
Juvenile Justice, Department of		26 Gidley St	St Marys	1477					
Juvenile Justice, Department of		211 Stephen St	Blacktown	890					
Juvenile Justice, Department of		7 Speed St	Liverpool	250					
Juvenile Justice, Department of		22 Middleton St	Stanmore	366					
State Emergency Service		7-9 Hornsby Street	Hornsby	815					
State Emergency Service		3/7 St James Pl	Seven Hills	521					
Corrective Services, Department of		3 Civic Place	Katoomba	171					
Community Services, Department of		180 Katoomba St	Katoomba	448					
Heritage NSW		3 Marist Place	Parramatta	1325					
Attorney General's Department	Parramatta Justice Precinct	O'Connell Street	Parramatta	20,028	Multiple buildings.				
Lands, Department of (Crown Lands)	Dept of Lands Building	23-33 Bridge Street	Sydney	6010					
Various	GOB Penrith	2 Station Street	Penrith	8238					
Attorney General's Department	Chief Secretary's Building	122 Macquarie Street	Sydney	5000					
Department of Education	Education Building	35-39 Bridge Street	Sydney	14,063					
Various	GOB Blacktown	22 Main Street	Blacktown	7,335					
Various	Bligh House	4-6 Bligh Street	Sydney	10,156					
Commerce, Department of (OPW&S)	McKell	2-24 Rawson Place	Sydney	26,340	Instructions to the valuer will be adjusted to take into account the current tenancy arrangement. i.e. net rent				
TOTALS FOR GROUP						\$0	\$0	\$0	\$0

Tenderers are not required to provide costs for each individual property as the tender will be awarded on a group by group basis. Totals for each group must be provided.

VARIATIONS TO EXISTING PORTFOLIO

Cost to provide additional valuation reports for up to 10 properties

TYPE OF VALUATION	COST PER PROPERTY
Full Speaking Valuation Report	
Statement of Value	
Asset Proforma	
Rental Valuation	

Cost to provide extra valuations outside of the existing portfolio on an hourly basis

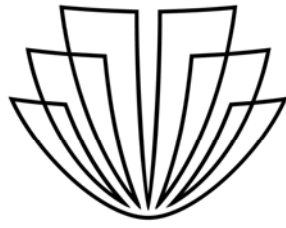
POSITION	HOURLY RATE (CBD)	HOURLY RATE (METRO)	HOURLY RATE (COUNTRY)
Director			
Associate Director			
Senior Valuer			
Surveyor			
Junior Valuer			
Administration			

Tenderers also need to advise SPA the manner in which the existing contract will be amended if the number of properties varies:	
Plus 10 properties	
Minus 5 properties	

NOTES:

- * Tenderers should note that where the number of properties is reduced by up to 5 properties, there will be no change in the fixed price.
- * All fees must include GST and disbursements
- * Successful tenderers may be required to undertake valuations on finance leases, assets classified as 'private financed projects' and emerging assets in accordance with State Property Authority's valuation policy.
- * Successful tenderers may be awarded the rental component and/or capital component (includes full speaking val, statement of val and asset pro-forma template) depending on quotes received.
- * Please note that if your valuation firm is quoting for capital valuations, you will be required to also segment assets annually.
- * The list of properties is subject to change throughout the duration of the Contract.

The list of properties is fixed for the duration of the contract unless a variation occurs. The fee paid to the successful tenderer will vary from year to year depending on the type of valuation work undertaken.



STATE PROPERTY AUTHORITY

Consultancy Agreement

STATE PROPERTY AUTHORITY

And

{"CONSULTANT"}

THIS DEED dated the day of [200]

BETWEEN **State Property Authority ABN 91 840 597 406** of
Level 9, 4-6 Bligh Street, Sydney in the State of New South Wales
("the Principal")

AND **[insert name of the person required to sign the Deed]** (the
"Consultant ").

RECITALS:

-
- A. The Principal issued the Request for Tender for the provision of the Services.
 - B. The Consultant offered the Tender in response to the Request for Tender.
 - C. The Principal accepted the Tender by way of the Letter of Acceptance.
 - D. The parties agree that the Services will be provided in accordance with the terms and conditions of this Agreement.

Operative Clauses

1 Definitions

Agreement

The contract between the Consultant and the Principal constituted by the Agreement Documents, which supersedes all understandings, representations and communications between the parties related to the subject matter of the Agreement made before this Agreement

Agreement Documents

Agreement Documents include:

- This Agreement;
- Agreement Information;
- The Services;
- Letter of Acceptance and any other documents listed therein.
- The Tender

If there is any inconsistency between any of the above documents, the conditions of this Agreement shall prevail.

Business Day

Any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.

Consultant

The entity named in Item 2 of the Agreement Information and includes the officers, employees, agents and sub-contractors of the Consultant in the relevant context.

Confidential Information

means any information and all other knowledge at any time disclosed (whether in writing or orally) to the Consultant by the Principal, or acquired by the Consultant in performing the Services which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential;
- (c) the Consultant 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;
- (f) any material which relates to the affairs of a third party;

but does not include information which:

- (g) must be disclosed to perform the Services;
- (h) is or becomes public knowledge other than by breach of this Agreement;
- (i) is in the lawful possession of the Consultant without restriction in relation to disclosure before the date of receipt of the information from the Principal or a third party;
- (j) has been developed or acquired by the Consultant independently of the carrying out of the Services;
- (k) is ascertainable through independent enquiries;
- (l) may be or is required to be disclosed pursuant to Memorandum No. 2007-01 Public Disclosure of Information arising from NSW Government Tenders and Contracts dated 8 January 2007, as amended or updated from time to time; or
- (m) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority.

Contract Material

All material brought or required to be brought into existence as part of, or for the purpose of, performing the Services, including but not limited to documents, equipment, information and data stored by any means.

Fee

The fee described in Clause 5.

GST, TAX INVOICE, TAXABLE SUPPLY

Have the meanings given to these terms in the GST Law.

GST Law

Means *A New Tax System (Goods and Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation.

Intellectual Property

All rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets, and all other rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Letter of Acceptance

A letter from the Principal to the Consultant accepting the Consultant's Tender for the Services.

Material

Includes, but is not limited to, software, documentation, information or data, whether or not in material form;

Moral Rights

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

Principal

The entity named in Item 1 of the Agreement Information.

Request for Tender

The Request for Tender dated.... And entitled "Request for Tender in respect of Formation of a panel for Property Valuation Services RFT No.0900488" issued by the Authority for the Services.

Services

The services to be provided under this Agreement by the Consultant as described in The Services.

2 Engagement

- .1 The Principal engages the Consultant in the capacity set out in Item 3 of the Agreement Information to perform the Services, and the Consultant accepts the engagement and undertakes to perform the Services, on the terms set out in this Agreement.

3 Consultant's obligations

Professional Standard of Care

- .1 The Consultant must perform the Services diligently and to that standard of care and skill to be expected of a consultant who regularly acts in the capacity in which the Consultant is engaged and who possesses the knowledge, skill and experience of a consultant qualified to act in that capacity.

Knowledge of Requirements of the Principal

- .2 The Consultant must use all reasonable efforts to inform itself of the requirements of the Principal and must regularly liaise, consult and meet with the Principal during the performance of the Services.

Personnel

- .3 The Consultant must:
 - .1 ensure that all personnel engaged by it in connection with the Services are appropriately qualified, competent and experienced in the provision of the type of services required by the Principal;
 - .2 engage persons named by the Consultant and agreed by the Principal to carry out the Services (or any of them) nominated.
- .4 The Consultant's responsibility for the performance of the Services and for the work and performance of its personnel is not altered in any way by Clause 3.3 or by anything done in accordance with Clause 3.3.

Discrepancies In Information

- .5 If the Consultant considers that information, documents and other particulars made available to it are inadequate or contain errors or ambiguities, the Consultant must give written notice as soon as practicable to the Principal detailing the errors or ambiguities.

Program or Plan

- .6 The Consultant must, by the time specified in Item 4 of the Agreement Information, submit to the Principal a program or plan for the performance and completion of the Services within the time specified in Item 5 of the Agreement Information.

Timely Provision of Services

- .7 The Consultant must perform the Services expeditiously and in accordance with the program.

Change of Scope or Timing

- .8 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the scope or timing of the Services, the Consultant must give written notice to the Principal detailing the circumstances and extent or likely extent of the change or delay and whether the Consultant will be proposing a variation in accordance with Clause 6.

Alterations to Approved Documents

- .9 The Consultant must not make any substantial alteration to, addition to or omission from the plans, drawings, layouts, designs, specifications or other material previously approved, without the prior written approval of the Principal.

Principal's Materials

- .10 The Consultant must protect and keep safe and secure all Materials provided by the Principal to the Consultant.
- .11 Upon discharge of this Agreement by performance or termination, the Consultant must promptly return to the Principal those Materials.

Co-operation by the Consultant

- .12 The Consultant must liaise, co-operate and confer with others as directed by the Principal.

Obtain All Necessary Approvals

- .13 The Consultant must obtain all approvals, authorities, licences and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Services, except where obtained by the Principal as set out in Item 6 of the Agreement Information.

Consultant's Relationship with the Principal

- .14 The Consultant must not act outside the scope of the authority conferred on it by this Agreement and must not bind the Principal in any way or hold itself out as having any authority to do so, except where authorised by this Agreement.

Confidentiality

- .15 The Consultant:
- .1 must not disclose any Confidential Information to any person without the prior written consent of the Principal; and
 - .2 must take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use and access.
- .16 The Consultant agrees to use the Confidential Information solely for the purposes of the Services and for no other purpose.
- .17 Notwithstanding Clause .15.1, the Consultant may disclose Confidential Information to its officers, employees and permitted sub-contractors ("permitted recipient") where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- .18 Before disclosing the Confidential Information to a permitted recipient, the Consultant will ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that he, she or it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement. The Principal may, at its sole discretion and at any time, require the Consultant to arrange for a permitted recipient to execute a confidentiality deed in the form attached to this Agreement relating to the non-disclosure and use of the Confidential Information and the Consultant will promptly arrange for such deed to be executed and provided to the Principal.
- .19 The Confidential Information must not be copied or reproduced by the Consultant and/or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required to accomplish the purpose for which the Confidential Information was provided pursuant to this Agreement.
- .20 If any person, being any partner, officer, agent, consultant, sub-contractor or employee of the Consultant, who has had access to the Confidential Information in accordance with this Agreement leaves the service or employ of the Consultant then the Consultant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Consultant, would be a breach of the obligations of the Consultant under this Agreement.

Consultant's Representative

- .21 The person named in Item 7 of the Agreement Information will be responsible on behalf of the Consultant for all aspects of the Services and has the legal power to bind the Consultant in respect of any matters arising in connection with the Services. Any substituted representative must be notified promptly in writing to the Principal.

Additional Services

- .22 The Consultant may, at its own cost, obtain advice, services or assistance from others in connection with the Services, but will not be reimbursed those costs unless those costs are listed in the Agreement Information and the Consultant has obtained the prior written consent of the Principal to incur them.

Subcontracting and Assignment

- .23 The Consultant must not assign or subcontract any part of the Services without the prior written approval of the Principal, which approval may be given or withheld in the Principal's absolute discretion.
- .24 An approval given by the Principal permitting the Consultant to subcontract any portion of the Services does not relieve the Consultant from its obligations and liabilities pursuant to this Agreement.
- .25 Without limiting the generality of Clause .23, notwithstanding any consent given by the Principal, the Consultant will be responsible for ensuring the suitability of any sub-contractor for the work proposed to be carried out and for ensuring that the work proposed to be carried out by the sub-contractor meets the requirements of this Agreement.
- .26 The Consultant agrees and acknowledges that it will be liable to the Principal for any negligent, wilful or reckless acts, defaults or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the negligent, wilful or reckless acts, defaults or omissions of the Consultant or the employees or agents of the Consultant.
- .27 Prior to any sub-contractor or any employee or agent of the sub-contractor commencing work in respect of the Services, the Consultant will, if requested by the Principal, obtain from that person, and provide to the Principal, a written assignment from the person to the Principal of the Intellectual Property created as a result of the person performing that work.
- .28 The Consultant will ensure that a sub-contractor is aware of all the terms and conditions of the Agreement relevant to the sub-contractor's part in the performance of the Agreement.

Statutory Requirements

- .29 The Consultant must:
- .1 ensure that all work done in connection with the Services complies with the requirements of all applicable laws, regulations, codes and the requirement of any authority and all relevant Australian standards applicable to the Services; and
 - .2 not do anything that would cause the Principal to breach its obligations under any such legislation.
- .30 The Consultant must hold all necessary approvals, licences and permits required to provide the Services and otherwise fulfil its obligations under this Agreement.

Conflict of Interest

- .31 The Consultant warrants that it has no conflict of interest at the date of this Agreement.
- .32 The Consultant must immediately notify the Principal in writing upon becoming aware of the existence, or possibility, of a conflict of interest, including of any actual or perceived conflict of interest of an employee or sub-contractor.
- .33 On receipt of the notice in Clause .32, the Principal may:
- .1 approve the Consultant continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict; or
 - .2 where in the Principal's reasonable view the conflict of interest cannot be appropriately managed, exercise its rights of termination under this Agreement.

Security of Premises

- .34 The Consultant must comply with all directions, procedures and policies relating to occupational health, safety and security pertaining to the Principal's premises and facilities, when using them.

Access to Consultant's Premises

- .35 The Consultant must, upon reasonable notice, permit the Principal access to the Consultant's premises in order for the Principal to inspect, discuss and assess anything in connection with the Services.

Insurances

- .36 The Consultant must provide the Principal with proof of all insurance required to be maintained by the Consultant under this Agreement in clause 9.

4 Principal's obligations

Provide Information

- .1 The Principal will as soon as practicable, or as required by this Agreement, make available to the Consultant all relevant instructions, information, documentation or data or any other material required for the performance of the Services.
- .2 The Consultant agrees and acknowledges that the Principal's provision of information and assistance in accordance with Clause .1 is by way of assistance only and cannot in any way be deemed to give rise to a duty of care on the part of the Principal. The Consultant must rely on its own professional and personal expertise in providing the Services.

Appoint a Representative

- .3 The person named in Item 8 of the Agreement Information, or any other person the Principal nominates in writing, will act as the Principal's Representative and will have authority to act on behalf of the Principal for all purposes in connection with this Agreement.

5 Payment

Payment

- .1 In consideration of the provision of the Services the Principal will pay the Consultant the Fee calculated in the manner provided in Item 9 of the Agreement Information, subject to the conditions of this Agreement.

Right of Set-Off

- .2 The Principal may deduct from amounts otherwise payable to the Consultant any amount due from the Consultant to the Principal in connection with the Services.

Effect of Payment of the Fee

- .3 Payment, in part or in total, of the Fee set out in Item 9 of the Agreement Information does not constitute an acceptance by the Principal of the Services and does not amount to a waiver of any right or action which the Principal may have at any time against the Consultant.

Reimbursable Expenses

- .4 The Principal will reimburse the Consultant the reasonable costs, expenses, fees or charges incurred by the Consultant limited to those items set out in Item 10 of the Agreement Information, provided that in all cases the Consultant has first obtained the Principal's prior written approval to incur or pay those costs, expenses, fees or charges.

Timing of Payment

- .5 At the times specified in Item 11 of the Agreement Information, and upon Termination pursuant to Clause 11, the Consultant must lodge with the Principal a payment claim for the Services performed (and for approved reimbursable expenses, if any, incurred) during that period.
- .6 Within 10 Business Days after receipt of the Consultant's payment claim, the Principal will provide to the Consultant a payment schedule identifying the payment claim to which it relates and stating the payment, if any, which the Principal will be making. Reasons will be given if the amount is less than that claimed.
- .7 The Principal will pay the Consultant the amount due within 20 Business Days after receiving the Consultant's payment claim.
- .8 Payment by the Principal will be made by Electronic Funds Transfer to a bank, building society or credit union account nominated by the Consultant. No payment will be due to the Consultant until details of the nominated account (name of financial institution, account name and account number) are notified in writing to the Principal. The Consultant shall promptly notify the Principal in writing of any change to the nominated account but the Principal will not be responsible for any payments made into a previously nominated account prior to notification of such change being received by the Principal.

Conditions Precedent

- .9 The Consultant will not be entitled to a payment in response to a payment claim for the Services performed under this Agreement until it has submitted:
 - .1 the program in accordance with Clause 3.6;
 - .2 proof of insurance in accordance with Clause 3.36; and
 - .3 a signed and completed 'Subcontractor's Statement regarding Workers Compensation, Pay-roll Tax and Remuneration' (Subcontractor's Statement). For the purposes of the Subcontractor's Statement the Consultant may be both a 'subcontractor' (to the Principal) and a 'principal contractor' (to the Consultant's subconsultants). The form may be downloaded from the Office of State Revenue website at:
<http://www.osr.nsw.gov.au/lib/doc/forms/opt011.pdf>; and
 - .4 a Workers Compensation Insurance Certificate of Currency.

Pay as You Go

- .10 If the Consultant does not quote its ABN in its Tender or on its claims or invoices, or otherwise advise the Principal of its ABN relating to the service, the Principal will withhold tax from payments in accordance with the *A New Tax System (Pay As You Go) Act 1999* (Cwlth).

GST

- .11 Each party warrants that at the time any Taxable Supplies are made under this Agreement, that party is or will be registered under the GST Law.
- .12 The Consultant's right to payment under this Agreement is subject to a valid Tax Invoice being delivered to the Authority prior to the date on which the payment is to be made.
- .13 If a party makes a Taxable Supply to the other party under this contract the recipient of the Taxable Supply must pay (at the same time and in the same manner as the price is due to be paid) the amount of any GST payable in respect of the Taxable Supply.

6 Variations

Proposed Variation

- .1 The Principal may instruct variations in writing and the Consultant must comply with these instructions.
- .2 The Consultant must take all reasonable steps to minimise the effects of variation work on the time to complete the Services.
- .3 Unless the Principal instructs the Consultant to proceed, the Consultant must not begin to carry out a variation until the parties have resolved price and time implications (including delay costs) by agreement or determination under Clause 12.
- .4 When requested by the Principal, the Consultant must within the time specified in the request, advise the Principal of its price (including any delay costs) for a proposed variation and its effect on the time to complete the Services, or on any other matter specified in the request.
- .5 If the parties agree that a variation applies they must endeavour to agree in writing on its price and effect on the time to complete the Services. Failing agreement on price or time, or that a variation applies, the provisions of Clause 12 apply.
- .6 The Fee must be adjusted to account for the price of a variation.
- .7 If the Consultant considers that a variation applies but the Principal has not instructed a variation, the Consultant must make its claim for a variation within 5 Business Days from the start of the event giving rise to the variation, or from the time when the event should have become known to the Consultant with reasonable diligence on its part.
- .8 Variations instructed by the Principal must be generally consistent with or of a similar nature to the type of work included in the Services.

Valuation

- .9 Unless otherwise agreed, the price of a variation will be determined using the hourly rates set out in the Proposal, where included. If the Proposal does not include hourly rates relevant to the variation, reasonable rates and prices apply.

7 Copyright and Intellectual Property

Vesting

- .1 Subject to Clause 7.2, title to and Intellectual Property in or in relation to Contract Material (other than the Contract Material listed in Item 13 of the Agreement Information) vests upon its creation in the Principal. The Consultant must, upon request by the Principal, do all things necessary to vest that title or that Intellectual Property in the Principal.
- .2 If title to Intellectual Property in or in relation to Contract Material is not capable of being vested in the Principal under Clause 7.1 because the Consultant itself does not own that Intellectual Property, the Consultant must ensure that the Principal is irrevocably licensed (whether by sub-licence from the Consultant or direct licence from the owner) to use that Contract Material or Intellectual Property.
- .3 The Consultant indemnifies the Principal against any claims, actions, and loss or damage arising out of any infringement or alleged infringement of Intellectual Property rights (including Moral Rights) by the Consultant, its officers, employees, agents or subcontractors in connection with the performance of the Services or the use by the Principal of the Contract Material for any purpose reasonably contemplated under the Agreement.

Delivery

- .4 On, or as soon as practicable after, the expiration or earlier termination of this Agreement, the Consultant must deliver to the Principal all Contract Material.

Limitations

- .5 The Consultant must ensure the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement unless it has obtained the prior written approval of the Principal to do otherwise. While the Principal will not unreasonably withhold approval, it may attach any terms and conditions it considers appropriate.

8 Warranties, Indemnity and Release

- .1 The Consultant warrants that all personnel engaged in the performance of the Services are appropriately qualified, competent and experienced.
- .2 The Consultant warrants that it will not, in carrying out the Services, infringe or breach or permit or suffer to be infringed or breached any Intellectual Property rights of any third party.
- .3 The Consultant warrants and undertakes that all work done in connection with the Services will comply and conform with all applicable legislation and any regulations, by laws, ordinances, or orders made under such legislation as well as any applicable codes of conduct, policies, guidelines, quality assurance standards and all relevant Australian standards applicable to the Services.
- .4 The Consultant must indemnify and keep indemnified the Principal and its officers, employees and agents ("those indemnified"), from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses (including reasonable legal costs and expenses), which may be brought against, made upon, or suffered or incurred by any of those indemnified arising directly or indirectly as a result of or in connection with:
 - .1 the provision of the Services to the extent that the same is due to a negligent, wilful or reckless act, default or omission of the Consultant or any of its officers, employees, agents and/or sub-contractors; and/or
 - .2 any act or omission of the Consultant or any of its officers, employees, agents and/or sub-contractors resulting in personal injury to or the death of any person, or the loss of or damage to property,

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

- .5 The Consultant's liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

9 Insurance

Professional Indemnity Insurance

- .1 The Consultant must have insurance covering liability for errors in provision of the Services. The insurance must be with an insurer approved by the Principal (which approval will not be unreasonably withheld) and provide coverage for an amount not less than the amount shown in Item 14 of the Agreement Information.

Workers' Compensation

- .2 The Consultant must ensure that an insurance policy is effected prior to commencing performance of the Services and remains current for the duration of this Agreement, covering liability for death of or injury to persons employed by the Consultant and related liability as required or under the *Workers' Compensation Act 1987* (NSW).

Public Liability

- .3 The Consultant must obtain and maintain a public liability policy of insurance to cover loss or damage to property or injury or death to persons arising out of or in connection with carrying out the Services.

- .4 The policy must be:
 - .1 with an insurer and under conditions approved by the Principal (which approval will not be unreasonably withheld);
 - .2 obtained prior to commencing the carrying out of the Services;
 - .3 maintained for the duration of the Agreement; and
 - .4 for an amount not less than that stated in Item 15 of the Agreement Information in respect of any single occurrence.
- .5 The policy must cover the Consultant, the Principal, the Principal's Representative and all subconsultants employed from time to time for or in relation to the Agreement and the Services for their respective rights and interests and cover their liabilities to third parties.
- .6 The policy must also provide that:
 - .1 in so far as the policy covers more than one insured party, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured party;
 - .2 the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured party;
 - .3 failure by any insured party to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured parties;
 - .4 any non-disclosure by one insured party does not prejudice the right of any other insured party to claim on the policy; and
 - .5 a notice to the insurer by one insured party will be deemed to be notice by all insured parties.

10 Inspection of records

Records

- .1 The Consultant must:
 - .1 keep proper accounts, records (including information stored by computer and other devices) and time sheets in accordance with accounting principles generally applied in commercial practice in respect of its time charge billing, its reimbursable expenditure and fees and reimbursements payable to others engaged pursuant to this Agreement and retain the same for a period of seven (7) years; and
 - .2 keep the operational records and project data relating to the provision of the Services securely and in a form and manner as to facilitate access and inspection under this clause and retain the same for a period of 2 years.

Access

- .2 The Consultant must, within a reasonable time of any request, give the Principal access to, or verified copies of, any information which may be reasonably required to enable any claim to be substantiated and verified.

11 Termination

Termination by the Principal other than for Default by the Consultant

- .1 The Principal may terminate the whole or any part of the performance of the Services at any time, by written notice addressed to the Consultant.
- .2 The Consultant must, after receipt of a notice under this Clause:
 - .1 cease work on the terminated Services within the time specified in the notice; and
 - .2 comply with any reasonable directions given by the Principal in relation to performance of the Agreement.

- .3 As soon as practicable after ceasing work under Clause 11.2, the Consultant must lodge with the Principal a statement of the amount of the Fee (and any approved reimbursable expenses) claimed by the Consultant to be payable for Services performed to the earlier of:

- .1 the date of cessation of the terminated Services; and
- .2 the date by which the Consultant was required to cease work on those Services.

The statement must be accompanied by supporting information as reasonably required by the Principal.

Termination by the Principal for Default by the Consultant

- .4 If the Consultant:

- .1 becomes bankrupt, or insolvent, or enters into a scheme or arrangement with its creditors;
- .2 fails to carry out the Services with due diligence and competence;
- .3 without reasonable cause suspends the carrying out of the Services; or
- .4 commits a material breach of this Agreement, which is not capable of remedy in the opinion of the Principal,
- .5 fails to remedy a material breach, which in the Principal's opinion is capable of being remedied,;
- .6 is the subject of proceedings or investigations commenced or threatened by the Independent Commission Against Corruption, the police services or similar public body,;

the Principal may:

- .7 in the case of the default specified in Clause 11.4.1, 11.4.4 and 11.4.6, forthwith terminate this Agreement by written notice addressed to the Consultant; and
- .8 in the case of any other specified default, terminate this Agreement by written notice addressed to the Consultant if the Consultant fails to remedy the default within 7 days from the date of service of a notice by the Principal on the Consultant specifying the relevant default.

- .5 If the Principal terminates this Agreement for cause the Principal may:

- .1 contract with any other person to complete the provision of Services;
- .2 deduct any loss or damages arising from or in connection with the termination (which may be as ascertained and certified by the Principal) from any money due, or which may become due, to the Consultant (whether under this Agreement or otherwise); and/or
- .3 recover in an appropriate court the balance of any outstanding loss or damage remaining unpaid as a debt due and payable by the Consultant to the Principal.

For the purposes of the termination provisions in the Agreement, the Consultant acknowledges that a series of minor breaches may constitute a "material breach".

Termination by the Consultant

- .6 If the Principal fails to pay the Consultant any amount in accordance with this Agreement which is not in dispute, or commits a fundamental breach of the Agreement, the Consultant may give notice requiring the Principal to remedy the default within 10 Business Days after receiving the notice.
- .7 If the Principal fails to remedy the default, or fails to propose steps reasonably acceptable to the Consultant to do so, the Consultant may issue a notice terminating the Agreement.
- .8 The Principal must pay the amounts prescribed in the clause "Adjustment of the Fee on Termination".

Consultant's Continuing Liability

- .9 Termination by the Principal or Consultant or completion of the Services will not release the Consultant from liability in respect of any breach, or non-performance, of any obligation pursuant to this Agreement.

Effect of Termination

- .10 Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.

Adjustment of the Fee on Termination

- .11 If any of the Services are terminated pursuant to Clause 11.1, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant to the date of termination and a further amount calculated in the manner set out in Item 16 of the Agreement Information, as adjusted by any additions or deductions in accordance with this Agreement in full and final satisfaction of any claim the Consultant has or may have.
- .12 If this Agreement is terminated pursuant to Clause 11.4, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant to the date of termination, together with any adjustments and deductions for loss or damage suffered, or reasonably likely to be suffered by the Principal as a consequence of breach by the Consultant. The Principal may recover any short-fall from the Consultant as a debt due and payable.
- .13 If this Agreement is terminated pursuant to Clause 11.6, the Principal will pay the Consultant a reasonable amount for the Services performed by the Consultant to the date of termination together with the amount calculated in the manner set out in Item 16 of the Agreement Information in full and final satisfaction of any claim the Consultant has or may have.

12 Dispute resolution

Nomination

- .1 The Consultant and the Principal will endeavour to resolve any dispute speedily by negotiation within 14 days. If a dispute between the Consultant and the Principal is not resolved by negotiation, then before either party has recourse to litigation, the party must submit the dispute to expert determination. If the Consultant and the Principal do not agree upon an independent expert ("Expert"), either may request the Chief Executive Officer of the Australian Commercial Disputes Centre to nominate an Expert.

Submissions

- .2 Within 7 days of acceptance by the Expert of the appointment, the claimant will submit in writing to the Expert the claim and all the evidence which the claimant wishes the Expert to take into account. Within 14 days thereafter the other party will submit in writing to the Expert that party's response to the claim, particulars of any counterclaim and all the evidence which that party wishes the Expert to take into account.

Procedure

- .3 Copies of documents sent to the Expert must be sent to the other party at the same time. The Expert may meet with the parties jointly but not separately and may ask questions of the parties which must be answered orally or in writing as requested by the Expert.

Determination

- .4 As soon as possible the Expert must give the parties the Expert's determination in writing as to:
 - .1 the respective rights and entitlements of the parties, and
 - .2 the amount or service if any which the Expert considers is due from one party to the other.

- .5 The determination of the Expert shall be made as an Expert and not as an Arbitrator and shall be final and binding on the parties except where the Expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out work, in excess of \$100,000. Such determination shall not be final and binding, provided either party gives notice to the other party of its dissatisfaction within 28 days of the determination being given.

Liability

- .6 The Expert will not be liable to the parties for negligence in the conduct of the determination.

Costs

- .7 The Principal and the Consultant will be jointly and severally liable to the Expert for the fees of the Expert. As between themselves, the Principal and the Consultant will each bear half the Expert's fee and each will bear their own costs of the determination.

Continuing Performance

- .8 Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

13 Notices

- .1 Any notice given under this Agreement:
- .1 must be in writing addressed to the intended recipient at the address shown in Item 17 of the Agreement Information or the address last notified by the intended recipient to the sender;
 - .2 must be signed by an authorised officer of the sender; and
 - .3 will be taken to have been given or made (in the case of delivery in person or by fax, cable or post) when delivered, received or left at the specified address.
- .2 If delivery or receipt of a notice occurs on a day on which business is not generally carried on in the place to which the communication is sent or later than 4.00 pm (local time), it will be taken to have occurred at the commencement of business on the next Business Day in that place.

14 Communication

- .1 The parties agree and consent that notices and communications may be by electronic communication in accordance with the *Electronic Transactions Act 2000* (NSW).

Agreement Information

Item

1 The Principal

The Principal is:

Mentioned in clause 1
the State Property Authority (SPA)

2 The Consultant

The Consultant is:

Mentioned in clause 1

3 Capacity in which the Consultant is engaged

The capacity in which the Consultant is engaged:

Mentioned in clause 2
Valuation expert

4 Time by which Consultant must provide program or plan

The time by which Consultant must provide program or plan to Principal is:

Mentioned in clause 3.6

5 Time to complete the Services

The time to complete the Services is:
(Refer to **The Services**)

Mentioned in clause 3.6

6 Approvals obtained by Principal

Approvals obtained by Principal:

Mentioned in clause 3.13

7 Consultant's Representative

The Consultant's Representative is:

Mentioned in clause 3.21

8 Principal's Representative

The Principal's Representative is:

Mentioned in clause 4.3

9 The Fee.

The Fee is:

Mentioned in clause 5.1

10 Reimbursable Expenses

Reimbursable Expenses:

Mentioned in clause 5.4

11 Claim timetable

Claim timetable:

Mentioned in clause 5.5

12 Payment timetable

Mentioned in clauses 5.6, 5.7 and 5.8

Payment timetable:

13 Intellectual property

Mentioned in clause 7.1

Intellectual property not vesting in the Principal:

14 Professional indemnity insurance

Mentioned in clause 9.1

Quantum of professional indemnity insurance:

\$5,000,000 for capital valuations and minimum of \$1,000,000 for disposals and acquisitions

15 Public liability insurance

Mentioned in clause 9..4

Quantum of public liability insurance:

\$20,000,000 for capital valuations and minimum \$10,000,000 for valuations for disposals and acquisitions

16 Percentage on termination

Mentioned in clauses 11.12 and 11.13

Percentage on termination

Nil

17 Notices

Mentioned in clause 13

Notices to the Principal

For notices to the Principal the intended recipient is the Principal's Representative:

Office address:

(for delivery by hand)

»Level 1 Bligh House
»4-6 Bligh Street
»Sydney
»

Postal address:

(for delivery by post)

»GPO Box 5341
»Sydney 2000
»
»

Facsimile number

»02 9338

E-mail address

»

Notices to the Consultant

For notices to the Consultant the intended recipient is the Consultant's Representative:

Office address:

(for delivery by hand)

Postal address:

(for delivery by post)

Facsimile number

E-mail address

The Services

Agreement name:

Confidentiality and Privacy Deed

Agreement name:

CONFIDENTIALITY AND PRIVACY DEED

(Clause 3.18)

THIS DEED dated the day of [200]

BETWEEN State Property Authority ABN [insert ABN] of [insert address] ("the Principal")

AND [insert name of the person required to sign the Deed] (the "Recipient").

RECITALS:

- A. The Recipient is an officer, employee, agent or sub-contractor of the Consultant.
- B. The Consultant has entered into the Consultancy Agreement with the Principal.
- C. In the course of the Recipient performing certain services for the Principal (whether directly or indirectly) pursuant to the Consultancy Agreement, the Recipient will have access to and may become aware of Confidential Information belonging to or in the possession of the Principal.
- D. Improper use or disclosure of the Confidential Information could damage the Principal's ability to perform its governmental/statutory functions and could result in irreparable harm to the Principal.
- E. The Recipient gives the undertakings contained in this Deed to, and for the benefit of the Principal on the terms and conditions herein contained.

OPERATIVE PROVISIONS

1. DEFINITIONS & INTERPRETATION

1.1 Unless specified in Clause 1.2 of this Deed, capitalised terms have the meaning given to them in the Consultancy Agreement.

1.2 In this Deed including the Recitals, unless the context otherwise requires:

“Confidential Information” means any information and all other knowledge at any time disclosed (whether in writing or orally) to the Recipient by the Principal or the Consultant or acquired by the Recipient in the course of the Recipient performing certain services for the Principal (whether directly or indirectly) pursuant to the Consultancy Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or
- (c) the Recipient 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;
- (f) any material which relates to the affairs of a third party;

but does not include information which:

- (g) is or becomes public knowledge other than by breach of this Deed;
- (h) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt from the Principal or the Consultant, as the case may be; or
- (i) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority;

“Consultancy Agreement” means the Consultancy Agreement between the Principal and the Consultant dated *[insert date]* for the provision of *[insert short description of the Project/Consultancy Services]*;

“Express Purpose” means *[complete as appropriate. The nature of the services to be performed by the Recipient should be specifically identified]*; and

1.3 Except where the context otherwise requires:

- (a) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;

- (b) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Deed or any part of it;
- (c) the headings and index in this Deed are for convenience only and do not affect the interpretation of this Deed;
- (d) words importing a gender include any other gender;
- (b) persons will be taken to include any natural or legal person; and
- (f) where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

2. CONFIDENTIAL INFORMATION

- 2.1 The Recipient must keep the Confidential Information in confidence and must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 2.2 The Principal may grant or withhold its consent in its absolute and unfettered discretion and may impose conditions on that consent, as the Principal sees fit. If the Principal grants consent subject to conditions, the Recipient must comply with those conditions.
- 2.3 Without limiting the generality of Clause 2.1, the Principal may require that the Recipient procures the execution of a deed by the person to whom the Recipient proposes to disclose the Confidential Information, on terms substantially similar to the terms of this Deed.
- 2.4 The Recipient:
 - (a) may use the Confidential Information for the Express Purpose only and must not use the Confidential Information for any other purpose;
 - (b) must not copy or reproduce the Confidential Information without the prior approval of the Principal;
 - (c) must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information; and
 - (d) must comply with any direction of the Principal regarding the safekeeping and storage of Confidential Information.
- 2.5
 - (a) Immediately upon request, the Recipient must deliver to the Principal all documents and any material in the possession or control of the Recipient containing Confidential Information.
 - (b) If the Principal makes a demand for the return of documents or any material containing Confidential Information, and the Recipient is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Recipient must provide full details of where the documents containing the Confidential Information are, and the identity of the person in whose custody or control they lie.
 - (c) A reference to “documents” or “materials” in this Clause 2.5 includes material in any form of storage of information, whether visible to the eye or not.

3. CONFLICT OF INTEREST

- 3.1 The Recipient warrants that before entering into this Deed it has disclosed to the Principal all the past, current and anticipated interests of the Recipient which may conflict with or restrict the Recipient in performing the services referred to in Recital "C" for the Principal fairly and independently.
- 3.2 The Recipient shall not during the course of performing The Services, engage in any activity or obtain any interest likely to conflict with or restrict the Recipient in providing services to the Principal fairly and independently and shall immediately disclose to the Principal such activity or interest.

6. SURVIVAL

- 6.1 This Deed will survive termination of the services referred to in Recital 'C' and the expiry or termination of Consultancy Agreement.

7. NOTICES

- 7.1 A notice under this Deed must be in writing and forwarded to the address, facsimile number or the email address of the intended recipient as specified below or the address last notified by the intended recipient to the sender:

The Recipient's contact name and address:

Name:

Address:

Facsimile:

Email:

Telephone:

Mobile:

The Principal's contact name and address:

Name:

Address:

Facsimile:

Email:

Telephone:

Mobile:

- 7.2 A notice under this Deed will be deemed to be served:
- (a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery;
 - (b) in the case of delivery by post - within three business days of posting;
 - (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - (d) in the case of delivery by email, on receipt of confirmation by the recipient that the recipient has received the email.
- 7.3 Notwithstanding Clause 7.2, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

8. GENERAL

- 8.1 This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.
- 8.2 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 8.3 No failure or delay by the Principal in exercising any right, power or remedy in relation to this Deed and no course of dealing or grant by the Principal to the Recipient of any time or other consideration, will operate as a waiver of the breach or a default by the Recipient. Any waiver by the Principal of a breach of this Deed will not be construed as a waiver of any further breach of the same or any other provision.
- 8.4 All amendments to this Deed must be in writing, signed by both parties and executed in the form of a deed.
- 8.5 All consents, approvals and waivers given under this Deed must be writing.
- 8.6 This Deed is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 8.7 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales and the courts of appeal therefrom.

EXECUTED AS A DEED

Execution by the Principal:

SIGNED, SEALED AND DELIVERED on behalf of)
State Property Authority by **[insert name of**)
person signing on the Principal's behalf] as)
delegate not so as to incur any personal liability in)
the presence of:

.....
Signature of Witness

.....
Print Name of Witness

.....
[Delegate]

Execution by the Consultant:

SIGNED, SEALED AND DELIVERED by **[insert**)
name of Consultant] on behalf of **[insert**)
name of Consultant]:

.....
Signature of Director/Secretary

.....
Print name of Director/Secretary

.....
Signature of Director

.....
Print name of Director