

# ***Summary File ONLY***

**PLEASE BE AWARE THAT  
THIS PDF FILE  
CANNOT BE PRINTED**

**IT IS BROWSABLE ON-SCREEN ONLY AND IS PROVIDED  
FOR YOUR INFORMATION TO DECIDE WHETHER TO  
BECOME A PROSPECTIVE TENDERER ONLY**

Note: This file may contain a brief scope statement, or an extract from the RFT documents, or a full exhibited copy – depending on the specific circumstances.

To participate in this tender process you **MUST** first download or order a full copy of the Request for Tender (RFT) documents, including the responsible components, and any addenda issued to date.

To do this return to the RFT web page on this web site and copy the RFT documents to your own computer or network – the blue “**DOWNLOAD A SOFT COPY**” link at the bottom provides access to the page from which you can do this.



**NSW Procurement is a Business Unit of the NSW Department of Commerce**

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

## **PART A REQUEST FOR TENDER 0600938**

### **ACTUARIAL, FINANCIAL MANAGEMENT AND INFORMATION SERVICES FOR THE WORKCOVER AUTHORITY OF NEW SOUTH WALES**

Period: Three (3) years with the option to extend for two (2) further periods each of up to one (1) year in duration

**Tender Issue Date: 31 July 2006**

**Closing Date: WEDNESDAY, 13 SEPTEMBER, 2006**

**Closing Time: 9:30 am, Sydney Time**

*Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus four (4) copies of the tender. Tenders are to be marked “Original”, “Copy 1”, “Copy 2”, “Copy 3” and “Copy 4” accordingly.*

*Prospective Tenderers should note that some information required to submit a tender is considered confidential and will be provided to prospective tenderers on a restricted basis only. Refer Part A, clause 3.2 for more information.*

Non-Refundable Hard Copy Document Fee \$110 (includes GST). Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>. Payment for a hard copy is to be made by either a cheque drawn in favour of the NSW Department of Commerce or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted.

This publication is available on request via email in large print and/or on computer disk for people with a disability. To obtain copies of this publication in either of these formats, please contact the Contact Officer identified in this RFT.

Other formats, such as Braille and audio (cassette tape), will be considered on a case-by-case basis.

© State of New South Wales – NSW Procurement, 2004.

# *Actuarial, Financial Management and Information Services for the WorkCover Authority of NSW*

---

## TABLE OF CONTENTS

<b>PART A</b>	<b><u>THE REQUIREMENT AND CONDITIONS OF TENDER</u></b>	<b>4</b>
<b>1.</b>	<b>DEFINITIONS OF TERMS USED IN PART A</b>	<b>4</b>
<b>2.</b>	<b>OUTLINE DESCRIPTION OF THE REQUIREMENT</b>	<b>5</b>
2.1	Background.....	5
2.2	Request for Tender.....	7
2.3	Scope of Services.....	7
2.4	Tender Process .....	9
<b>3.</b>	<b>SUMMARY INFORMATION FOR TENDERERS</b>	<b>9</b>
3.1	Structure of Request for Tender .....	9
3.2	Restricted Information (Confidential Documents).....	9
3.3	Contact Officer.....	10
3.4	Nature and Term of Contract Agreement.....	10
3.5	Eligibility to Tender .....	10
<b>4.</b>	<b>PREPARATION OF TENDER - GENERAL</b>	<b>11</b>
4.1	Conformity of Tenders .....	11
4.2	General Instructions for Completion of Tenders.....	11
4.3	Addenda to this RFT before Close of Tenders.....	12
4.4	Pre-Tender Briefing .....	12
4.5	Individual Briefing Sessions.....	12
<b>5.</b>	<b>PREPARATION OF TENDER – SERVICE FEE SCHEDULE</b>	<b>13</b>
5.1	Fee Schedule.....	13
5.2	Calculating the Tender Price .....	13
5.3	Price Basis.....	13
5.4	Minimum Tender Validity Period.....	14
<b>6.</b>	<b>PREPARATION OF TENDER – POLICY REQUIREMENTS</b>	<b>14</b>
6.1	Procurement Policy – Introduction.....	14
6.2	Code of Practice for Procurement .....	14
6.3	Occupational Health and Safety .....	14
<b>7.</b>	<b>SUBMISSION OF TENDERS</b>	<b>15</b>
7.1	General Instructions for Submission of Tenders .....	15

7.2	Late Tenders.....	16
7.3	Extension of the Closing Date and Time .....	17
<b>8.</b>	<b>EVALUATION OF TENDERS</b>	<b>17</b>
8.1	General .....	17
8.2	Selection Criteria .....	17
8.3	Variation of Tenders .....	19
8.4	Exchange of Information Between Government Agencies.....	19
8.5	Corrupt or Unethical Conduct.....	20
<b>9.</b>	<b>OUTCOMES</b>	<b>20</b>
9.1	Negotiations Before Determination of Outcome.....	20
9.2	Acceptance or Rejection of Tenders .....	20
9.3	Discontinuance of the Tender Process .....	20
9.4	Post Tender Negotiations in the Event all Tenders Are Rejected .....	21
9.6	Complaints.....	21
9.7	Disclosure of Information Concerning Successful and Unsuccessful Tenders .....	21
9.8	Ownership of Tenders .....	21

## **ANNEXURE A TO PART A      DEED OF CONFIDENTIALITY**

## **PART A THE REQUIREMENT AND CONDITIONS OF TENDER**

### **1. DEFINITIONS OF TERMS USED IN PART A**

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

**“1987 Act”** means the *Workers Compensation Act 1987*.

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

**“Addendum”** means an addendum or addition to this Request for Tender (RFT) made by the Board before the Closing Date and Time.

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

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

**“Closing Date and Time”** means the Closing Date and Time for receipt of Tenders, specified on the cover sheet to this RFT.

**“Code”** means the NSW Government Code of Practice for Procurement, as amended from time to time.

**“Conforming Tender”** means a Tender that:

- (a) conforms to the Requirement;
- (b) substantially conforms to the terms and conditions contained in Part B; and
- (c) substantially conforms to all of the other stated requirements of this RFT.

**“Contract Agreement”** means the Contract Agreement concluded between the Principal and the Contractor and includes:

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

**“Contractor”** means the organisation or individual who by the Contract Agreement undertakes to provide the Service required by the Contract Agreement and, where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners as the case may be and the expression shall also include any person to whom the benefit may be assigned by the Contractor with the consent of the Principal.

**“Date of Acceptance”** means the date that the tenderer is notified that their offer has been accepted by the Board.

**“Late Tender”** means a Tender received after the Closing Date and Time for tenders and includes a Tender which is only partly received by the Closing Date and Time.

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

**“Non-Conforming Tender”** means a Tender that:

- (a) does not conform to the Requirement;
- (b) is not in the prescribed form;
- (c) does not substantially conform to any one or more of the terms of the Contract Agreement in Part B, including a Tender which seeks to qualify or amend these terms; or
- (d) does not conform to any of the other stated requirements of this RFT.

**“NSW”** means the state of New South Wales

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

**“OHS”** means Occupational Health and Safety.

**“Principal”** means the WorkCover Authority of NSW, and includes a reference to WorkCover NSW acting on behalf of the Nominal Insurer under section 154C of the 1987 Act.

**“Requirement”** means the detailed description of the required Services to be met by the tenderer and detailed in Part C2 (Specification of Services) of the RFT.

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

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

**“Tender Price”** means, in respect of each Service offered, the price nominated in the Service Fees Schedule at Part C for that Service.

**“WorkCover NSW”** means the WorkCover Authority of New South Wales as constituted by the 1998 Act.

**“Workers Compensation System”** means the Scheme and other arrangements as described in clause 2.1.7 of this Part A.

## 2. OUTLINE DESCRIPTION OF THE REQUIREMENT

### 2.1 Background

- 2.1.1 WorkCover NSW is a statutory corporation, representing the Crown, constituted by section 14 of the 1998 Act.
- 2.1.2 WorkCover NSW administers the operation of the NSW workers compensation system, which provides statutory workers compensation insurance for employers and workers of NSW. Specifically, WorkCover NSW is responsible for setting premium rates, monitoring and reviewing benefit levels, and maintaining the overall viability of the workers compensation system.
- 2.1.3 The principal Acts relating to the NSW workers compensation system are the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998.
- 2.1.4 The Workers Compensation Nominal Insurer is a statutory legal entity established under section 154A of the 1987 Act. The Workers Compensation Nominal Insurer is a licensed insurer under the workers compensation legislation and issues policies of workers compensation insurance and deals with claims under those policies as insurer.

- 2.1.5 WorkCover NSW acts on behalf of the Workers Compensation Nominal Insurer under section 154C of the 1987 Act. The Nominal Insurer appoints agents to exercise its insurance functions.
- 2.1.6 The current contracts for actuarial, financial management and information services are due to expire on 31 October 2006. It is the intention of WorkCover NSW, however, to seek an extension to that Term and it is envisaged that Services provided under the new contract agreement are likely to commence on 1 January 2007.
- 2.1.7 The NSW workers compensation system consists of:
- (a) the NSW workers compensation scheme;
  - (b) self-insurers under Division 5 of Part 7 of the 1987 Act;
  - (c) specialised insurers under Division 3 of Part 7 of the 1987 Act;
  - (d) Government employers covered by the Government's managed fund scheme, as referred to in section 211B of the 1987 Act; and
- the statutory funds listed in clause 2.1.9.
- 2.1.8 The NSW workers compensation scheme, which forms part of the NSW workers compensation system, incorporates the following statutory fund:
- (a) the Workers Compensation Insurance Fund.
- 2.1.9 The other statutory funds within the NSW workers compensation system are:
- (a) the Uninsured Liability and Indemnity Scheme;
  - (b) the Insurers Guarantee Fund;
  - (c) the Bush Fire Fighters Compensation Fund;
  - (d) the Emergency and Rescue Workers Compensation Fund;
  - (e) the Workers Compensation (Dust Diseases) Fund; and
  - (f) the NSW Sporting Injuries Insurance Scheme.
- 2.1.10 The Workers Compensation Insurance Fund is established under section 154D of the 1987 Act. The assets of the Fund consist of premiums received by the Nominal Insurer for insurance policies issued under the 1987 Act, other amounts of money received in connection with insurance policies, and income derived from the investment of assets of the Fund. Money is paid out of the Fund to meet claims under policies of workers compensation insurance and for other specified reasons. The assets of the Fund are held on trust. The Nominal Insurer manages the operation of the Fund, including investment of its assets, subject to the investment policies determined by the Investment Board.
- 2.1.11 The Uninsured Liability and Indemnity Scheme is the scheme administered by WorkCover NSW and constituted under section 139 of the 1987 Act. The scheme meets the cost of claims not initially paid by uninsured employers.
- 2.1.12 The Insurers Guarantee Fund is established under section 227 of the 1987 Act. The Fund finances the payment of claims and ongoing benefits that arise when a licensed insurer goes into liquidation. Contributions from insurers and distributions from liquidators are applied to meet the claims costs and administrative expenses of the Fund.
- 2.1.13 The Bush Fire Fighters Compensation Fund is constituted under section 19 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*. The Fund is financed by an annual contribution from the NSW Rural Fire Service through NSW Treasury and is applied to compensate volunteer bush fire fighters for personal injury and damage to their personal effects and equipment.

- 2.1.14 The Emergency and Rescue Workers Compensation Fund is constituted under section 31 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*. The Fund is financed by NSW Treasury by an appropriation from Parliament and is applied to compensate emergency service, lifesavers and rescue workers for personal injury.
- 2.1.15 The Workers Compensation (Dust Diseases) Fund is constituted under section 6 of the *Workers Compensation (Dust Diseases) Act 1942*. The Fund is administered by the Workers Compensation (Dust Diseases) Board under that Act. Contributions from insurers finance the Fund, which is applied to compensate workers with dust diseases within the meaning of that Act, dependants of those workers, and for other specified purposes.
- 2.1.16 The NSW Sporting Injuries Insurance Scheme comprises both the main scheme established by the Sporting Injuries Insurance Act 1978 and the supplementary scheme established in 1984 and funded by the NSW Government. The Sporting Injuries Fund (main scheme) is established by the Sporting Injuries Committee under section 11 of the *Sporting Injuries Insurance Act 1978*. The Fund provides serious injury compensation for members of sporting organisations that are members of the Fund. It is funded by premiums paid by member organisations.
- 2.1.17 WorkCover NSW's annual usage rate for the period 1 July 2005 to 30 June 2006 for Additional Services and/or ad-hoc work was 5978 hours. It should be noted that due to the difference in structure between the current contract and any future arrangements, WorkCover NSW is unable to provide details of the potential allocation of hours between the proposed Primary and Secondary Contractor roles. Future usage would need to consider industry conditions, related reforms, WorkCover NSW's in-house capabilities and other factors which may be present from time to time.

## **2.2 Request for Tender**

- 2.2.1 WorkCover NSW requires actuarial, financial management and information services to assist in the administration of the NSW workers compensation system.
- 2.2.2 The Workers Compensation Nominal Insurer requires a Scheme Actuary to calculate remuneration payable to scheme agents and perform other services related to scheme agents' remuneration.
- 2.2.3 This Request For Tender seeks submissions from suitably experienced and capable organisations interested in providing actuarial, financial management and information services to WorkCover NSW and the Nominal Insurer. The specific services comprising WorkCover NSW's and the Nominal Insurer's Requirements are detailed in the Specification of Service in Part C2.

## **2.3 Scope of Services**

- 2.3.1 WorkCover NSW seeks two (2) providers of actuarial, financial management and information services as follows:
- (a) an "Actuarial, Financial Management and Information Services Primary Contractor" (Primary Contractor); and
  - (b) an "Actuarial, Financial Management and Information Services Secondary Contractor" (Secondary Contractor).



2.3.2 The role of the Primary Contractor is set out in detail in Part C2. It incorporates:

- **Actuarial Services.** Responsibility for undertaking valuations, assessing performance related fees for Scheme Agents, budget projections and other actuarial services in respect of the Scheme, and peer review of the valuations of the other Workers Compensation System funds. The Primary Contractor will also be required to provide advice and supporting reports to assist in the determination of queries or disputes that may arise from time to time on matters relating to Scheme Agent remuneration arrangements.
- **Financial Management Services.** Responsibility for providing financial management, insurance and related consultancy services, assisting in policy development and related matters for WorkCover NSW.
- **Information Services.** Assist WorkCover NSW with the maintenance and improvement of the WorkCover NSW Corporate Data Repository and the development of standard and ad-hoc reports for WorkCover NSW. The Primary Contractor will also be required to provide ongoing assistance in the specification and testing of changes; development of any additional reports; and in resolving data quality and consistency problems in relation to the WorkCover NSW Corporate Data Repository. Additionally, the Primary Contractor will be required to provide ongoing assistance in the training and education of WorkCover NSW staff, and supporting WorkCover NSW to build in-house capability and skills.

2.3.3 In its absolute discretion WorkCover NSW may decide to award any work to the Primary Contractor, to the Secondary Contractor, to another contractor or to put it out to the market by way of a competitive process.

2.3.4 The role of the Secondary Contractor is set out in detail in Part C2. It incorporates:

- **Actuarial Services.** Responsibility for undertaking valuations, premium setting, budget projections and other actuarial services in respect of the Workers Compensation System, and peer review of the valuation of the Scheme.
- **Financial Management Services.** Responsibility for providing financial management, insurance and related consultancy services, assisting in policy development and related matters for WorkCover NSW.
- **Information Services.** Assist WorkCover NSW with the maintenance and improvement of the WorkCover NSW Corporate Data Repository and the development of standard and ad-hoc reports for WorkCover NSW. The Secondary Contractor will also be required to provide ongoing assistance in the specification and testing of changes; development of any additional reports; and in resolving data quality and consistency problems in relation to the WorkCover NSW Corporate Data Repository. Additionally, the Secondary Contractor will be required to provide ongoing assistance in the training and education of WorkCover NSW staff, and supporting WorkCover NSW to build in-house capability and skills.

2.3.5 In its absolute discretion WorkCover NSW may decide to award any work to the Secondary Contractor, to the Primary Contractor, to another contractor or to put it out to the market by way of a competitive process.

2.3.6 Tenderers may bid for one or both Contractor roles but will not be awarded more than one Contractor role.

2.3.7 The Dust Diseases Board may utilise the Services of the Actuaries appointed under any resultant Contract Agreement but reserves the right to determine which Actuary will be the Primary and Secondary Contractor for its requirements only.

- 2.3.8 WorkCover NSW and the Dust Diseases Board reserves the right at all times, to request other providers not included in any resultant Contract Agreement to provide services including those included in any resultant Contract Agreement.

## **2.4 Tender Process**

- 2.4.1 The Board is responsible for the conduct of the tender process, assisted by Department of Commerce (NSW Procurement).

## **3. SUMMARY INFORMATION FOR TENDERERS**

### **3.1 Structure of Request for Tender**

- 3.1.1 This RFT is made up of Parts A, B and C. If Tenderers wish to submit a tender they must submit Part C in its entirety. Tenderers may retain Parts A & B and a copy of Part C. The tenderer's response to Part C forms the Tender. The Tender is to be referenced in accordance with Part C.
- 3.1.2 The Tender must be completed in accordance with the instructions in this Part A and Part C.

### **3.2 Restricted Information (Confidential Documents)**

- 3.2.1 Confidential documents containing background information and reports form part of this tender – Attachments B, C, D, E, F, G, H, I, J and K to the Specification of Services at Part C2.
- 3.2.2 Subject to the prospective tenderer meeting the following criteria, these documents will be made available for collection from NSW Department of Commerce offices on the day following the open tender briefing. Authorised representatives should ensure their availability for collection of the documents on that day.
- 3.2.3 The tenderer shall submit the following documentation to Department of Commerce (NSW Procurement):
- An executed copy of the Confidentiality Deed at Annexure A to Part A of this RFT, including details of the person authorised to collect the confidential information on behalf of the prospective tenderer;
  - Details of a mobile phone contact number of the authorised representative; and
  - A short summation of the prospective tenderers experience and capabilities sufficient to demonstrate a true interest in, and likelihood of, tendering.
- 3.2.4 The documents listed at clause 3.2.3 above shall be submitted to Cherie Knowles at the conclusion of the Open Pre-Tender Briefing.
- 3.2.5 The Tender Evaluation Committee (TEC) shall review the prospective Tenderer's application for receipt of Confidential Documents.
- 3.2.6 Confidential Documents will be made available to prospective Tenderers who are determined by the TEC to be bona-fide Tenderers on the day following the open tender briefing.
- 3.2.7 Where the TEC requires additional information to assess the bona-fides of a prospective Tenderer, contact will be made with the prospective Tenderer in relation to such information.
- 3.2.8 Where the application for Confidential Documents is denied, the applicant will be advised.
- 3.2.9 The Confidential Documents nominated at clause 3.2.1 shall be provided in either hardcopy or softcopy format to the prospective tenderer's authorised representative as nominated in the Confidentiality Deed, subject to the authorised representative providing photo identification.

- 3.2.10 Confidential documents nominated at clause 3.2.1 shall only be provided to prospective tenderers that meet the conditions set out in clause 3.2 above. Confidential documents will not be provided to subcontractors.

### **3.3 Contact Officer**

- 3.3.1 Requests for information or advice regarding this RFT should be directed to:

For All Enquiries

Name: Cherie Knowles

Phone: (02) 9501 5875

Fax: (02) 9372 7799

Email: All email enquiries are to be forwarded to:

[mark.vanepen@commerce.nsw.gov.au](mailto:mark.vanepen@commerce.nsw.gov.au)

and copied (cc'd) to: [cmkprocurement@optusnet.com.au](mailto:cmkprocurement@optusnet.com.au)

- 3.3.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer. Restricted Information, however, will only be provided to those tenderers that meet the conditions of Part A, clause 3.2.

### **3.4 Nature and Term of Contract Agreement**

- 3.4.1 The Requirement is to be met by way of a Contract Agreement to perform the Services between the Principal and the successful tenderer(s) on the terms and conditions set out in Part B.
- 3.4.2 The Contract Agreement Term will be for a three (3) year period, and may be extended by two (2) further periods each of up to one (1) year in duration. Any such extension will be at the sole discretion of the Principal, will be in writing and will be in accordance with the terms and conditions of the Contract Agreement.
- 3.4.3 For operational purposes, WorkCover NSW has a preference for any Contract Agreement to conclude on 31 March. Such preference may be taken into consideration when determining the period of any optional extension exercised.

### **3.5 Eligibility to Tender**

- 3.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Principal will only contract with the relevant legal entity or entities.
- 3.5.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from trustees are permitted this may include a copy of the relevant trust deed. Any evidence that is requested may not be considered if it is not provided within 3 working days of the request.
- 3.5.3 The Board may submit any financial information provided by the Tenderer for independent financial assessment of the Tenderer's business. If the Board judges the tenderer's financial position to be marginal, it reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank or parent company guarantee, or an unconditional performance bond.
- 3.5.4 The Board reserves the right to reject any tender if it judges the tenderer not to have appropriate or adequate financial assets.
- 3.5.5 The Principal will not enter into a Contract Agreement with an organisation that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their Tender.

- 3.5.6 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into a Contract Agreement with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender.
- 3.5.7 The Principal Actuary must be a Fellow of the Institute of Actuaries of Australia.
- 3.5.8 Tenderers must have received the Restricted Information (Confidential Documents) as stipulated in Clause 3.2 to be eligible to tender.

#### **4. PREPARATION OF TENDER - GENERAL**

##### **4.1 Conformity of Tenders**

- 4.1.1 The Board seeks substantially Conforming Tenders.
- 4.1.2 Tenderers that do not provide pricing in the required format may be excluded from the tender process without further consideration at the Board's discretion.
- 4.1.3 Tenderers are to state in Part C of their Tender whether their tender complies with the conditions of contract in Part B. A statement of compliance will be final and any conditions of contract agreed to will not be subject to negotiation should the tender be successful.
- 4.1.4 Tenders that do not include a fully completed response to Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or, in the case of electronic tenders, which cannot be effectively evaluated because the file is submitted in an unacceptable format or has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.
- 4.1.5 The Board will consider Alternative Tenders, provided the Alternative Tender meets the scope and functional intent expressed in the RFT. Where such an Alternative Tender is proposed, a detailed description of the alternative must be submitted, stating clearly the manner in which it does not conform to the requirements of the RFT.
- 4.1.6 The Board may assess an Alternative Tender against the selection criteria.
- 4.1.7 An Alternative Tender must be clearly marked "Alternative Tender".
- 4.1.8 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
  - (1) Any Alternative Tender or part of an Alternative Tender, which meets the scope and functional intent expressed in the RFT; and
  - (2) Any other Non-Conforming Tender or part of a Non-Conforming Tender that, in the Board's opinion, is substantially a Conforming Tender.

##### **4.2 General Instructions for Completion of Tenders**

- 4.2.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 4.2.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 4.2.3 Tenderers must respond to all of Part C of this RFT, as directed.
- 4.2.4 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

- 4.2.5 A Tenderer must satisfy itself that the Tender, including the Tender Price, is correct and that it is financially and practically viable for it to enter into and perform the proposed Contract Agreement.

#### **4.3 Addenda to this RFT before Close of Tenders**

- 4.3.1 A tenderer may ask the Contact Officer for clarification of anything in the RFT before the Closing Date and Time. The Board may issue any instruction resulting from such request in writing to all tenderers in the form of an Addendum.
- 4.3.2 If for any other reason the Board requires the RFT to be amended an Addendum will be issued.
- 4.3.3 In each case, an Addendum becomes part of the RFT.
- 4.3.4 It is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a Tender has already been submitted. They must obtain a copy of all addenda and confirm in Part C that all addenda have been obtained and taken into consideration.

#### **4.4 Pre-Tender Briefing**

- 4.4.1 An open pre-tender briefing session for prospective tenderers will be held at 11.30am to 1.30pm on Wednesday 9 August 2006 at the following location:

WorkCover Authority of New South Wales  
Meeting Rooms 3A and 3B  
Level 3  
60 – 70 Elizabeth Street  
Sydney NSW 2000.

This briefing session will enable prospective tenderers to obtain further information, in order that they may gain a thorough understanding of the services required by the Principal.

- 4.4.2 Prospective tenderers wishing to attend the open briefing session are to contact Cherie Knowles on (02) 9501 5875 or email [cmkprocurement@optusnet.com.au](mailto:cmkprocurement@optusnet.com.au) by 4.00pm on Tuesday 8 August 2006 advising details of the organisation and its personnel attending.

#### **4.5 Individual Briefing Sessions**

- 4.5.1 Tenderers may request a one on one briefing session with WorkCover NSW.
- 4.5.2 Individual briefing sessions will be held at:

WorkCover Authority of New South Wales  
Meeting Room 3A  
Level 3  
60 – 70 Elizabeth Street  
Sydney NSW 2000.

- 4.5.3 The following dates and times have been allocated for individual briefing sessions:

Date	Time	Time	Time	Time
15 August 2006	9.00am to 10.30am	11.00am to 12.30pm	1.00pm to 2.30pm	3.00pm to 4.30pm
16 August 2006			1.00pm to 2.30pm	3.00pm to 4.30pm
17 August 2006	9.00am to 10.30am	11.00am to 12.30pm		

- 4.5.4 Organisations seeking an individual briefing should contact Cherie Knowles on (02) 9501 5875 or email [cmkprocurement@optusnet.com.au](mailto:cmkprocurement@optusnet.com.au) to book their individual briefing session and advise details of the tenderer's representatives attending. Tenderers should nominate no more than four representatives for the individual briefing.
- 4.5.5 Subject to a tenderer meeting the conditions of Part A, clause 3.2, information provided to a tenderer at individual briefings will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer.

## **5. PREPARATION OF TENDER – SERVICE FEE SCHEDULE**

### **5.1 Fee Schedule**

- 5.1.1 Tenderers must complete the Service Fee Schedule at Part C1.

### **5.2 Calculating the Tender Price**

#### **5.2.1 General**

- 5.2.1.1 The Tendered Hourly Rates and Maximum Fee must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the Contract Agreement including out-of-pocket expenses and disbursements incurred by it in providing the Services, including but not limited to photocopying, account keeping/processing or management fees, facsimile and telephone charges, travel, accommodation, meals and parking;
- (c) include Goods and Services Tax (GST) if it is payable;
- (d) include all other applicable taxes (except GST), duties and charges at the rates applicable at the Closing Date and Time for Tenders; and
- (e) include all costs associated with the preparation and submission of the Tender.

- 5.2.1.2 Within each category tenderers must tender the same hourly rates for each level of staff across all Services including Maximum Fee Services. Any discounts offered are to be reflected in the tendered hourly rate and applied across all Services within a category. Discounts offered solely in relation to a Maximum Fee will not be considered for evaluation purposes.

- 5.2.1.3 For specific Services nominated as Maximum Fee Services, as details in Part C Clause 2, tenderers are also required to tender a Maximum Fee.

- 5.2.1.4 Tenderers who do not provide pricing in the required format may be excluded from the tender process without further consideration at the Board's discretion.

- 5.2.1.5 Tenderers are to note that the Principal reserves the right during the Term of the Contract Agreement to request Maximum Fees for any Service.

### **5.3 Price Basis**

- 5.3.1 Subject to the conditions of clause 9 of Part B, tenderers are invited to submit prices for the Services which are either:
- (a) FIRM during the Term of the Contract Agreement including any optional extension periods; or

- (b) FIRM for the first year of the Contract Agreement, then subject to annual adjustment, in accordance with the provisions of clause 2.11 of Part C, including any optional extension period.

5.3.2 Tenderers are to nominate in clause 2.11 of Part C the price basis of the tender.

5.3.3 Where variation to tendered prices is nominated, the maximum nominated increases and additional administrative costs which may be incurred shall be taken into consideration in the evaluation of tenders.

#### **5.4 Minimum Tender Validity Period**

5.4.1 Tenders must remain open for acceptance for a period of at least six (6) months from the Closing Date and Time for Tenders. Tenderers must state in their response to Part C if their Tender will remain open for any longer period.

### **6. PREPARATION OF TENDER – POLICY REQUIREMENTS**

#### **6.1 Procurement Policy – Introduction**

6.1.1 Tenderers should read the main policy documents listed below. Other relevant policies and particular policy objectives to be implemented through this procurement are drawn to tenderers' attention in this cl.6. Their requirements are reflected in the selection criteria listed in cl.8.2 and in the responses required from tenderers in Part C.

- (a) Government Procurement Policy  
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>
- (b) Government Code of Practice for Procurement:  
[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

#### **6.2 Code of Practice for Procurement**

6.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement. The ability of a tenderer to demonstrate compliance with the Code is an essential condition of all Tenders.

6.2.2 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 contract agreement that may be awarded.

6.2.3 If a tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its tender or any subsequent tender and may result in this or any subsequent tender being passed over without prejudice to any other rights or action or remedies available to the Board.

#### **6.3 Occupational Health and Safety**

6.3.1 Tenderers must comply with the applicable requirements of the following Acts and instruments in the performance of any Contract Agreement awarded:

- (a) The *Occupational Health and Safety Act 2000* (NSW);
- (b) The Occupational Health and Safety Regulation 2001 and any other regulation made under that Act; and
- (c) Any relevant Codes of Practice made under that Act.

6.3.2 Tenderers must ensure that the tenderer's sub-contractors will comply with the OHS requirements listed in clause 6.3.1 in the performance of any contract agreement awarded.

6.3.3 Tenderers must indicate compliance with OHS&R requirements in their response to Part C.

## **7. SUBMISSION OF TENDERS**

### **7.1 General Instructions for Submission of Tenders**

7.1.1 A Tender must be received by the Closing Date and Time.

7.1.2 A Tender may be submitted by any of the following methods:

(a) by delivery into McKell Tender Box:

(1) It must be marked:

Tender Box,  
'RFT 0600938'  
Level 3, McKell Building (Ground Floor)  
2-24 Rawson Place  
Sydney

(c) by facsimile to Tender Box: (02) 9372 8974;

(d) by electronic lodgement to Tender Box through the NSW Department of Commerce, eTendering website at: <https://tenders.nsw.gov.au/commerce>

7.1.3 A tenderer must not change pre-existing text in the RFT other than to insert the required information.

7.1.4 If a tenderer intends to submit a Tender electronically through the NSW Department of Commerce eTendering website, the tenderer must follow the instructions contained in the "Tenderer's Guide to Using eTenders" and "How to lodge a Response" found in the downloadable version of the RFT at <https://tenders.nsw.gov.au/commerce/>.

7.1.5 If a tenderer intends to submit a Tender electronically through the NSW Department of Commerce eTendering website or by facsimile, the following must be considered:

(a) The facsimile machine and NSW Department of Commerce eTendering website are at peak use on the morning when Tenders close.

1) Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Time than at other times.

2) When lodging by facsimile or through the NSW Department of Commerce eTendering website, it is recommended that a Tender be lodged well in advance of the Closing Date and Time.

3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce eTendering website is appropriate.

(b) The facsimile machine and the NSW Department of Commerce eTendering website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce eTendering website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to the instructions contained in "How to lodge a Response" found in the downloadable version of the RFT at



<https://tenders.nsw.gov.au/commerce/>, as to compressing electronically submitted Tenders.

- 1) In order to comply with the above paragraph, an electronic Tender may be supported by documents in hard copy or on CD-ROM.
- 2) Supporting documents, to be submitted in hard copy or on CD-ROM, may be specified as required throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates, and company brochures.
- 3) If submitting an electronic tender with supporting documents:
  - (a) The complete Tender, including the supporting documents, must be submitted by Closing Date and Time; and
  - (b) Supporting documents should be clearly designated as “Supporting Documents to RFT 0600938”.

- 7.1.6 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the Department of Commerce eTendering website. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000 (NSW)*, and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.
- 7.1.7 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown on the Department of Commerce eTendering website.
- 7.1.8 An electronically lodged tender must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 97, or any format required by the RFT. Any CAD files submitted with an electronically lodged Tender must be in DWF, DWG or DXF format. A tenderer must ensure that any CAD files submitted will correctly display and print in Microstation Version 4.
- 7.1.9. Signatures are not required for a Tender submitted to the Department of Commerce eTendering website. A tenderer, however, must ensure that an electronically lodged Tender is authorised by the person or persons who may do so on behalf of the Tenderer and appropriately identify the person and indicate the person’s approval of the information communicated.
- 7.1.10 If a tenderer experiences any persistent difficulty with the Department of Commerce eTendering website in submitting a Tender or otherwise, it is encouraged to advise the Contact Officer, and to note there are usually alternative Tender lodgement methods described in the RFT.

## **7.2 Late Tenders**

- 7.2.1 Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be compromised.

### **7.3 Extension of the Closing Date and Time**

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

## **8. EVALUATION OF TENDERS**

### **8.1 General**

- 8.1.1 Tenders will be assessed against the selection criteria listed in clause 8.2 below, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 8.1.2 Information supplied by the tenderer in response to Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 8.1.3 As part of the evaluation process, tenderers may be called upon at their own expense to make a presentation of their proposal to the evaluation committee. Presentations will be taken into consideration in the evaluation of tenders.
- 8.1.4 Tenderers should note that their premises, facilities and operations may be inspected during the tender evaluation phase. Reasonable notice will be provided to tenderers of any proposed inspection. Inspections will be carried out between the hours of 9:00 a.m. to 5:00 p.m. Monday to Friday.
- 8.1.5 The evaluation committee may also review and take account of any independent performance assessments available from regulators, other clients or any other source.
- 8.1.6 At the Board's discretion any omitted detail or variation and/or qualification of any requirement may be either evaluated and/or scored in accordance with the tenderers statement (or lack thereof) or clarified by the Board as to the intention of the tenderer.

### **8.2 Selection Criteria**

- 8.2.1 The selection criteria to be used in the evaluation of tenders are outlined below. Tenderers should note that any terms used in the following selection criteria which are defined in Part B shall have the same meaning as in Part B.

- A. Cost considerations
- B. Demonstrated understanding of WorkCover NSW and its requirements including:-
  - i. Demonstrated understanding of WorkCover NSW's role, functions and objectives.
  - ii. Demonstrated understanding of WorkCover NSW's requirements for actuarial, financial management and information services.
  - iii. Demonstrated understanding of the features of various funds and schemes within the NSW Workers Compensation System.
- C. The tenderer's previous experience providing comparable services, including:-
  - i. Demonstrated experience in providing actuarial services in relation to the general insurance industry and or workers' compensation schemes and other areas particularly relevant to WorkCover NSW's requirements.
  - ii. Demonstrated experience in providing reports (actuarial, information, statistical and consultancy reports) and presenting on results to meet WorkCover NSW's needs and in a way which is readily understood by non-technical users.
  - iii. Demonstrated experience and success in building its clients' staff's knowledge and capacity in actuarial, financial management and/or insurance related matters.

- D. Tenderer's ability and capacity to meet the requirements including:-
- i. Resource capability to perform the services including demonstrated knowledge, qualifications, skills, experience, suitability, availability and proposed roles of the personnel proposed to be assigned to the Services, including the designated principal actuary for each tendered Service, and level of staff and corresponding hours offered against each Maximum Fee Service.
  - ii. Capacity to undertake the required valuation and peer review of the WorkCover NSW Scheme Statutory Fund for the year ending 31 December 2006.
  - iii. Demonstrated ability to meet tight deadlines and availability of additional resources to meet peak demands, provide specialist support and meet additional requirements.
  - iv. Possession of and access to modern analytical tools, models and computer technology to undertake actuarial analyses.
  - v. The tenderer's financial capacity and stability.
- E. Suitability of tenderer's proposed methodologies:
- i. Proposed approach and methodology for meeting WorkCover NSW's requirements including how Scheme structural changes will be addressed eg. Premium changes, benefit changes, etc.
  - ii. How the tenderer proposes to manage all aspects of the services including quality management, staff supervision, client management, project planning, liaison with the other Actuarial Contractor, reporting arrangements and control of costs, and details of systems in place to support such management.
  - iii. How the tenderer proposes to add value to the required Services.
  - iv. Appropriate mechanism for avoiding and dealing with conflicts of interests including performance of work on behalf of Scheme Agents.
  - v. Details of how the tenderer proposes to take-over remuneration tools and requirements of Workers Compensation Claims and Policy Services Schedule 3 (Part C2, Specification of Services, Attachment B) and other existing projects to ensure continuity.
- F. Commercial and contractual factors, including:
- i. Degree of Compliance with the terms and conditions of the Contract Agreement.
  - ii. Degree of Compliance with the Specification of Services.
  - iii. Probity and integrity declarations.
  - iv. Demonstrated commitment to and capacity to comply with legislative obligations (including compliance with regulations, codes of practice or other subsidiary instruments) under the following Acts:
    - Occupational Health and Safety Act 2000
    - Workers Compensation Act 1987
    - Workplace Injury Management and Workers Compensation Act 1998
    - Industrial Relations Act 1996.
  - v. Demonstrated commitment to and capacity to comply with:
    - NSW Government Procurement Policy; and
    - NSW Government Code of Practice for Procurement and benefits offered in relation to the Policy.

G. Quality of Referee Reports.

- 8.2.2 Many factors will contribute to the assessment and information supplied in response to the various sections of the tender will contribute in the evaluation against each criterion.

### 8.3 Variation of Tenders

- 8.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may vary its Tender:

- (a) by providing the Board with further information by way of explanation or clarification ("provide an explanation");
- (b) by correcting a mistake or anomaly ("correct a mistake"), or
- (c) by documenting agreed changes to the Tender negotiated under this Part A.

- 8.3.2 Such a variation may be made either:

- (a) at the request of the Board, or
- (b) with the consent of the Board at the request of the tenderer

but only if,

- (c) in the case of variation requested by the tenderer to provide an explanation or correct a mistake, it appears to the Board reasonable in the circumstances to allow the tenderer to provide the explanation or correct the mistake or anomaly, or
- (d) in the case of variation to document agreed changes, the Board has confirmed that the draft documented changes reflect what has been agreed.

- 8.3.3 If a Tender is varied to provide an explanation or correct a mistake, the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.

- 8.3.4 A variation of a Tender will not be permitted if in the Board's view:

- (a) it would substantially alter the original Tender; or
- (b) in the case of variation to provide an explanation or correct a mistake, it would result in the revising or expanding of a Tender in a way which would give a tenderer an unfair advantage over other tenderers.

### 8.4 Exchange of Information Between Government Agencies

- 8.4.1 By tendering for this Contract Agreement, the tenderer authorises the Board and WorkCover NSW to collect, or exchange with other public bodies, information and opinions about the tenderer's performance or financial position (that may identify the tenderer by name) for any purpose related to the performance by the tenderer of NSW public sector contracts. In particular, any such information and opinions about the tenderer may be used in considering whether to offer the tenderer opportunities for NSW public sector work.

- 8.4.2 The tenderer agrees that it will make no claim against the State, the Board, the Principal, its employees, or any other NSW public body in respect of information or opinions about the tenderer collected, exchanged and used for the above-stated purposes. The tenderer may have rights under the *Freedom of Information Act 1989* to access, and to require the correction of, information held by certain agencies.

- 8.4.3 The tenderer agrees that information which may be collected, exchanged and used in accordance with this provision may include "personal information" about the tenderer for the purposes of the Privacy and Personal Information Protection Act 1998. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties in accordance with this clause.

## **8.5 Corrupt or Unethical Conduct**

- 8.5.1 If a tenderer, or any of its officers, employees, agents or subcontractors, is found to have:
- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, WorkCover NSW, or the NSW Government in connection with this RFT or the submitted Tender;
  - (b) engaged in corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988*; or
  - (c) a record (including through an agency report) of unethical behaviour,
- this may result in the Tender not receiving further consideration.
- 8.5.2 The Board is under no obligation to do so, but may in its discretion invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

## **9. OUTCOMES**

### **9.1 Negotiations Before Determination of Outcome**

- 9.1.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct negotiation with preferred tenderers or a preferred tenderer, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

### **9.2 Acceptance or Rejection of Tenders**

- 9.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with this Part A, any Alternative Tender or other Non-Conforming Tender.
- 9.2.2 The Board is not bound to accept the lowest or any Tender.
- 9.2.3 If the Board rejects all the Tenders received it may:
- (a) invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
  - (b) conduct post tender negotiations in accordance with this Part A.

- 9.2.4 The Board will accept a Tender by execution of a formal Contract Agreement. No Tender may be verbally accepted.

### **9.3 Discontinuance of the Tender Process**

- 9.3.1 The Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.
- 9.3.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

#### **9.4 Post Tender Negotiations in the Event all Tenders Are Rejected**

- 9.4.1 If there are no acceptable Tenders the Board may negotiate with the tenderer/s which are closest to conforming with the tender requirements and provide value for money.

#### **9.5 Limit of Liability**

- 9.5.1 To the extent permitted by law the tenderer acknowledges that no claim shall be made against the State of New South Wales and its agencies in connection with the preparation and use of this tender documentation, the evaluation of tenders and/or the administration of the tender and evaluation process.
- 9.5.2 Notwithstanding clause 9.5.1 should a claimant be able to make a claim in relation to the preparation and use of this tender documentation, the evaluation of tenders and/or administration of the tender and evaluation it must do so within 28 days of the occurrence of the event that gave rise to the claim. The tenderer agrees that the aggregate amount of any such claim shall not exceed the costs incurred by the claimant in preparing the material used solely for the tender response or \$10,000.00 whichever is the lesser.

#### **9.6 Complaints**

- 9.6.1 It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the conditions in Part B or the Requirement, it is invited to write to:

State Contracts Control Board  
Level 23, McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

#### **9.7 Disclosure of Information Concerning Successful and Unsuccessful Tenders**

- 9.7.1 In accordance with NSW Government Policy, the Board may publish information relating to the contract agreement awarded under the RFT, including the identity of the successful tenderer, the price payable by the agency and the significant selection criteria used in Tender assessment plus their weightings.
- 9.7.2 Unless the successful tenderer agrees or release is legally required, the Board will not disclose the successful tenderer's financing arrangements, cost structure or profit margins, significant intellectual property or any other information that in the Board's view would put the successful tenderer at a substantial commercial disadvantage.
- 9.7.3 A tenderer may request that the Board not disclose particular information included in its Tender, giving reasons. The Board will consider any such request before disclosure of information under this clause, but the Board's decision is final and at its absolute discretion.
- 9.7.4 The Board 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.
- 9.7.5 For contracts valued over \$150,000, the Board will normally publish the names of tenderers when Tenders close, and the other public information about the contract on the internet, within 90 days after award of the contract. For other contracts the Board will disclose the public information on request.

#### **9.8 Ownership of Tenders**

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

## **ANNEXURE A TO PART A      DEED OF CONFIDENTIALITY**

1. Confidential documents containing background information and reports form part of this tender – Annexures B, C, D, E, F, G, H, I, J, and K to Specification of Services at Part C2.
2. Subject to the prospective tenderer meeting the following criteria, these documents will be made available for collection from NSW Department of Commerce offices on the day following the open tender briefing. Authorised representatives should ensure their availability for collection of the documents on that day.
  - 2.1 The tenderer shall submit the following documentation to Department of Commerce (NSW Procurement):
    - An executed copy of this Confidentiality Deed, including details of the person authorised to collect the confidential information on behalf of the prospective tenderer;
    - Details of a mobile phone contact number of the authorised representative; and
    - A short summation of the prospective tenderers experience and capabilities sufficient to demonstrate a true interest in, and likelihood of, tendering.
  - 2.2 The documents listed at clause 2.1 above shall be submitted to Cherie Knowles at the conclusion of the Open Pre-Tender Briefing.
  - 2.3 The Tender Evaluation Committee (TEC) shall review the prospective Tenderer's application for receipt of Confidential Documents.
  - 2.4 Confidential Documents will be made available to prospective tenderers who are determined by the TEC to be bona-fide tenderers on the day following the open tender briefing.
  - 2.5 Where the TEC requires additional information to assess the bona-fides of a prospective Tenderer, contact will be made with the prospective Tenderer in relation to such information.
  - 2.6 Where the application for Confidential Information is denied, the applicant will be advised.
  - 2.7 The confidential documents nominated at clause 1 shall be provided in either hardcopy or softcopy format to the prospective tenderer's authorised representative as nominated in the Confidentiality Deed, subject to the authorised representative providing photo identification.
3. Confidential documents nominated at clause 1 above shall only be provided to prospective tenderers that meet the conditions of clause 2 above and are assessed by the TEC as being bona-fide prospective tenderers. Confidential documents will not be provided to Subcontractors.

# **DEED OF CONFIDENTIALITY**

**STATE CONTRACTS CONTROL BOARD ON BEHALF OF  
THE WORKCOVER AUTHORITY OF NSW**

**AND**

**[INSERT]**



## TABLE OF CONTENTS

<b>1</b>	<b>INTERPRETATION.....</b>	<b>2</b>
<b>2</b>	<b>CONFIDENTIALITY .....</b>	<b>4</b>
<b>3</b>	<b>CONFLICTS OF INTEREST .....</b>	<b>5</b>
<b>4</b>	<b>COMMENCEMENT .....</b>	<b>6</b>
<b>5</b>	<b>INDEMNITY .....</b>	<b>6</b>
<b>6</b>	<b>LIMIT OF LIABILITY.....</b>	<b>7</b>
<b>7</b>	<b>NOTICES .....</b>	<b>7</b>
<b>8</b>	<b>GENERAL.....</b>	<b>8</b>
	Schedule 1 .....	10
	<b>Signing page.....</b>	<b>11</b>

**Deed****Date****Parties**

Name State Contracts Control Board on behalf of the WorkCover Authority of NSW  
(**Board**)

Address Level 22, McKell Building, 2-24 Rawson Place, Sydney NSW 2000

Fax Number (02) 9372 7799

Contact Cherie Knowles, telephone (02) 9501 5875

Name [insert details]  
(**Recipient**)

Address

Fax Number

Email Address

Contact

**RECITALS**

- A. The Board wishes to engage the services of a number of organisations for the provision of Actuarial, Financial Management and Information Services to WorkCover NSW.
- B. The Board has issued the Request For Tender for the engagement of these organisations.
- C. The Recipient has expressed an interest in receiving the Restricted and Confidential Information forming part of the Request For Tender.
- D. It is a condition that the Recipient execute this Deed of Confidentiality, which sets out the conditions on which it will deal with the Restricted and Confidential Information forming part of the Request For Tender Documentation and Information and how it will conduct itself in the procurement process relating to those services, prior to receiving the Restricted and Confidential Information forming part of the Request For Tender Documentation.

## THE PARTIES AGREE AND DECLARE AS FOLLOWS:

### 1. Interpretation

#### 1.1 Definitions

In this Deed unless the context requires otherwise:

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

- Inviting and accepting tenders;
- Determining the conditions under which tenders are invited or accepted;
- Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of NSW Procurement.

**Business Days** means a day which banks are generally open for normal business in Sydney and excludes Saturdays, Sundays and public holidays.

**Commencement Date** means the date when the Recipient signs this Deed.

**Confidential Information** means any information disclosed in the Request For Tender process or during the procurement process (whether orally or in writing) whether before or after the Commencement Date, that is non-trivial and:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated as confidential;
- (c) the Recipient knows or ought to know is confidential;
- (d) is personal information as defined in the Privacy Act 1988 (Cth), the Privacy and Personal Information Act 1998 (NSW), the Health and Records Information Privacy Act 2002 (NSW) or any other similar form of legislation; or
- (e) is treated by the Board and/or WorkCover NSW as confidential,

but does not include information which:

- (f) is or becomes public knowledge other than by breach of this Deed or other breach of obligation of confidentiality by any person to whom the Confidential Information was disclosed;
- (g) is in the lawful possession of the Recipient without restriction in relation to disclosure before the date of receipt of the Information;
- (h) is created independently of the Disclosing Party's Confidential Information; or
- (i) the Board wishes to disclose to the relevant Minister, Parliament, Committee or other person in accordance with public policy or Law.

**Deed** means this deed dealing with Confidential Information.

**Demand** includes all existing or potential actions, causes or action, suits, rights, claims, expenses, losses, proceedings and demands of any nature, including any claim for damages, costs, interest or indemnity, whenever and however arising, known or unknown.

**Document (or Documentation)** means documentation or material in any form (including in machine readable or other form) and includes reports, specifications, user or technical manuals, designs, plans, spreadsheets, drawings, pictures, or any other marking in any format.

**Information** includes records, Documents, business plans, strategic business initiatives, accounts, technical data and standards, technical advice and trade secrets, service standards, data, instructions, plans specifications, formulae, technology, computer software, designs, drawings, process descriptions, reports, developments, results and customer records, whether in documentary, visual, oral, machine readable or other form.

**Laws** includes:

- (a) any statute, regulation, by-law, ordinance or subordinate legislation in force in Australia, whether made by a State, Territory, Commonwealth, or a local government;
- (b) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued there under;
- (c) common law and the principles of equity;
- (d) any direction issued under any law; and
- (e) any relevant standards or industry codes of conduct (whether mandatory or voluntary in their application).

as applicable from time to time.

**Personnel** means any person, employee, subcontractor, agent or supplier.

**Request For Tender (RFT)** means the document reference number 0600938 issued by the Board.

**Tender** means the tender submitted by the Recipient in answer to the Request For Tender.

**WorkCover NSW** means the WorkCover Authority of New South Wales as constituted by the *Workplace Injury Management and Workers Compensation Act 1998*, and includes the Authority and its officers, employees and agents except where the context requires it to be more narrowly construed.

## 1.2 Interpretation Within the Deed

In this Deed except where the context otherwise requires:

- (a) A reference to this Deed includes any variation, and includes where the Deed has been assigned, novated, or otherwise transferred, in accordance with this Deed;
- (b) A reference to any Law will be deemed to extend to include a reference to all Laws amending, consolidating, replacing or overruling that Law from time to time;
- (c) The singular includes the plural and vice versa;
- (d) A reference to one gender includes every other gender;
- (e) Persons will be taken to include any natural or legal person;
- (f) 'include' 'includes' and 'including' means 'including without limitation';
- (g) "absolute discretion" means absolute and unfettered discretion;
- (h) The headings and index in this Deed are for convenience only and do not affect the interpretation of this Deed;

- (i) In the construction and interpretation of this Deed, no rule of construction applies to the disadvantage of the Board on the basis that the Board initiated or drafted the Deed or any part of it;
- (j) 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 any other person or body in its place, must be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
- (k) If any time limit under this Deed falls on a non-Business Day then that time limit will be deemed to have expired on the next Business Day;
- (l) 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 will have a corresponding meaning;
- (m) Where a reference occurs to the doing of anything by the Board including giving any notice, approval, direction or waiver, this may be done by a duly authorised officer of the Board;
- (n) Where the Recipient is comprised of more than one person, each obligation of the Recipient will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- (o) A reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually.

## **2. Confidentiality**

### **2.1 The Recipient must:**

- (a) hold the Confidential Information in strict confidence;
- (b) use the Confidential Information only for the purpose of preparing and submitting a Tender and subsequent involvement in the procurement process;
- (c) not allow any persons to have unauthorised access to the Confidential Information; and
- (d) not disclose any of the Confidential Information by any means to any person except:
  - (1) in accordance with this Clause 2; or
  - (2) after receiving the written consent or approval of the Board.

### **2.2 The Recipient must not make any use of the Confidential Information or any part of it except for performing its obligations or exercising its rights under this Deed. Prior to disclosing any of the Confidential Information to any third party, except where the Recipient is permitted to disclose the Confidential Information to its advisers in accordance with 2.4, the Recipient must provide written notice to the Board and obtain its approval for the disclosure and use, which may be denied or granted in the Board's absolute discretion.**

### **2.3 The Recipient must:**

- (a) ensure that any person to whom it is authorised to disclose the Confidential Information (including its employees and professional advisers) is aware of the confidential nature of the Confidential Information;
- (b) ensure that any person to whom it is authorised to disclose the Confidential Information holds the Confidential Information in confidence on no less onerous terms than those set out in this Deed; and

- (c) ensure that each person to whom it is authorised to disclose the Confidential Information executes an undertaking in the form specified in Schedule 1.
- 2.4 The Recipient is permitted to disclose the Confidential Information to its legal, financial or other professional and technical advisers, and only to the extent reasonably necessary for the sole purpose of seeking advice from such advisers.
- 2.5 The Recipient must keep a list of all persons to whom the Confidential Information is disclosed and must provide a copy of the list to the Board immediately upon being requested to do so by the Board.

#### **No Transfer of Rights in the Information etc**

- 2.6 The parties agree that nothing in this Deed transfers any rights in the Information, including Confidential Information, to the Recipient.

#### **Protection of Information**

- 2.7 The Recipient must maintain safeguards against the destruction, loss or alteration of the Information or Documents in electronic form or otherwise that:
  - (a) are no less rigorous than the safeguards that can be expected when using the highest insurance industry standard; and
  - (b) comply with all Laws applicable to the Recipient's use and custody of such items.

#### **No Lien**

- 2.8 The Recipient does not have, and must not permit the creation of, any general or particular, security interest or other form of encumbrance over the Board's or WorkCover NSW's property, Information or Documentation whether for the Recipient's benefit or for the benefit of any third party.

#### **On Termination**

- 2.9 The Recipient must, except to the extent approved by the Board in writing, deliver to the Board, or its nominee, within 5 Business Days of request from the Board:
  - (a) all of the Board's and WorkCover NSW's Information, including Confidential Information, and any Document that includes or refers to that Information;
  - (b) the list referred to in 2.5 of persons to whom the Confidential Information has been disclosed; and
  - (c) all copies of (a) above in whatever form.
- 2.10 To the extent that the items in Sub-Clause 2.9 (a) are stored in electronic form, the Recipient must deliver them in an electronic form which is readily accessible to the Board.

### **3. Conflicts of Interest**

- 3.1 The Recipient to whom access to or disclosure of the Information is given pursuant to this Deed represents and warrants that:
  - (a) no actual or perceived conflict of interest exists or is likely to arise while in receipt of the Information; and
  - (b) it will not permit any situation to arise or engage in any activity, which may result in an actual or perceived conflict of interest with the Recipient's receipt of such Information.

- 3.2 Where the Recipient has or may have an actual, potential or apparent conflict of interest, it must notify the Board immediately. The Board may, at its discretion:
- (a) exclude the Recipient and its Tender from further consideration; or
  - (b) impose conditions on the Recipient for the management of the actual, potential or apparent conflict of interest.
- 3.3 If the Recipient is unable or unwilling to comply with the conditions imposed or otherwise resolve the actual, potential or apparent conflict or interest in a manner satisfactory to the Board, the Recipient and its Tender may be removed from further consideration.

#### **4. Commencement**

- 4.1 This Deed shall be taken to have commenced on the date on which the Recipient first received the Information, whether or not that date was before the Commencement Date.

#### **5. Indemnity**

- 5.1 To the maximum extent permitted by Law, the Recipient agrees to indemnify and keep indemnified, the Board, its Personnel, successors and assigns, and the Workers Compensation Nominal Insurer and WorkCover NSW, its Personnel, successors and assigns ("those indemnified") against any Demand incurred or suffered by any of those indemnified where such Demand arises out of or in connection with:
- (a) any breach or alleged breach of any Laws by the Board, WorkCover NSW and/or the Recipient, arising out of or in connection with the Recipient's failure to comply with this Deed; and
  - (b) any breach or alleged breach of this Deed.
- 5.2 The indemnity referred to in Clause 5.1 will be granted whether or not legal proceedings are instituted, and if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- 5.3 Although the Board and/or WorkCover NSW may elect to defend a Demand, the Recipient must if requested by the Board but at the Recipient's expense, conduct the defence of a Demand. The Recipient must follow the Board's and/or WorkCover NSW's directions relating in any way to that defence or to negotiations for settlement of the Demand.
- 5.4 The Board and/or WorkCover NSW must if requested but at the Recipient's expense provide the Recipient with reasonable assistance in conducting the defence of such a Demand.
- 5.5 The Recipient's liability to indemnify those indemnified under this Deed will be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of the Board and/or WorkCover NSW caused or contributed to the liability or loss.

## 6. Limit of Liability

- 6.1 To the extent permitted by law, the Recipient will have no Demand against any or all of the Department of Commerce, the Board, WorkCover NSW or the New South Wales State Government or their agencies with respect to:
- (a) the application of, or failure to apply, the conditions of the Request For Tender; or
  - (b) the exercise of, or failure to exercise, its rights under the conditions of the Request For Tender.
- 6.2 If, despite any other clause in this Deed, the Recipient succeeds in any Demand arising out of or in connection with the Board's involvement in the Request For Tender or the subsequent procurement process, the Recipient, by submitting its Tender, accepts that the aggregate amount of any and all Demands will not exceed \$10,000.

## 7. Notices

- 7.1 A notice, approval, direction, consent, or other communication under this Deed must be in writing and must be either:

- (a) left at the property address of
  - (1) for the Recipient, the property address of the Recipient is:

**[insert address, Tel and Fax details];**

- (2) for the Board, the property address of the Board is:

Level 22, McKell Building, 2-24 Rawson Place, Sydney NSW 2000  
 Telephone Number (02) 9501 5875  
 Fax Number (02) 9372 7799

or

- (b) sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the property address of either party, or
- (c) sent by facsimile machine to the facsimile number of the parties, or if either party notifies another address or facsimile number, then to that address or facsimile number; or
- (d) hand delivered to the contact of that party nominated on Page 1.

Unless a later time is specified in it, a notice, approval, direction, consent, or other communication takes effect from the time it is received.

- 7.2 A notice, approval, direction, consent, or other communication is taken to be received:
- (a) if left at the property address, on the first Business Day after leaving it;
  - (b) if posted, on the second (seventh if posted to or from a place outside Australia) Business Day after posting;
  - (c) if sent by a facsimile machine, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this Clause 7; and
  - (d) if given or served by hand, at the time of delivery.



## **8. General**

### **Writing**

- 8.1 All amendments to this Deed and all consents, approvals, ratifications, waivers, and variations made under or pursuant to this Deed must be in writing.

### **Perfection of Rights**

- 8.2 The Recipient must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Deed.

### **Consents**

- 8.3 A party may give its consent or approval conditionally or unconditionally or may withhold its consent or approval, in its absolute discretion, unless this Deed specifically provides otherwise.

### **Non-waiver**

- 8.4 No failure or delay by a party in exercising any right, power or remedy under this Deed and no course of dealing or grant by that party of any time or other consideration, will operate as a waiver of a default by the other party. Any waiver of a default of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

### **Severability**

- 8.5 If any part of this Deed is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of the Deed.

### **Relationship**

- 8.6 Nothing in this Deed creates a partnership, agency, joint venture or contract of employment.
- 8.7 The Recipient must not assign, novate or transfer the whole or part of this Deed or any payment or other right benefit or interest under this Deed without obtaining the prior written approval of the Board, which may be denied or given in its absolute discretion.

### **Entire Agreement**

- 8.8 This Deed constitutes the entire agreement and understanding between the parties as to the subject matter of this Deed. Any prior arrangements, agreements, representations or undertakings as to the subject matter of this Deed are superseded.

### **Legal advice and costs**

- 8.9 Each party will bear its own costs incurred in relation to the preparation of this Deed.

**Stamp Duties and Taxes**

- 8.10 All stamp duties (including fines, penalties and interest) that may be payable on or in connection with this Deed and any instrument executed under it must be borne by the Recipient.
- 8.11 All taxes, duties, charges imposed or levied in Australia or overseas in connection with the performance of this Deed will be borne by the Recipient.
- 8.12 The Recipient must indemnify those indemnified on demand against any liability for breach of Clauses 8.10 and 8.11.

**Counterparts**

- 8.13 This Deed may be executed by counterparts by the respective parties, which together will constitute one Deed.

**Applicable Law**

- 8.14 This Deed is governed by, and must be construed in accordance with, the Laws applicable in force in the State of New South Wales.

**Governing Jurisdiction**

- 8.15 Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and the courts of appeal there from.

**Media Statement**

- 8.16 The Recipient must not discuss or permit its employees to discuss any aspects of the information or the contents of the Request for Tender with any member or representative of any media related organisation.

## Schedule 1

[DATE]

To:  
The Board  
Level 11, McKell Building  
2-24 Rawson Place  
Sydney NSW 2000

### Undertaking

I refer to the Deed of Confidentiality (**Deed**) between the Board and  
(the "**Recipient**")

dated .....2006.

I am a nominee or employee of the Recipient to whom Information (as defined in the Deed) may be disclosed to or on behalf of the Recipient. Pursuant to Clause 2.3 of the Deed, I now by this Undertaking, undertake to the Board to comply with and be bound by the Deed as if I were the "Recipient" for the purposes of that Deed.

SIGNED : .....

Full Name:

Address:

Position with, or relationship to, the Recipient:

I witnessed the above signature: (Sign) .....

(Print name)

**Signing page****Executed as a deed**

**SIGNED FOR AND ON BEHALF OF** )  
**THE STATE CONTRACTS** )  
**CONTROL BOARD** by the Senior )  
Contract Officer [or other authorised )  
person with delegation authorised to )  
sign on behalf of the Board] in the )  
presence of: )  
) )  
) )  
) )

.....

.....  
Witness Signature

.....  
Print Full Name of Witness

.....  
Position

**If company, sign this**

**The Common Seal** of [Insert )  
**corporation name]** ABN [Insert ABN )  
**number]** was affixed in the presence )  
of: )

.....  
Signature of Director

.....  
Signature of Director/Secretary

.....  
Print name of Director

.....  
Print name of Director/Secretary

**If another organisation, sign this**

[Insert organisation's name] )  
 ABN [Insert ABN number] in the )  
 presence of: )

.....  
 Signature of Witness

.....  
 Signature of CEO/Partner

.....  
 Print name of Witness

.....  
 Print name of CEO/Partner

**If individuals, sign this**

**Signed by** [Insert individual's name] )  
 in the presence of: )  
 )

.....  
 Signature of Witness

.....  
 Signature of [Insert individual's name]

.....  
 Print name of Witness



**NSW Procurement is a Business Unit of the NSW Department of Commerce**

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

## **PART B – CONDITIONS OF CONTRACT AGREEMENT**

**Contract Agreement Number 0600938**

**ACTUARIAL, FINANCIAL MANAGEMENT AND  
INFORMATION SERVICES FOR THE  
WORKCOVER AUTHORITY OF NEW SOUTH  
WALES**



**WorkCover Authority of New South Wales**

**("WorkCover")**

and

**[Insert name of Contractor]**

**(“Contractor”)**

---

**[\*PRIMARY ACTUARIAL, FINANCIAL MANAGEMENT AND  
INFORMATION SERVICES CONTRACT AGREEMENT]**

**[\*SECONDARY ACTUARIAL, FINANCIAL MANAGEMENT AND  
INFORMATION SERVICES CONTRACT AGREEMENT]**

**[\*Delete whichever is not applicable]**

**FOR**

**THE WORKCOVER AUTHORITY OF NEW SOUTH WALES**

---

# Table of Contents

<b><u>PART B</u></b>	<b><u>CONDITIONS OF CONTRACT AGREEMENT</u></b>	<b>8</b>
1.	INTERPRETATION.....	8
1.1	Definitions.....	8
1.2	Rules for interpreting this Contract Agreement .....	20
2.	NATURE OF THE CONTRACT AGREEMENT BETWEEN THE PRINCIPAL AND THE CONTRACTOR.....	22
3.	TERM.....	22
4.	THE PRINCIPAL'S OBJECTIVES .....	22
5.	PROVISION OF SERVICES.....	23
6.	RIGHT TO OBTAIN SERVICES ELSEWHERE .....	24
7.	THE PRINCIPAL'S REQUIREMENTS .....	25
7.1	Knowledge Of The Principal's Requirements.....	25
7.2	Additional Services .....	25
8.	CONTRACTOR'S WARRANTIES .....	26
9.	PRICE BASIS.....	27
10.	MANAGEMENT OF THE SERVICES .....	28
11.	THE PRINCIPAL'S RESPONSIBILITIES .....	29
12.	DELAY .....	30
13.	SERVICE FEES AND INVOICING .....	31
14.	TAXES AND GST .....	34
15.	PERFORMANCE MONITORING .....	34
16.	MISTAKES IN INFORMATION.....	35
17.	COMPLIANCE WITH LAWS.....	35
18.	CONFLICT OF INTEREST .....	36
19.	INTELLECTUAL PROPERTY RIGHTS.....	37



20.	DELIVERY OF CONTRACT MATERIAL .....	38
21.	PERSONNEL .....	38
22.	PAYMENT OF WAGES AND ALLOWANCES .....	41
23.	INDEMNITY BY THE CONTRACTOR .....	41
24.	MINIMUM INSURANCE REQUIREMENTS .....	43
25.	CONFIDENTIAL INFORMATION .....	44
26.	PRIVACY .....	45
27.	PRINCIPAL'S DATA AND NOMINAL INSURER'S DATA .....	46
28.	WORKCOVER NSW CORPORATE DATA REPOSITORY (CDR).....	47
29.	ASSIGNMENT AND SUBCONTRACTING .....	48
30.	EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES .....	50
31	SUSPENSION.....	51
31.1	Suspension of Services .....	51
31.2	Suspension of Payment .....	52
32.	TERMINATION.....	52
32.1	Termination for Convenience .....	52
32.2	Effect of Termination for convenience .....	52
32.3	Termination for Cause.....	53
32.4	Effect of Termination for cause .....	54
33.	CONSEQUENCES OF TERMINATION .....	54
34.	SET-OFF/MONEY RECOVERABLE BY THE PRINCIPAL.....	56
35.	TRANSITION-OUT SERVICES.....	57
36.	CAUSES BEYOND THE CONTROL OF THE PARTIES.....	58
37.	NOTICES.....	59
38.	ISSUE RESOLUTION .....	59

39.	PERFORMANCE OF CONTRACT AGREEMENT DURING ISSUE RESOLUTION.....	61
40.	MISCELLANEOUS .....	61
41.	ENTRY TO OFFICIAL ESTABLISHMENTS .....	62
42.	DAMAGE TO PROPERTY.....	62
43.	ACCESS TO CONTRACTOR'S PREMISES .....	62
44.	VARIATIONS .....	62
45.	WAIVER .....	63
46.	SEVERABILITY .....	63
47.	COUNTERPARTS .....	63
48.	APPLICABLE LAW .....	63
49.	RIGHTS CUMULATIVE.....	63
50.	NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP .....	63
51.	NON-MERGER .....	63
	<b><u>SCHEDULE 1 CONTRACT AGREEMENT DETAILS</u></b> .....	66
	<b><u>SCHEDULE 2 EXPERT DETERMINATION PROCEDURE</u></b> .....	68
	<b><u>SCHEDULE 3 SPECIFICATION OF SERVICES</u></b> .....	71
	<b><u>SCHEDULE 4 SERVICE FEES SCHEDULE</u></b> .....	72
	<b><u>SCHEDULE 5 CONFIDENTIALITY DEED</u></b> .....	73
1.	DEFINITIONS AND INTERPRETATION .....	73
2.	NON DISCLOSURE.....	74
3.	CONSENT .....	75
4.	RESTRICTION ON USE .....	75
5.	DEPARTING EMPLOYEES .....	75
6.	SURVIVAL .....	75
7.	RETURN OF CONFIDENTIAL INFORMATION .....	76

8. CONFLICT OF INTEREST .....	76
9. NOTICES.....	76
10. MISCELLANEOUS .....	76
<u>ANNEXURE 1 TO SCHEDULE 5</u> .....	82
SCHEDULE 6 – WORKCOVER NSW STATEMENT OF BUSINESS ETHICS .....	83

## PART B CONDITIONS OF CONTRACT AGREEMENT

**[\*Primary Actuarial, Financial Management and Information Services Contract Agreement]**

**[\*Secondary Actuarial, Financial Management and Information Services Contract Agreement]**

**[\* Delete whichever is not applicable]**

### BETWEEN

The WorkCover Authority of New South Wales as described in Item 1 of Schedule 1 hereto (“the Principal”);

The Workers Compensation Nominal Insurer described in Item 1 of Schedule 1 hereto (“the Nominal Insurer”);

and

The Contractor as described in Item 2 of Schedule 1 hereto (“the Contractor”).

### BACKGROUND

- A. WorkCover Authority of NSW is a statutory corporation representing the Crown constituted by section 14 of the 1998 Act.
- B. WorkCover NSW administers and enforces compliance with occupational health and safety, injury management, return to work and workers compensation legislation, and manages the NSW workers compensation system. The workers compensation system provides a system of statutory workers compensation insurance for employers and workers in NSW.
- C. The Workers Compensation Nominal Insurer is a statutory legal entity established under section 154A of the 1987 Act. The Workers Compensation Nominal Insurer is a licensed insurer under the workers compensation legislation and issues policies of workers compensation insurance and deals with claims under those policies as insurer. The Workers Compensation Nominal Insurer appoints agents to exercise its insurance functions. WorkCover NSW acts for the Nominal Insurer under section 154C of the 1987 Act.
- D. WorkCover NSW, through the NSW Department of Commerce, has issued a Request for Tender for the provision of Actuarial, Financial Management and Information Services.
- E. The Contractor has responded to that Request for Tender and has been selected to provide the Services.
- F. The Contractor agrees to provide, and WorkCover of NSW agrees to procure, the Services in accordance with the terms of this Contract Agreement.

## **PART B CONDITIONS OF CONTRACT AGREEMENT**

### **1. INTERPRETATION**

#### **1.1 Definitions**

**“1987 Act”** means the Workers Compensation Act 1987;

**“1998 Act”** means the Workplace Injury Management and Workers Compensation Act 1998;

**“Actuarial, Financial Management and Information Services”** means the services as specified in Part C2 of the Request for Tender and to be incorporated in Schedule 3 (Specification of Services) or Additional Services as agreed between the Principal and the Contractor from time to time;

**“Additional Services”** means the provision of such other projects, or additional or ancillary advice, recommendations and/or reports within the scope of the services specified in Part C2 of the Request for Tender (to be incorporated in Schedule 3 (Specification of Services)) but not otherwise specified, (as requested or approved by the Principal), and as agreed between the Principal and the Contractor from time to time;

**“Alternate Contractor”** means the Contractor appointed as the Secondary Contractor by the Dust Diseases Board;

**“Annexure”** means an Annexure to this Contract Agreement;

**“Assigned Contractor”** means the Contractor appointed as the Primary Contractor by the Dust Diseases Board;

**“Bush Fire Fighters Compensation Fund”** means the fund established under the *Workers Compensation (Bush Fire, Emergency & Rescue Services) Act 1987*;

**“Business Days”** means a day which banks are generally open for normal business in Sydney and excludes Saturdays, Sundays and public holidays;

**“Commencement Date”** means the date specified in Item 3 of Schedule 1 to this Contract Agreement;

**“Confidential Information”** means any information and all other knowledge at any time disclosed (whether in writing, orally or in any other form) to the Contractor by the Principal, or acquired by the Contractor in performing the Services (whether disclosed before or after the execution of this Contract Agreement) which:

(a) is by its nature confidential;

(b) is designated, or marked, or stipulated as confidential;

(c) is treated by the Principal as confidential; and

(d) the Contractor knows or ought to know is confidential;

and includes but is in no way limited to:

(i) Intellectual Property of the Principal;

(ii) information relating to the management of the NSW workers compensation scheme;

(iii) the Principal's Data;

(iv) the Principal's Material;

(v) the New Contract Material;

(vi) the Nominal Insurer's Data; and

(vii) the Nominal Insurer's Material;

but does not include information which:

(i) is or becomes public knowledge other than by breach of this Contract Agreement;

(ii) is in the lawful possession of the Contractor without restriction in relation to disclosure before the date of receipt of the information from the Principal or a third party;

(iii) has been developed or acquired by the Contractor independently of the carrying out of the Services;

(iv) is ascertained through independent enquiries;

(v) may be or is required to be disclosed pursuant to the Guidelines contained in Premier's Memorandum No. 2000-11 "Disclosure of Information on Government Contracts with the Private Sector" dated 27 April 2000, as amended or updated from time to time; or

(vi) is required to be disclosed pursuant to law, regulation, legal process or a regulatory authority;

**"Contract Agreement"** means this Contract Agreement concluded between the Principal and the Contractor and includes:

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

**“Contract Agreement Details”** means the details specified in this Part B;

**“Contract Material”** means:

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

**“Contractor”** means the organisation or individual who by the Contract Agreement undertakes to provide the Service required by the Contract Agreement and, where the Contractor is an individual or partnership, the expression shall include the personal representatives of that individual or of the partners as the case may be and the expression shall also include any person to whom the benefit may be assigned by the Contractor with the consent of the Principal;

**“Contractor's Insolvency”** means any of the following circumstances:

- (a) the Contractor is unable to pay all its debts as and when they fall due and payable;
- (b) the Contractor indicates that it does not have the resources to perform this Contract Agreement or any Agreement;
- (c) an application for winding up is made and not stayed within ten (10) Business Days;
- (d) a winding up order is made relating to the Contractor;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed with respect to the Contractor's affairs;

- (f) a mortgagee enters into possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors of the Contractor for the purpose of entering into a deed of arrangement;
- (h) any actions of a similar effect are taken; or
- (i) where the Contractor is a wholly owned subsidiary of a parent or holding company – any of paragraphs (a) – (h) apply to the parent or holding company;

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

**“Critical Time Project”** means a project in which the completion time is critical to WorkCover NSW and failure by the Contractor to complete the project by the stipulated due date impacts on the operations of WorkCover NSW;

**“Emergency and Rescue Workers Compensation Fund”** means the fund established under section 31 of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*;

**“GST”** has the meaning given to this term in the GST Law;

**“GST Law”** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), related legislation and any delegated legislation made pursuant to such legislation;

**“Harmful Code”** means any computer program, virus or other code that is harmful, destructive, disabling or which assists in or enables theft or alteration of data;

**“Information”** means information in any form, including but not limited to information in the form of data, text or images;

**“Information Privacy Principle”** means any or all of:

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

**“Insurers Guarantee Fund” or “IGF”** means the fund established under section 227 of the 1987 Act;



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

**“Interference with Privacy”** means:

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

**“Investment Board”** means the Workers Compensation Insurance Fund Investment Board established under section 19A of the 1998 Act for the purposes of advising the Principal in relation to issues affecting the management of the WCIF;

**“IPO”** means the Insurance Premium Order;

**“Key Personnel”** means the Personnel of the Contractor including without limitation the Principal Actuary specified in Item 8 to Schedule 1 hereto, required to undertake the provision of the Services or such other Personnel as the Principal agrees in writing, to perform the Services;

**“Laws”** means:

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

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

**“Maximum Fee”** means, in relation to the Services, the maximum amount payable by the Principal to the Contractor for a specific Service described in the Specification of Services as set out in the Service Fees Schedule and/or the maximum amount payable by the Principal to the Contractor for specific Services, and/or Additional Services undertaken by the Contractor as agreed between the Contractor and the Principal from time to time;

**“Minister”** means the Minister who for the time being administers the 1987 Act;

**“Month”** means a calendar month;

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

**“New Contract Material”** means any and all reports, analysis, computer models, software, data, information tools, procedures, documentation, programs, invention, discovery, improvement, idea, design, technique or material conceived, developed or produced by the Contractor in the course of providing the Services under this Contract Agreement;

**“Nominal Insurer” or “Workers Compensation Nominal Insurer”** means the Workers Compensation Nominal Insurer established under Division 1A of Part 7 of the 1987 Act;

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

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

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

**“NSW Sporting Injuries Insurance Scheme”** means the Sporting Injuries Insurance Fund (main scheme) established under Section 11 and the Supplementary Sporting Injuries Insurance Fund established under section 11A of the *Sporting Injuries Insurance Act 1978*;

**“NSW Sporting Injuries Committee”** means the Sporting Injuries Committee constituted under section 7 of the *Sporting Injuries Insurance Act 1978* to oversee the operation of the NSW Sporting Injuries Insurance Scheme;

**“NSW Workers Compensation Scheme” or “Scheme”** means that part of the NSW Workers Compensation System which comprises the Workers Compensation Insurance Fund;

**“NSW Workers Compensation System” or “System”** means:

- (a) the NSW Workers Compensation Scheme;
- (b) self-insurers under Division 5 Part 7 of the 1987 Act;
- (c) specialised insurers under Division 3 Part 7 of the 1987 Act;
- (d) Government employers covered by the Government’s managed fund scheme, as referred to in section 211B of the 1987 Act; and
- (e) the following statutory funds:
  - (i) the Uninsured Liability and Indemnity Scheme;
  - (ii) the Insurers Guarantee Fund;
  - (iii) the Bush Fire Fighters Compensation Fund;
  - (iv) the Emergency and Rescue Workers Compensation Fund;
  - (v) the Workers Compensation (Dust Diseases) Fund; and
  - (vi) the NSW Sporting Injuries Insurance Scheme;

**“OHS”** means occupational health and safety;

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

**“Performance Bond”** means the bond payable on timely completion of a Critical Time Project under clause 12.2 of this Contract Agreement;

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

**“Personnel”**

In the case of the Contractor means:

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

In the case of the Principal means:

- (a) officers, employees, and agents of that party;

**“Price”** means the price payable for each Service as set out in the Service Fee Schedule;

**“Primary Contractor”** means the Contractor appointed under an Actuarial, Financial Management and Information Services Contract Agreement to provide the Primary Actuarial, Financial Management and Information Services specified in Part C2 of the Request for Tender and to be incorporated in Schedule 3 (Specification of Services);

**“Principal”** means WorkCover Authority of NSW, and includes reference to WorkCover NSW acting on behalf of the Nominal Insurer under section 154C of the 1987 Act;

**“Principal Actuary”** means the person appointed by the Contractor under clause 21.1 and who is specified in Item 4 of Schedule 1 hereto;

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

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

**“Principal’s Material”** means any material, information, data, documentation or software (in whatever form and however stored) owned by or licensed to the Principal which exists at the Commencement Date;

**“Principal’s Objectives”** means (not expressed in any order of importance or precedence) the following objectives of the Principal:

- (a) promotion of prevention of injury and diseases at the workplace and the development of healthy and safe workplaces;
- (b) promotion of prompt, efficient and effective management of injuries to persons at work;
- (c) ensuring the efficient operation of workers compensation insurance arrangements; and
- (d) ensuring appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the OHS legislation relates;

**“Principal’s Representative”** means the person for the time being holding or performing the duties of the Principal as referred to in clause 10.1 and who is specified in item 5 of Schedule 1 hereto;

**“Privacy Legislation”** means:

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

**“Protected Information”** means:

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

**“Request for Tender”** means the request for tender number 0600938 issued on 31 July 2006 by the Department of Commerce through NSW Procurement for and on behalf of the Principal for actuarial, financial management and information services for the Principal;

**“Schedule”** means a Schedule to this Contract Agreement;

**“Scheme Agent”** means an agent of the Nominal Insurer under section 154G of the 1987 Act;

**“Scheme Actuary”** means the person appointed by the Nominal Insurer from time to time to perform the functions required of a scheme actuary including but not limited to any calculation, estimate or assessment for the payment of any fees to a Scheme Agent;

**“Secondary Contractor”** means the Contractor appointed under an Actuarial, Financial Management and Information Services Contract Agreement to provide the Secondary Actuarial, Financial Management and Information Services specified in Part C2 of the Request for Tender and to be incorporated in Schedule 3 (Specification of Services);

**“Self Insurer”** means a person who holds a licence as a self insurer under Division 5 of Part 7 of the 1987 Act;

**“Services”** means the services specified (or referred to) in Part C2 of the Request for Tender and to be incorporated in Schedule 3 (Specification of Services) hereto and includes without limitation:

- (a) the Services to be performed for the Principal by the Contractor in its capacity as [*\*Primary Contractor* /*\*\* Secondary Contractor*]; and

[Note: \*words appear in the Primary Contractor Contract Agreement only and \*\* words appear in the Secondary Contractor Contract Agreement only]

(b) the Additional Services;

**“Service Fees”** means:

- (a) the hourly rate for Services provided in accordance with the Contract Agreement to which a Maximum Fee is not applicable; and
- (b) Maximum Service Fees, payable by the Principal to the Contractor for the performance by the Contractor of the:
  - (i) Services set out in the Service Fee Schedule;
  - (ii) Additional Services, as agreed between the Principal and the Contractor from time to time;

**“Service Fee Schedule”** means the list of Services offered by the tenderer, together with the corresponding Maximum Service Fee and hourly rate information contained in Part C1 and to be incorporated in Schedule 4, Service Fee Schedule hereto;

**“Specialised Insurer”** means an insurer who holds a licence as a specialised insurer under Division 3 of Part 7 of the 1987 Act;

**“Specification of Services”** means the detailed description of the required Services to be met by the Contractor and detailed in Part C2 of the Request for Tender and to be incorporated in Schedule 3 hereto;

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

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

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

- (a) clause 8 (Contractor’s Warranties);
- (b) clause 17 (Compliance with Laws);
- (c) clause 18 (Conflict of Interest);

- (d) clause 19 (Intellectual Property Rights);
- (e) clause 21 (Personnel)
- (f) clause 24 (Minimum Insurance Requirements);
- (g) clause 25 (Confidential Information);
- (h) clause 26 (Privacy);
- (i) clause 27 (The Principal's Data and Nominal Insurer's Data); and
- (j) clause 28 (WorkCover Corporate Data Repository);

**“Tax Invoice”** has the same meaning as it has in the GST Law;

**“Term”** means the term of this Contract Agreement;

**“Transition-In Services”** means the Services to be provided by the Contractor during the Term as specified in the Specification of Services or as otherwise agreed between the Principal and the Contractor, with respect to the effective and orderly transfer of responsibility for the management and provision of the services to be transitioned to the Contractor;

**“Transition-Out Period”** means a period of three (3) Months (or such other period as the parties may agree) after the cessation of the Contract Agreement, whether through expiry, termination or any other determination, unless the Principal advises the Contractor in writing that it does not require the Contractor to provide Transition-Out Services;

**“Transition-Out Services”** means the services necessary to be provided by the Contractor, for efficient and effective transfer of responsibility for the provision of the Services (or part of them) from the Contractor to the Principal, or a third party designated by the Principal, and all matters related to or connected with the Principal (or a third party) assuming control of the Services, as specified in the Specification of Services and in accordance with clause 35;

**“Treasury”** means the NSW Treasury;

**“Uninsured Liability and Indemnity Scheme” or “ULIS”** means the scheme constituted under section 139 of the 1987 Act;

**“WCC”** means the Workers Compensation Commission;



**“WorkCover NSW Corporate Data Repository” or “CDR”** is the data warehouse and reporting system developed by the Principal and operating as the primary source of data for reporting and analysis for the Principal, the Actuarial, Financial Management and Information Services Primary Contractor, and the Actuarial, Financial Management and Information Services Secondary Contractor;

**“WorkCover NSW”** means the WorkCover Authority of New South Wales as constituted by the 1998 Act, and includes the Authority and its officers, employees and agents except where the context requires it to be more narrowly construed;

**“WorkCover NSW Statement of Business Ethics”** means the WorkCover NSW Statement of Business Ethics as specified in Schedule 6 hereto;

**“Workers Compensation (Dust Diseases) Board” or “Dust Diseases Board”** means the Workers Compensation (Dust Diseases Board) constituted under section 5 of the *Workers Compensation (Dust Diseases) Act 1942*;

**“Workers’ Compensation (Dust Diseases) Fund”** means the Fund established under section 6 of the *Workers’ Compensation (Dust Diseases) Act 1942*;

**“Workers Compensation (Dust Diseases) Scheme”** means the scheme which provides compensation to workers and dependants of workers who have suffered dust diseases under the terms of the *Workers Compensation (Dust Diseases) Act 1942*;

**“Workers Compensation Insurance Fund” or “WCIF”** means the fund established under section 154D of the 1987 Act.

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

### **1.2.1 Except where the context otherwise requires:**

- (a) a reference to a Law extends to include a reference to all statutes, or subordinate legislation amending, consolidating or replacing that Law from time to time;
- (b) a reference to a person which has ceased to exist or has been reconstituted, amalgamated or merged, or the functions of which have become exercisable by any other person or body in its place, refers to the person or body established or constituted in its place by which its functions have become exercisable;
- (c) where any time limit pursuant to this Contract Agreement expires on a day that is not a Business Day then that time limit shall be deemed to have expired on the next Business Day;

- (d) where a word or phrase is given a defined meaning in this Contract Agreement, any other part of speech or other grammatical form in respect of such word or phrase, unless the context otherwise requires, has a corresponding meaning;
- (e) no rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Contract Agreement or any part of it;
- (f) where there occurs a reference to the doing of anything by the Principal including giving any notice, consent, direction or waiver, this may be done by any duly authorised officer of the Principal;
- (g) where the Contractor is comprised of more than one person, each obligation of the Contractor will bind those persons jointly and severally and will be enforceable against them jointly and severally;
- (h) the headings and table of contents in this Contract Agreement are for convenience only and do not affect the interpretation of this Contract Agreement;
- (i) a reference to dollars or \$ means Australian dollars;
- (j) where the Principal or the Contractor is required to act reasonably in the performance of this Contract Agreement, that shall be read as a requirement to act as would a party in the position of the Principal or of the Contractor which is acting reasonably in its own best interests;
- (k) a reference to a group of persons is a reference to all of them collectively and to any two or more of them collectively and to each of them individually;
- (l) persons will be taken to include any natural or legal person; and
- (m) the singular includes the plural and vice versa and words importing gender include other genders.

1.3 If there is a conflict between provisions of this Contract Agreement, then the documents shall be given the following order of priority such that the conflicting provision in the document lower in the order of priority shall be read down or severed to the extent necessary to resolve the conflict:

- (a) the terms and conditions contained in Part B of this Contract Agreement; and
- (b) the Schedules and Annexures to this Contract Agreement listed below.
  - Schedule 1 (Contract Agreement Details);
  - Schedule 2 (Expert Determination Procedure)

- Schedule 3 (Specification of Services);
- Schedule 4 (Service Fees);
- Schedule 5 (Confidentiality Deed); and
- Schedule 6 (WorkCover NSW Statement of Business Ethics).

1.4 The Parties may undertake business by the electronic exchange of information and the provisions of this Contract Agreement will be interpreted to give effect to undertaking business in this manner.

## **2. NATURE OF THE CONTRACT AGREEMENT BETWEEN THE PRINCIPAL AND THE CONTRACTOR**

2.1 This Contract Agreement covers WorkCover NSW's requirement for the delivery of Actuarial, Financial Management and Information Services in accordance with the Specification of Services detailed in Schedule 3.

2.2 This Contract Agreement constitutes the entire agreement between the Parties. Any prior arrangements, Contracts, representations or undertakings are superseded. No notification or alteration of any clause of this Contract Agreement will be valid except in writing signed by both Parties.

## **3. TERM**

3.1 The Contract Agreement commences on the Commencement Date stipulated at Schedule 1, Item 3 and, unless sooner terminated, remains in force for the Term stipulated at Schedule 1, Item 3.

3.2 The Contract Agreement may be extended by two (2) further periods each of up to one (1) year in duration. Any such extension will be at the sole discretion of the Principal and will be in accordance with the terms and conditions of the Contract Agreement. All requirements for an extension to the Term of the Contract Agreement will be made in writing by the Principal.

3.3 Subject to any extension under clause 3.2, the Contractor will be required to provide services in respect of the three financial years 2006/2007, 2007/2008, 2008/2009 and 2009/2010.

## **4. THE PRINCIPAL'S OBJECTIVES**

4.1 The Contractor acknowledges that the Principal is engaging the Contractor to assist the Principal in fulfilling the Principal's Objectives.

- 4.2 The Contractor will perform the Services to achieve the Principal's Objectives and without limitation will, together with its Personnel, demonstrate the highest possible ethical standards in its, or their, dealings and conduct in the provision of the Services under this Contract Agreement and work and communicate effectively with and maintain the confidence of all stakeholders affected by this Contract Agreement, at all times during the Term of this Contract Agreement.
- 4.3 The parties agree that achievement of the Principal's Objectives is only one requirement of the Contract Agreement, and the nature and extent of the Contractor's obligations are not to be construed or interpreted solely by reference to the Principal's Objectives or their achievement.
- 4.4 Notwithstanding clause 4.3, the parties agree that the Contractor's obligations under this Contract Agreement will be interpreted, to the greatest extent possible, consistently with the Principal's Objectives. Where there is any ambiguity in the interpretation of any of the Contractor's obligations, the interpretation that furthers the Principal's Objectives is to be preferred to any other interpretation.

## **5. PROVISION OF SERVICES**

- 5.1 The Contractor acknowledges and accepts that the Contract Agreement constitutes a standing offer for the supply of only such Services on a non-exclusive basis as may be required from time to time during the Term of the Contract Agreement and the Principal shall not be bound expressly or implied to order from the Contractor any quantity of Service during the Term of the Contract Agreement.
- 5.2 The Contractor shall establish immediately, at no additional cost to the Principal, all necessary facilities for the effective conduct and management of all aspects of the Contract Agreement.
- 5.3 Without limiting the generality of clause 5.1, the Contractor must perform the Services:
- (a) in accordance with the terms and conditions detailed herein, in an efficient and cost effective manner with the degree of care, skill and competence expected of an actuary acting as an expert in the delivery of the Services, including use of the latest technology and techniques available to provide the Services, in accordance with the Specification of Services and to the satisfaction of the Principal and in accordance with its general directions;
  - (b) in a timely manner, completing each part of the Services within any timeframe set out for that part of the Services in the Specification of Services or as otherwise agreed between the Principal and the Contractor; and
  - (c) in accordance with any directions given by the Principal from time to time.

- 5.4 The Contractor shall be responsible for all costs associated with rectifying Services deemed unacceptable by the Principal and/or errors made by the Contractor in the provision of Services;
- 5.5 For the purposes of this clause, the word “direction” includes any agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Principal or the Principal’s Representative may make, give or issue pursuant to the provisions of this Contract Agreement.
- 5.6 The Contractor must complete all Services, in accordance with the written terms of this Contract Agreement and the engagement protocol set out in clause 7.2 below (including but not limited to Service Fees) agreed to between the Contractor and the Principal at the time the Principal authorises the performance of the Services.
- 5.7 The Contractor agrees:
- (a) in performance of the Services, to fully co-operate, consult and liaise with the [\*Primary Contractor /\*\* Secondary Contractor] as specified in the Specification of Services or as otherwise directed by the Principal to achieve the Principal’s Objectives; and
  - (b) it will not, by any act or omission, impede, hinder, restrict or obstruct (or attempt to impede, hinder, restrict or obstruct) the performance by the [\*Primary Contractor /\*\* Secondary Contractor] of the Services to be performed by them as specified in the Specification of Services or as otherwise may be agreed between the Principal and the [\*Primary Contractor /\*\* Secondary Contractor].

**[Note: \*words appear in the Secondary Contractor Contract Agreement only and \*\* words appear in Primary Contractor Contract Agreement only]**

## **6. RIGHT TO OBTAIN SERVICES ELSEWHERE**

- 6.1 The Contractor acknowledges and accepts that the Principal reserves the right at all times to use either the Primary Contractor or the Secondary Contractor, to use selective or open tendering procedures, or to refer work to any other service providers outside the Contract Agreement, for any of the Services covered by the Contract Agreement and the Contract Agreement shall not be considered as infringed or vitiated thereby.
- 6.2 For the avoidance of doubt, if the Principal exercises its rights under clause 6.1 to use either the Primary Contractor or the Secondary Contractor for any of the Services covered by this Contract Agreement, the Primary Contractor may supply any or all of the Services specified in Schedule 3 in respect of the Secondary Contractor, and the Secondary Contractor may supply any or all of the Services specified in Schedule 3 in respect of the Primary Contractor.

- 6.3 Notwithstanding clause 6.1 above, if, in the Principal's opinion, the Services are not being properly performed or cannot be promptly or conveniently obtained under the Contract Agreement, the Principal may make, or authorise the making of, arrangements for the provision of such Service/s from a third party and the Contract Agreement shall not be considered as infringed or vitiated thereby
- 6.4 If the Principal exercises its right under clause 6.3 above and, in doing so, is required to pay a fee higher than what it would ordinarily have paid the Contractor for the same Services, then the Contractor will pay the difference to the Principal on demand.
- 6.5 The Contractor will not be entitled to any payment or compensation in relation to Services provided by a third party pursuant to this clause.
- 6.6 The Contractor acknowledges that the Principal will appoint more than one supplier to supply the Services and warrants that the Contractor will make no objection to such appointment.

## **7. THE PRINCIPAL'S REQUIREMENTS**

### **7.1 Knowledge Of The Principal's Requirements**

- 7.1.1 The Contractor must:
- (a) use all reasonable efforts to inform itself of the ongoing requirements of the Principal in performing the Services; and
  - (b) have, or develop, and maintain an understanding of the needs of WorkCover NSW and its Divisions, including, but not limited to Schedule 6 (WorkCover NSW Statement of Business Ethics), and an understanding of the particular circumstances, requirements and demands of Government and WorkCover NSW and its Divisions.

### **7.2 Additional Services**

- 7.2.1 Where the Principal requires the provision of Additional Services, the requirement must follow the procedures set out in the Engagement Protocol determined by the Principal and notified to the Contractor from time to time.

## **8. CONTRACTOR'S WARRANTIES**

8.1 The Contractor warrants on a continuing basis that:

- (a) it will provide the Services in accordance with the requirements of the Contract Agreement (including without limitation any timeframes set out for the Services as specified in the Specification of Services or as agreed with the Principal for Additional Services) with due care and skill;
- (b) it will comply with all statements or representations as to the provision of the Services in the tenderer's response to the Request for Tender;
- (c) the information contained in the tenderer's response to the Request for Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor, the Personnel and any Subcontractors is complete and accurate and is not misleading in any material respect by omission or otherwise;
- (d) it will not enter into any arrangement that impedes or is likely to impede its performance of the Services in a manner, and to a standard, that is satisfactory to the Principal without first obtaining the Principal's consent;
- (e) the performance of the Services will not infringe the Intellectual Property Rights of any third party;
- (f) it is capable of validly making the assignments and granting the licences required to be made or granted under clause 19 (Intellectual Property Rights);
- (g) it has established and will comply with and maintain during the Term of the Contract Agreement, the quality assurance arrangements set out in the tenderer's response to the Request for Tender;
- (h) the use of the New Contract Materials and the Contractor's Materials will not infringe the Intellectual Property Rights of any person;
- (i) the Services will conform to any applicable Laws and standards;
- (j) the Principal can rely upon the accuracy of the advice and information provided by the Contractor; and
- (k) all personnel engaged in the provision of the Service are appropriately qualified, competent and experienced.

## **9. PRICE BASIS**

9.1 Hourly Rates and Maximum Fees basis shall be as provided in the Service Fee Schedule at Part C Clause 2 of the Request for Tender.

### **9.2 Price Adjustment process for Increases in Contract Agreement Hourly Rates and Maximum Fees**

9.2.1 The Contractor may not vary the Hourly Rates and Maximum Fees for the Service except in accordance with the price mechanism selected in Part C1 of the Tender.

9.2.2 The Contractor must apply in writing to the Principal to increase the Hourly Rates and Maximum Fees in the Service Fee Schedule. Such application is to be made six weeks prior to each applicable anniversary of the Contract Agreement. Sufficient documentation to justify applications for Hourly Rate and Maximum Fee variation must accompany the application.

9.2.3 Subject to the Contractor having provided the Principal with sufficient documentation, the Principal will, in writing, approve or reject a price variation within six (6) weeks of lodgement of the application.

9.2.4 The Hourly Rates and Maximum Fee applicable to all Services shall be the Hourly Rates and Maximum Fee applicable at time of quotation and engagement. Increased Hourly Rates and Maximum Fees approved by the Principal shall apply to all Services (if any) engaged and commenced in Years 2, 3, 4 and 5 respectively after the date upon which the Principal publishes the increased Hourly Rates and Maximum Fees. No Price increase shall be applied retrospectively or to Services already quoted and engaged.

9.2.5 Where the Hourly Rates and Maximum Fees variation is accepted, the Service Fee Schedule will be taken to include the varied Hourly Rates and Maximum Fees.

9.2.6 The provision of Services under the Contract Agreement shall not be withheld or disrupted by formalities or disputes associated with the variation of a Price.

9.3 Where Hourly Rates are provided, the Principal reserves the right during the Term of the Contract Agreement to request Maximum Fees for any Service.



## **10. MANAGEMENT OF THE SERVICES**

- 10.1 The Principal's Representative is the authorised representative of the Principal for all purposes connected with this Contract Agreement. Any notice, information, instruction or other communication given to the Principal's Representative is deemed to have been given to the Principal if given in accordance with clause 37 (Notices). The Principal may change the Principal's Representative at any time. The Principal's Representative may delegate part or all of the day to day management and administration of the Services to another person.
- 10.2 The Principal Actuary as detailed at Schedule 1 Item 4 is the authorised representative of the Contractor for all purposes connected to this Contract Agreement and any notice, information, instruction or other communication given to the Principal Actuary is deemed to have been given to the Contractor if given in accordance with clause 37 (Notices).
- 10.3 The Principal's Representative and the Principal Actuary are responsible for communicating with each other on all matters relating to the day to day management and administration of the Services and this Contract Agreement.
- 10.4 The Principal's Representative and the Principal Actuary must closely and continuously liaise with each other in relation to the provision of the Services. Any matters raised by the Contractor are to be directed through the Principal Actuary to the Principal's Representative, unless otherwise directed in relation to a Service.
- 10.5 In addition to the provisions set out in clause 5.7 the Contractor will co-operate and liaise with other service providers who provide professional services to the Principal, including (without limitation):
- (a) any persons who provided actuarial, financial management or information services immediately prior to the Commencement Date;
  - (b) any other persons contracted by the Principal during the Term to provide actuarial, financial management or information services, (including the Services);
  - (c) any persons appointed by the Principal to provide actuarial, financial management or information services following the expiration of the Term; and
  - (d) such other third parties nominated by the Principal from time to time.
- 10.6 The Contractor shall notify the Principal immediately upon becoming aware of any error or omission in the Contract Material or other Information or advice supplied by it to the Principal.

## **11. THE PRINCIPAL'S RESPONSIBILITIES**

- 11.1 The Principal will make the following information available to the Contractor for the purposes of providing the Services:
- 11.1.1 Files containing unit record data for claims and/or policies.
  - 11.1.2 Reports relating to claims data from WorkCover NSW's CDR, including:
    - (a) claim numbers;
    - (b) payment by type; and
    - (c) duration of incapacity.
  - 11.1.3 Reports relating to premiums and wages for each policy year by insurer and month.
  - 11.1.4 Other data supplied by insurers to WorkCover NSW or the Nominal Insurer, including:
    - (a) licensing forms;
    - (b) insurer investment returns;
    - (c) common law database; and
    - (d) other information which the Contractor reasonably considers it needs to perform the services, as requested by the Contractor in writing.
  - 11.2 The Principal and the Contractor will use their best endeavours to agree on the types of files and reports to be supplied by the Principal to the Contractor for the purposes of clause 11.1 in light of any limitations identified and on a timetable for the provision of these files and reports.
  - 11.3 The Contractor acknowledges that the information referred to in clause 11.1 becomes available at different times eg monthly, quarterly. The Principal will provide the information to the Contractor as soon as reasonably practicable after the information becomes available.
  - 11.4 Notwithstanding clause 11.2, if relevant data is not available in time to provide sufficient data in accordance with clause 11.1 to the Contractor for the Contractor to complete a Service by the date specified in the Specification of Services or in accordance with a date agreed to by the parties, the Principal will make interim alternative arrangements for the provision of that data. If such alternative arrangements directly result in the Contractor failing to complete the Service by the relevant time then the provisions of clause 6.4 or 12.2 will not apply to that failure.

- 11.5 The Principal does not give any warranty or make any representation relating to:
- (a) the reliability, accuracy, coverage and specifications of the data (including but not limited to the Principal's Data) provided by it to the Contractor in accordance with this clause 11;
  - (b) the suitability or reliability of the WorkCover Corporate Data Repository.
- 11.6 The Principal shall notify the Contractor of any error that it finds in its data provided to the Contractor.

## **12. DELAY**

### **12.1 Notification of Delay**

- 12.1.1 The Contractor must promptly notify the Principal in writing of any possible delay in carrying out any of the Services. This notice must:
- (a) provide details of:
    - (i) the facts and circumstances which the Contractor considers may give rise to such a delay;
    - (ii) the extent or likely extent of the delay;
    - (iii) suggested strategies to manage the consequences of the delay;
    - (iv) the likely effect of the delay on this Contract Agreement; and
  - (b) request an extension of time which the Contractor considers reasonable in all the circumstances.

### **12.2 Delay in Critical Time Projects and Performance Bonds**

- 12.2.1 When providing Services which the Principal has identified as a Critical Time Project the Principal will withhold 10% of the total amount invoiced for that Service that is a Critical Time Project as a Performance Bond against that Service, without prejudice to any other rights or remedies the Principal may exercise under the Contract Agreement.
- 12.2.2 In providing the required valid Tax Invoice in accordance with clause 13 the Contractor shall show the 10% Performance Bond as a line item and deduct the 10% from the invoice amount relating to the Service that is a Critical Time Project.
- 12.2.3 Should the Contractor fail to complete the project by the due date, the Contractor shall forfeit the right to payment of the Performance Bond amount.

- 12.2.4 Should the Contractor complete the project by the due date, the Contractor shall be entitled to claim the amount withheld as the Performance Bond on its final invoice in respect of the Service that is a Critical Time Project.
- 12.2.5 The Principal may not withhold the 10% Performance Bond detailed in clause 12.2.1 if the Contractor's failure to complete a Service within the agreed timeframe is caused or significantly contributed to by the Principal failing to provide information or documentation required by the Contractor for the completion of the Service within the agreed timeframe.

### **13. SERVICE FEES AND INVOICING**

- 13.1 Subject to clause 22.2, the Principal will, in consideration of the Contractor performing its obligations in accordance with this Contract Agreement, pay to the Contractor the Service Fees. Subject to clause 12 (Delay), the Service Fees will be paid and calculated in accordance with this clause 13 and as detailed in Schedule 4 (Service Fees Schedule).
- 13.2 Subject to clauses 13.3 and 13.4 the Service Fees will be calculated on a time basis by applying the time charge hourly rates of the Personnel of the Contractor specified in Schedule 4 (Service Fees Schedule) to the number of hours or part thereof spent by each of them in performing the Services.
- 13.3 In relation to all Services, if there is a Maximum Fee:
- (a) specified for a Service in the Service Fees Schedule; or
  - (b) agreed between the parties for a specific Service,
- then the total Service Fees payable for those Services will be the lesser of the Maximum Fee and the Service Fees calculated in accordance with clause 13.2.
- 13.4 In relation to all Services, if there is an Hourly Rate the Principal reserves the right to request Maximum Fees for any Service.
- 13.5 Subject to clause 15.1, no amount is payable until the Principal receives a valid Tax Invoice for the part of the Service Fees payable in respect of each month.
- 13.6 A separate valid tax invoice is to be provided for services performed where WorkCover NSW is acting on behalf of the Nominal Insurer.
- 13.7 For the Tax Invoice to be valid it must include the following information:
- (a) an individual project code identifying each individual Service;
  - (b) the number of hours worked by all Personnel in the provision of the Services during the Month invoiced on any Service;

- (c) the total amount due against (b) above;
  - (d) for Time Critical Projects, the amount equal to the 10% Performance Bond amount to be withheld by the Principal;
  - (e) for Time Critical Projects an adjusted total amount due and payable, ie. (c) above less (d) above.
  - (f) a brief description of the work performed by all Personnel during the Month on any Service;
  - (g) a brief description of the work to be performed by all Personnel during the following Month on any Service;
  - (h) for all Services for which a Maximum Fee is payable, the Service Fees for those services by individual Service; and
  - (i) whether the Services invoiced were performed within the specified and/or agreed timeframes for those Services.
- 13.8 The Contractor must, with each invoice it issues under this Contract Agreement, and otherwise on request, provide the Principal with:
- (a) a declaration and other evidence if required by the Principal that it has paid all its Subcontractors all amounts owing to them;
  - (b) a written statement in any form prescribed under legislation with respect to workers compensation insurance, industrial relations (payment of Subcontractor's wages) and pay-roll tax:
    - (i) to the effect that all payments referred to in clause 22.2 have been paid by the Contractor and by its Subcontractors (if any). If there is no prescribed form the statement shall be in such form as the Principal approves;
    - (ii) stating whether the Contractor has engaged Subcontractors, and if so, whether the Contractor has received a written statement from its Subcontractors in the form specified in this clause; and
    - (iii) a copy of a certificate of currency of the Contractor's workers compensation insurance policy.

- 13.9 The Principal may withhold or suspend any payment or compliance by it with any other obligation under this Contract Agreement pending receipt of a statement and certificate required by this clause 13. Exercise of this right will not entitle the Contractor to cease work, terminate this Contract Agreement or to any other remedy and is without prejudice to the exercise of any statutory or other right or remedy (including termination) by the Principal.
- 13.10 If requested by the Principal's Representative, the Contractor must provide other information in support of the value of any Tax Invoice.
- 13.11 Unless the Principal's Representative questions or disputes the amounts stated in a Tax Invoice, the Principal will pay the Contractor within 20 Business Days of receipt of the Tax Invoice complete with all required information as detailed in clauses 13.5 to 13.8.
- 13.12 The hourly rates specified in the Service Fees Schedule apply to all Services performed by the Contractor under this Contract Agreement. The hourly rates are fixed and not subject to adjustment except as specified in the price variation mechanism detailed in the Service Fees Schedule.
- 13.13 If the Principal's Representative disputes the whole or any portion of the amount stated in the Tax Invoice:
- (a) The Principal's Representative must notify the Contractor in writing of the reasons for disputing the Tax Invoice.
  - (b) If the Principal's Representative and the Principal Actuary are unable to agree within 20 Business Days of the Principal's Representative giving notice to the Contractor of the dispute, then the dispute may be settled in accordance with the dispute resolution procedures specified in clause 38 (Issue Resolution).
  - (c) The Principal will pay the amount finally resolved by this process on receipt of an amended Tax Invoice.
- 13.14 If clause 12 (Delay) applies to the Services, or part thereof, the Principal is only required to pay that portion of the Tax Invoice as adjusted in accordance with clause 12.
- 13.15 The Contractor must keep proper accounts, records and separate time sheets in accordance with accounting principles generally applied in commercial practice to enable the Service Fees to be readily calculated and checked.
- 13.16 During the Term, the Contractor must, within seven (7) days of a request from the Principal, give the Principal, access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Contract Agreement, and any financial information, that the Principal reasonably requires.

- 13.17 The Contractor is not entitled to any out-of-pocket expenses and disbursements incurred by it in providing the Services, including but not limited to photocopying, account keeping/processing or management fees, facsimile and telephone charges, travel, accommodation, meals and parking.

#### **14. TAXES AND GST**

- 14.1 Subject to the provisions of this clause, all taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of this Contract Agreement will be borne by the Contractor.
- 14.2 The Service Fees are inclusive of GST unless Schedule 4 (Service Fees Schedule) to this Contract Agreement states otherwise.
- 14.3 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration (within the meaning of the GST Law) payable for the Service must be varied so that the Contractor's net dollar margin for the Service remains the same.
- 14.4 Any contract entered into by a Party to this Contract Agreement with a third party which involves a service being provided, the cost of which will affect the cost of any Service made under or in connection with this Contract Agreement, must include a clause in equivalent terms to clause 14.3.

#### **15. PERFORMANCE MONITORING**

- 15.1 The Contractor must provide:
- (a) a written monthly report to the Principal to enable the Principal to monitor the provision of the Services. The monthly report must be submitted with the monthly Tax Invoice provided in accordance with clause 13 and must include:
    - (i) a description of the Services performed in the previous month;
    - (ii) the status of any current Service;
    - (iii) any other matter which is likely to be of interest, use or benefit to the Principal in relation to the Services; and
    - (iv) such other material as the Principal may reasonably require from time to time;
  - (b) such other reports as are reasonably required by the Principal to assess the provision of the Services and to meet its reporting and compliance obligations. The costs of providing all reports are to be included in the Service Fees.

15.2 For the purpose of reviewing the provision of the Services and to evaluate the Contractor's performance of its obligations under this Contract Agreement, the Principal's Representative and the Principal Actuary will meet:

- (a) at least bi-monthly to discuss the Contractor's past performance and future work plans and timetables; and
- (c) at such other times as required by the Principal.

## **16. MISTAKES IN INFORMATION**

16.1 The Contractor must pay for all of its own costs and the Principal's costs occasioned by errors or omissions in Contract Material, calculations resulting from the analysis of the Contract Material, or other Information or advice supplied by the Contractor to the Principal, even though that Contract Material, calculations, Information or advice may have been approved or accepted by the Principal.

## **17. COMPLIANCE WITH LAWS**

17.1 The Contractor must:

- (a) ensure the Services will conform to any applicable Laws and standards;
- (b) obtain and maintain any licences, authorisations, consents, approvals and permits required under applicable Laws to provide the Services and to perform the Contractor's obligations under this Contract Agreement;
- (c) continue to comply with the requirements set out in this clause 17 throughout the Term, notwithstanding any changes to applicable Laws;
- (d) not do anything, or omit to do something, that would cause the Principal, or any of the NSW Government to breach their obligations under applicable Laws;
- (e) immediately advise the Principal of any significant breaches by the Contractor or its Personnel of any Laws which relate to this Contract Agreement; and
- (f) comply with the provisions of this Contract Agreement.

17.2 Without limiting clause 17.1, the Contractor must comply with any reasonable direction of the Principal to provide information and or documentation to enable the Principal to comply with its obligations at Law and/or under any applicable Government policies and guidelines and must provide such information and/or documentation with the timeframes stipulated by the Principal.



**18. CONFLICT OF INTEREST**

- 18.1 For the purposes of this clause, a “**conflict of interest**” includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Contract Agreement.
- 18.2 The Contractor warrants that at the date of this Contract Agreement it has disclosed to the Principal all conflicts of interest which exist at the date of execution of this Contract Agreement or are likely to arise in the performance of the Services, as specified in Item 7 of Schedule 1 hereto.
- 18.3 The Contractor must notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a conflict of interest which has not been disclosed to the Principal under clause 18.2.
- 18.4 On receipt of a notice under clause 18.3, the Principal may:
- (a) approve the Contractor continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict including, but not limited to, the Contractor managing any such conflict in accordance with the agreed mechanism to resolve the conflicts of interest set out at Item 7 of Schedule 1 hereto; or
  - (b) terminate the Contract Agreement in accordance with clause 32 if in its view a conflict of interest exists which prevents the proper performance of the Contract Agreement.
- 18.5 The Contractor will manage the conflicts of interest disclosed under clause 18.2 or notified under clause 18.3 in accordance with the agreed mechanism to resolve such conflicts of interest set out at Item 7 of Schedule 1 hereto and any conditions imposed by the Principal under clause 18.4.
- 18.6 If the Contractor fails to manage the conflicts of interest in accordance with those mechanisms or directions, then the Principal may terminate the Contract Agreement in accordance with clause 32.
- 18.7 The Contractor must promptly notify the Principal of any requests for services made to it by any Scheme Agent or Self or Specialised Insurer. If the Principal decides (in its absolute discretion) that a conflict of interest exists between the performance of the Services being carried out by the Contractor for the Principal and the services requested by the Scheme Agent or Self or Specialised Insurer, the Principal will inform the Contractor, and the Contractor must not perform the requested services.

**19. INTELLECTUAL PROPERTY RIGHTS**

- 19.1 The Contractor must not at any time breach or infringe any Intellectual Property rights of the Principal or of any other person whether in the course of providing the Service or otherwise.
- 19.2 The Contractor agrees to indemnify and keep indemnified the Principal (which term includes in this clause, the Principal, the NSW Government and their officers, employees and agents) from and against any actions, claims, proceedings, demands, costs, expenses, losses and damages, arising from or in connection with any infringement or alleged infringement of any Intellectual Property Rights.
- 19.3 The Principal may take legal proceedings including injunctive proceedings, against the Contractor if there is any actual, threatened or suspected breach of clause 19.1. This subclause applies despite the provisions of clause 38.
- 19.4 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property Rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may suspend payment of any money due to the Contractor under the Contract Agreement until such claim has been satisfied, settled, or withdrawn.
- 19.5 Subject to clauses 19.6 and 28 (WorkCover NSW Corporate Data Repository), title to all Intellectual Property Rights in all New Contract Material vests on creation in the Principal in right of the State of New South Wales or is otherwise hereby assigned or transferred by the Contractor to the Principal.
- 19.6 The Principal grants to the Contractor a limited, non-exclusive and revocable licence to copy, translate or adapt the New Contract Material created during the provision of the Services for the Contractor's internal use only.
- 19.7 The Contractor must ensure that any contracts with a third party supplier for software and hardware equipment used in providing a Service, confer on the Contractor the right to assign the Intellectual Property Rights in the software or hardware to, or licence or sub-licence the use of the software or hardware to the Principal.
- 19.8 This Contract Agreement does not affect the Intellectual Property Rights in the Contractor's Material, including Contractor's Material incorporated in the Contract Material, but the Contractor hereby grants, and ensures that relevant third parties grant, to the Principal, without additional cost, a non-exclusive, irrevocable, transferable licence:

(a) to use, reproduce, communicate to the public and adapt for its own purposes; and

(b) to sub-licence to third parties;

all those Intellectual Property Rights.

19.9 The Contractor must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to the provisions of this Contract Agreement dealing with Intellectual Property Rights.

19.10 The Contractor must ensure that the Contract Material is used, copied or supplied only for the purposes of this Contract Agreement and subject to its terms.

19.11 The Principal grants to the Contractor a non-exclusive, non-transferable licence to use the Principal's Material solely for the purposes of performing the Services covered by this Contract Agreement, subject to the confidentiality provisions of this Contract Agreement.

19.12 The Contractor must:

(a) hold, or obtain (without cost to the Principal) consents:

(i) to any acts or omissions of the Principal in exercise of its rights granted under this clause 19 that might otherwise constitute infringement of the Contractor's or any third party's Moral Rights;

(ii) from all authors of New Contract Material to its use and adaptation by the Contractor or the Principal, without restrictions and any requirement to attribute the New Contract Material to its authors; and

(b) provide copies of these consents referred to in clause 19.12(a) to the Principal immediately upon request.

## **20. DELIVERY OF CONTRACT MATERIAL**

20.1 On or as soon as practicable after the end of this Contract Agreement, the Contractor must deliver to the Principal all Contract Material and the Principal's Material. The Contractor may in good faith keep a copy of the Contract Material for its records.

## **21. PERSONNEL**

21.1 The Contractor will appoint a person to the role of Principal Actuary who will be primarily responsible for:

- (a) the provision of the Services and for the presentation of outcomes to the Principal's Representative, WorkCover Board, Dust Diseases Board, Workers Compensation and Workplace Occupational Health and Safety Council, Workers Compensation Investment Board, WorkCover Executive and Staff, NSW Government (including the Minister, NSW Treasury and the NSW Audit Office and their actuaries) and any other person advised to the Contractor by the Principal from time to time; and
  - (b) the performance of other obligations as specified in this Contract Agreement, including without limitation, the Specification for Services.
- 21.2 The Principal Actuary must be a Fellow of the Institute of Actuaries of Australia.
- 21.3 The Contractor must:
  - (a) ensure the Key Personnel perform the role, and commit the time to providing the Services allocated to each of them respectively, as set out in their response to the Request for Tender or as otherwise agreed with the Principal; and
  - (b) subject to clause 21.6, ensure that the Key Personnel carry out the Services.
- 21.4 The Contractor warrants that all personnel engaged in the provision of the Service are appropriately qualified, competent and experienced.
- 21.5 The Contractor must employ only such persons:
  - (a) as are careful, skilled and experienced in the provision of the Service or similar Service; and
  - (b) (where applicable) who hold all necessary licences, permits and authorities.
- 21.6 The Contractor must ensure that the Key Personnel (and any other Personnel approved by the Principal and undertaking work in respect of the Services):
  - (a) are aware of and comply with the Contractor's obligations in providing the Services;
  - (b) will not be hindered or prevented in any way in the performance of their duties including (but not limited to) being removed from the performance of the Services or being requested to perform services which in any way interfere with their due performance of the Services; and
  - (c) notify the Principal immediately orally and promptly in writing if the Principal Actuary or any Key Personnel or other Personnel (as approved by the Principal and undertaking work in respect of the Services) are unable to undertake work due to illness or other incapacity, absence on leave, or resignation from employment with the Contractor.

- 21.7 The Contractor will promptly replace any Key Personnel if the Principal is not satisfied with the performance or availability of that Key Personnel, in accordance with clause 21.8.
- 21.8 The Contractor will (at its own cost) provide replacement Personnel in the timeframe agreed with the Principal. All temporary or substitute Personnel must be approved in writing by the Principal. Such approval may be given or withheld in the Principal's absolute discretion. In giving its approval, the Principal may impose such conditions as it sees fit.
- 21.9 The Contractor must not change the Principal Actuary or any Key Personnel unless:
- (a) they leave the employment of the Contractor or there is a material change to their employment circumstances (including an extended period of leave or transfer to another work location); and
  - (b) the individual/specific Services they are performing are complete; and
  - (c) the Principal gives prior consent to the change in accordance with clause 21.8; or
  - (d) the Principal requires their removal under clause 21.7.
- 21.10 The Contractor must have sufficient alternate personnel to fill any temporary vacancies in the Key Personnel.
- 21.11 The Contractor acknowledges that the availability of nominated Key Personnel was fundamental in the award of the Contract Agreement and remains fundamental to the continued successful operation and quality of service provided under this Contract Agreement.
- 21.12 The Contractor shall seek the prior written consent of the Principal where it intends to utilise nominated Key Personnel for work outside this Contract Agreement.
- 21.13 Prior to Key Personnel commencing any work outside this Contract Agreement, the Contractor shall submit an application for consent to the Principal detailing:
- the Key Personnel involved;
  - the work involved; and
  - the likely duration of the work.
- 21.14 The Principal shall assess the likely impact of such external work on the successful operation and quality of service provided under this Contract Agreement, and determine, at its sole discretion, whether to approve or decline the Contractor's application.

- 21.15 Any approval given in respect of clause 21.14 may be revoked at any time where the Principal considers the external work is impacting on the quality of service provided by the Contractor and/or its Key Personnel under this Contract Agreement.

## **22. PAYMENT OF WAGES AND ALLOWANCES**

- 22.1 The Contractor must ensure that all Personnel employed or engaged by it in connection with the Services are paid wages and allowances of every kind required to be paid by or under any relevant award, determination or order made under legislation in force in New South Wales or by or under any workplace agreement that is in force in New South Wales and that all such persons are employed under the conditions contained in any such award, judgment, order or workplace agreement.
- 22.2 Notwithstanding any other provision of this Contract Agreement, payment of the Service Fees is conditional upon the Contractor giving the Principal's Representative, on request, a statutory declaration to the effect that in respect of work undertaken by its Personnel and Subcontractors pursuant to this Contract Agreement:
- (a) no remuneration or other benefits are due and owing by the Contractor to its Personnel (including deemed workers under the 1998 Act and Subcontractors);
  - (b) no payroll tax is due and owing by the Contractor; and
  - (c) there are no unpaid workers compensation premiums due.
- 22.3 The Principal is not liable for any of the Contractor's employee "on-costs", including wages, salaries, holiday pay or allowances, sick pay, workers' compensation, PAYE tax, payroll tax, fringe benefits tax, training levy or any other tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Contractor.
- 22.4 The Contractor must indemnify the Principal against any loss or liability (including statutory liability of the Contractor or any Subcontractor for unpaid remuneration or other benefits, workers compensation insurance premiums, workers compensation liability and unpaid pay-roll tax) directly or indirectly arising from breach of this clause or failure to pay the foregoing when due.

## **23. INDEMNITY BY THE CONTRACTOR**

- 23.1 Subject to clause 23.2, the Contractor will be liable in respect of and indemnifies and shall keep indemnified the Principal, the NSW Sporting Injuries Committee, the Dust Diseases Board, the NSW Government, their officers, employees and agents against any claim, loss or expense or damages (including a claim, loss or expense or damages arising out of personal injury or death or damage to property) which

any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together “the loss”) as a result of:

- (a) any default by the Contractor and/or its Personnel in the performance of its obligations under this Contract Agreement;
- (b) any unlawful, negligent, wilful, reckless or deliberately wrongful act, default or omissions on the part of the Contractor and/or its Personnel in the course of performance of this Contract Agreement;
- (c) any claim that the use of the Contractor’s Materials or New Contract Materials infringes the Intellectual Property Rights and/or Moral Rights of any person;
- (d) any claim that the use of the WorkCover NSW Corporate Data Repository or anything produced by the WorkCover NSW Corporate Data Repository infringes the Intellectual Property Rights and/or Moral Rights of any person where the infringement is as a result of the Services provided by the Contractor to the Principal in relation to the maintenance and improvement of the WorkCover NSW Corporate Data Repository;
- (e) any act or omission of the Contractor and/or its Personnel resulting in loss of, or damage to, property;
- (f) any breach of this Contract Agreement or the confidentiality deeds required by this Contract Agreement; and
- (g) any termination or variation of a contract or other agreement with a Subcontractor as a result of the Principal’s refusal to grant or withdrawal of consent under clause 29 (Assignment and Subcontracting);

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

23.2 If a party makes a claim against the other party arising out of or in connection with this Contract Agreement (whether the claim is based in contract or tort (including in negligence or under statute)) that other party’s liability in respect of that claim is limited to twenty (20) million dollars, in respect of each claim.

23.3 The Contractor’s liability in respect of, and indemnity given in, this clause 23 shall be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

**24. MINIMUM INSURANCE REQUIREMENTS**

- 24.1 The Contractor must hold and maintain and must ensure that all employees, personnel, and Subcontractors utilised in the provision of the Services are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Contract Agreement for the particular policy:
- 24.1.1 public liability insurance to the value of at least the amount of twenty (20) million dollars in respect of each claim;
  - 24.1.2 workers compensation insurance in accordance with applicable legislation for all the Contractor's employees;
  - 24.1.3 professional indemnity insurance to the value of twenty (20) million dollars in respect of each claim; and
  - 24.1.4 fidelity insurance to the value of twenty (20) million dollars in respect of each claim.
- 24.1.4.1 The professional indemnity and fidelity insurance:
- (i) must be maintained by the Contractor for 6 years after the conclusion of this Contract Agreement for an amount sufficient to indemnify the Contractor in respect of all liabilities arising out of this Contract Agreement;
  - (ii) must cover the Contractor's liability to the Principal in respect of the Services and any products supplied ancillary to the Services;
  - (iii) must include one automatic reinstatement provision; and
  - (iv) must include a description of the risk covered by the policy.
- 24.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 24.3 All policies, apart from workers compensation and professional indemnity insurance must:
- (a) note the interest of the Principal and the State; and
  - (b) not exclude liability assumed by the Contractor under this Contract Agreement.
- 24.4 Within 10 Business Days after the Commencement Date and then within 10 Business Days of the anniversary of the renewal date for each policy, for every year for which the Contractor is required to maintain the policy under this Contract Agreement, the Contractor must produce such documentary evidence to the Principal as the Principal reasonably requires that the insurance required under this Contract Agreement is current and in effect.



- 24.5 If the Contractor fails to comply with this clause 24, the Principal:
- (a) may effect and maintain that insurance and pay the necessary premiums; and
  - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 24.6 Where the Contractor is insured under a foreign company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor and include provisions as required by clause 24.3.
- 24.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Contract Agreement.

## **25. CONFIDENTIAL INFORMATION**

- 25.1 The Contractor must keep the Confidential Information of the Principal in confidence and must not disclose any such information to any person without the prior written consent of the Principal, other than as provided in this Contract Agreement.
- 25.2 The Contractor may disclose Confidential Information of the Principal:
- (a) to the Contractor's Personnel, if the disclosure is necessary for the purposes of providing Services under this Contract Agreement;
  - (b) to the Contractor's legal and professional advisers;
  - (c) to a Subcontractor and then only to the extent necessary to enable that Subcontractor to perform its part of the Services;
  - (d) as required under Laws or by legal process;
- provided that the Contractor ensures that the recipient:
- (e) keeps the Confidential Information confidential; and
  - (f) does not use the Confidential Information except for the purposes of this Contract Agreement.
- 25.3 Upon request by the Principal, the Contractor must ensure that permitted recipients of the Confidential Information execute a confidentiality deed (in a form set out in Schedule 5 (Confidentiality Deed)) or in such other form as may be required from time to time by the Principal relating to the Confidential Information of the Principal and promptly provide these executed deeds to the Principal.

- 25.4 Prior to any disclosure necessary to comply with any Laws, or any Government policy, the Contractor must give notice to the Principal, and full details of the circumstances of the proposed disclosure and of the relevant Confidential Information to be disclosed. The Contractor must give the Principal, a reasonable opportunity, and must provide such reasonable assistance as the Principal, may require, to:
- (a) challenge the proposed disclosure in the appropriate forum;
  - (b) minimise the amount of Confidential Information which is disclosed; and/or
  - (c) request that the Confidential Information only be disclosed on confidential terms.
- 25.5 The Contractor must not furnish any information, make any statement or issue any document or other written or printed material concerning this Contract Agreement or the Services for publication in any medium without prior written approval of the Principal.
- 25.6 The Contractor must use the Confidential Information solely in connection or for the purpose of the provision of the Services.
- 25.7 This clause 25 survives the termination or expiry of this Contract Agreement.

## **26. PRIVACY**

- 26.1 Without limiting clause 17 (Compliance with Laws) the Contractor must comply, and ensure that its Personnel comply, with the applicable requirements of the Privacy Legislation, including the Information Privacy Principles.
- 26.2 The Contractor agrees:
- (a) to use, retain or disclose Protected Information obtained during the course of this Contract Agreement only for the purpose for which the Protected Information was acquired;
  - (b) not to do any act, or engage in any practice, that would breach an Information Privacy Principle;
  - (c) to notify the Principal immediately of any breach or possible breach of the Privacy Legislation, whether by the Contractor or its Personnel or Subcontractors;
  - (d) to notify the Principal immediately of any complaint received by the Contractor or its Personnel which arises out of an obligation referred to in subclause 26.1 and of the outcome of any investigation of such a complaint;

- (e) to comply with all directions of the Principal or a Privacy Commissioner in relation to the matters referred to in this clause;
  - (f) to ensure that any Personnel of the Contractor who are required to deal with the Protected Information for the purposes of this Contract Agreement are made aware of the obligations in this clause 26; and
  - (g) to ensure that any other agreement with a Subcontractor, who will be fulfilling a requirement in relation to this Contract Agreement which includes the handling of Protected Information, contains the same or equivalent obligations as this clause 26 which are enforceable by the Contractor against the Subcontractor.
- 26.3 Without limiting clause 26.2, the Contractor agrees to comply with the *Privacy and Personal Information Protection Act 1998* (Privacy Act) and WorkCover NSW's *Personal and Privacy Information Management Plan 2000* (PPI Management Plan) which contains policies and practices of WorkCover NSW that ensure compliance with the Privacy Act, in the same manner and to the same extent as WorkCover NSW. For the purposes of compliance with the Privacy Act and the PPI Management Plan, the Contractor is to be regarded as a part of WorkCover NSW.

## **27. PRINCIPAL'S DATA AND NOMINAL INSURER'S DATA**

- 27.1 Nothing in this Contract Agreement transfers to the Contractor any rights in any of the Principal's Data or the Nominal Insurer's Data. The Principal's Data or the Nominal Insurer's Data and all Intellectual Property Rights that are owned by the Principal and/or the Nominal Insurer and held by the Contractor as custodian only.
- 27.2 The Contractor must not:
- (a) use the Principal's Data or the Nominal Insurer's Data for any purpose other than directly in relation to the supply of the Services under this Contract Agreement;
  - (b) make any of the Principal's Data or the Nominal Insurer's Data available to any third party other than in accordance with clause 25 (Confidential Information); and/or
  - (c) commercially exploit the Principal's Data or the Nominal Insurer's Data.
- 27.3 The Contractor does not have, and must not permit the creation of, any lien, security interest or other form of encumbrance over the Principal's Data or the Nominal Insurer's Data, whether for the Contractor's benefit or for the benefit of any third party.

27.4 The Contractor must:

- (a) maintain safeguards against the destruction loss or alteration of the Principal's Data or the Nominal Insurer's Data in electronic form in the course of delivering the Services that:
  - (i) ensure that the Principal's Data or the Nominal Insurer's Data delivered to the WorkCover NSW Corporate Data Repository is free of any Harmful Code;
  - (ii) are no less rigorous than the safeguards that can reasonably be expected in the insurance industry;
  - (iii) comply with all Laws and Government policy and guidelines applicable to the Contractor's use and custody of the Principal's Data or the Nominal Insurer's Data; and
  - (iv) comply at all times during the Term with all applicable Privacy Legislation relating to the keeping, processing, use and disclosure of any Protected Information contained or referred to in the Principal's Data or the Nominal Insurer's Data.

27.5 Without limiting any other clause of this Contract Agreement on the expiration or earlier termination of this Contract Agreement, the Contractor must give the Principal or the Principal's Representative a complete copy of all the Principal's Data or the Nominal Insurer's Data then in the Contractor's possession, custody, or control, in such format as the Principal may reasonably require.

**28. WORKCOVER NSW CORPORATE DATA REPOSITORY (CDR)**

28.1 The Contractor acknowledges that the WorkCover NSW Corporate Data Repository is a tool for providing consolidated management information on the Principal's operations. The WorkCover NSW Corporate Data Repository will be used by the Principal, the Primary Contractor, the Secondary Contractor, and other persons as determined by the Principal from time to time, to undertake reporting, analysis and monitoring functions.

28.2 The Contractor will assist the Principal in the maintenance and improvement of the WorkCover NSW Corporate Data Repository in accordance with the requirements set out in the Specification of Services at Schedule 3 and as requested by the Principal from time to time.

28.3 Without limiting clause 19 (Intellectual Property Rights), the Contractor acknowledges and agrees that notwithstanding the Contractor's involvement in the development and maintenance of the WorkCover NSW Corporate Data Repository:

- (a) the WorkCover NSW Corporate Data Repository and anything produced by the WorkCover NSW Corporate Data Repository; and
- (b) all Intellectual Property Rights in the WorkCover NSW Corporate Data Repository and anything produced by the WorkCover NSW Corporate Data Repository;

will be owned by, vested in, or assigned to the Principal and the Contractor will not make any claim whatsoever in relation to the above; and

- (c) in relation to any Contractor's Material which is contributed by the Contractor in the maintenance and improvement of the WorkCover NSW Corporate Data Repository, the Contractor grants, and ensures that third parties grant, to the Principal without additional cost, a non-exclusive, irrevocable, transferable licence to use, reproduce, communicate to the public and adapt for its own purposes and to sub-licence to third parties the Intellectual Property Rights in that material.

28.4 Without limiting clause 28.3 the Contractor must execute all documents and do all acts and things required, at its cost (unless otherwise agreed), for the purposes of giving effect to clause 28.3.

## **29. ASSIGNMENT AND SUBCONTRACTING**

29.1 The rights and obligations of the Contractor under this Contract Agreement may not be assigned in whole or in part and/or this Contract Agreement may not be novated without the prior consent of the Principal.

29.2 While a preference is held for all Personnel performing Services under this Contract Agreement to be employees of the Contractor, the Principal recognises that, in certain circumstances, the Contractor may need to utilise the services of Subcontractor(s) in order to provide a Service requested by the Principal. In such a case, it will be an express condition of this Contract Agreement that, for all purposes, the Subcontractor(s) will be regarded as Personnel of the Contractor.

29.3 The Contractor must not sub-contract the Contract Agreement, the Services or use the services of a Subcontractor without first obtaining the written consent of the Principal, which may be subject to any conditions which the Principal may impose.

29.4 Without limiting subclause 29.3, it is a condition of the Principal's approval under subclause 29.3 that the Contractor ensures the Subcontractor has executed a confidentiality deed (in a form set out in Schedule 5 (Confidentiality Deed)) or in such other form as may be required from time to time by the Principal relating to the Confidential Information of the Principal and promptly provide these executed deeds to the Principal.

- 29.5 Without limiting subclause 29.3, it is a condition of the Principal's approval under subclause 29.3 that:
- (a) any agreement between the Contractor and a Subcontractor contains the same or equivalent obligations as clause 18 of this Contract Agreement (Conflict of Interest) which are enforceable by the Contractor against the Subcontractor; and
  - (b) where the Contractor becomes aware of the existence or possibility of a conflict of interest involving a Subcontractor, it must comply with the provisions of clause 18 of this Contract Agreement (Conflict of Interest) as if the conflict were its own.
- 29.6 On receipt of a notice under clause 29.5 (a), the Principal may:
- (a) approve the Subcontractor continuing to perform the Services, which approval may be subject to reasonable conditions to ensure appropriate management of the conflict including, but not limited to, the Subcontractor or the Contractor managing any such conflict in accordance with the agreed mechanism to resolve the conflicts of interest set out at Item 7 of Schedule 1 hereto; or
  - (b) require the Contractor to terminate its agreement with the Subcontractor if in the Principal's view a conflict of interest exists which prevents the proper performance of the Contract Agreement.
- 29.7 Where the Contractor notifies the Principal of a Subcontractor's conflict of interest under clause 29.5 (b), the provisions of clause 18.5 – 18.7 of this Contract Agreement (Conflict of Interest) apply.
- 29.8 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Contract Agreement.
- 29.9 Regardless of any consent given, the Contractor will be responsible for ensuring the suitability of any Subcontractor and that the Subcontractor meets the requirements of this Contract Agreement.
- 29.10 The Principal may withdraw its consent to a Subcontractor if in its reasonable opinion the Subcontractor is not meeting the requirements of the Contract Agreement. The Principal will notify the Contractor in writing that its consent is withdrawn and the Contractor will immediately terminate its arrangement with the Subcontractor.
- 29.11 The Principal is not liable for any damages or consequential loss or loss of profits of the Contractor or any Subcontractor associated with the Principal's failure to grant consent under clause 29.3 or the withdrawal of the Principal's consent under clause 29.10.

- 29.12 The Principal will not be under any obligation to make payment for any monies due by the Contractor to any Subcontractor.
- 29.13 The Contractor is liable for any acts or omissions of any Subcontractor or any employee or agent of the Subcontractor as fully as if they were the acts or omissions of the Contractor and indemnifies and releases the Principal from any liability or loss resulting from the acts or omissions of any Subcontractor.
- 29.14 This clause will not merge on the completion or earlier termination of this Contract Agreement.
- 29.15 The Contractor will ensure that a Subcontractor is aware of and complies with all the terms and conditions of this Contract Agreement.

### **30. EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES**

- 30.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies information concerning the Contractor, including any information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Contract Agreement, or the Contractor's financial position.
- 30.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 30.3 The Principal regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 27 of the *Defamation Act 2005*.
- 30.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information of or about the Contractor. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

## **31 SUSPENSION**

### **31.1 Suspension of Services**

- 31.1.1 In addition to the Principal's rights under clauses 5 (Provision of Services), 6 (Right to Obtain Services Elsewhere) and 32 (Termination), the Principal may give the Contractor a written notice requiring the Contractor to suspend all or some of the Services from the date set out in the notice if, in the Principal's opinion, the Contractor has breached, is in breach of or is likely to breach this Contract Agreement or is not performing the Services in a diligent or competent manner.
- 31.1.2 If the Contractor receives a notice from the Principal under clause 31.1.1 then the Contractor must:
- (a) cease any work associated with the Services being suspended;
  - (b) take all necessary action to mitigate any losses or obligations arising from the suspension of the Services; and
  - (c) not enter into any agreements or arrangements with third parties with respect to the suspended Services without the written consent of the Principal.
- 31.1.3 If the Principal gives a notice under clause 31.1.1, suspending the Contract Agreement, then the Contractor is entitled to the following payments:
- (a) payment of any outstanding amounts invoiced in respect of the suspended services as at the date the notice of suspension was given, except:
    - (i) to the extent any amount is the subject of a dispute which is yet to be finalised in accordance with clause 13.13 and then in accordance with the resolution of the dispute; and/or
    - (ii) if clause 12.2 (Delay in Critical Time Projects and Performance Bond) applies.
- 31.1.4 If the Contractor and the Principal are not able to reach agreement in relation to the suspended Services within 20 Business Days of the Principal's notice under clause 31.1.1 then the Contract Agreement will be deemed to have been terminated on the 20<sup>th</sup> Business Day or such other date notified by the Principal in respect of the suspended Services only. If there are other Services that the Contractor is required to provide under this Contract Agreement that have not been suspended by the Principal, then this Contract Agreement will continue to apply to those Services.
- 31.1.5 The Principal shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the suspension of any Services by the Principal.



### **31.2 Suspension of Payment**

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

## **32. TERMINATION**

### **32.1 Termination for Convenience**

- 32.1.1 The Principal may without reason terminate this Contract Agreement or any part thereof by giving not less than 20 Business Days written notice to the Contractor.
- 32.1.2 The Contractor must do everything possible to mitigate any losses that it may suffer as a result of the Principal terminating this Contract Agreement in accordance with clause 32.1.1.
- 32.1.3 If the Principal gives a notice under this clause 32.1.1, terminating the Contract Agreement, then the Contractor is entitled to the following payments:
- (a) payment of any outstanding invoices as at the date the notice of termination was given, except:
    - (i) to the extent any invoice is the subject of a dispute which is yet to be finalised in accordance with clause 13.13 and then in accordance with the resolution of the dispute; and/or
    - (ii) if clause 12.2 (Delay in Critical Time Projects and Performance Bond) applies.
  - (b) payment for any Services provided by the Contractor in the period between the date of the notice and the date that the termination becomes effective.

### **32.2 Effect of Termination for convenience**

- 32.2.1 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination under clause 32.1 provided that any claim by the Contractor:
- (a) must be supported by written evidence of the costs claimed; and
  - (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Contract Agreement and its termination.

- 32.2.2 The Principal shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the termination of this Contract Agreement by the Principal.
- 32.2.3 The Contractor must, wherever possible, include in all subcontracts an equivalent provision to this clause.
- 32.2.4 If this Contract Agreement is terminated pursuant to clause 32.1.1, any incomplete Service under review must be completed and reports submitted by the Contractor in accordance with the terms of this Contract Agreement, unless otherwise specified by the Principal in writing.

### **32.3 Termination for Cause**

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

- (h) if the Contractor abandons or refuses to proceed with any of the Services after having commenced the same; or
- (i) if the Contractor otherwise fails to comply with the provisions of this Contract Agreement.

32.3.2 If the Principal gives a notice under clause 32.3.1, terminating the Contract Agreement, then the Contractor is entitled to the following payments:

- (a) payment of any outstanding invoices as at the date the notice of termination was given, except to the extent:
  - (i) any invoice is the subject of a dispute which is yet to be finalised in accordance with clause 13.13 and then in accordance with the resolution of the dispute; and/or
  - (ii) if clause 13.14 applies.
- (b) payment for any Services provided by the Contractor in the period between the date of the notice and the date that the termination becomes effective.

#### **32.4 Effect of Termination for cause**

32.4.1 If the Principal terminates this Contract Agreement for cause the Principal may:

- (a) contract with any other person to complete the provision of a Service;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Principal under any Contract (which may be ascertained and certified by the Principal), from any money due, or which may become due to the Contractor (whether under this Contract Agreement or any agreement) and/or from the Security (if any); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

### **33. CONSEQUENCES OF TERMINATION**

33.1 On termination of this Contract Agreement all the respective rights and obligations of the parties except under this clause and clauses:

- 8 (Contractor's Warranties);
- 12 (Delay);
- 13 (Service Fees and Invoicing);
- 14 (Taxes and GST);
- 16 (Mistakes in Information);
- 17 (Compliance with Laws);
- 19 (Intellectual Property Rights);
- 20 (Delivery of Contract Material);

- 23 (Indemnity by the Contractor);
- 24 (Minimum Insurance Requirements);
- 25 (Confidential Information);
- 26 (Privacy);
- 27 (Principal's Data and Nominal Insurer's Data);
- 28 (WorkCover NSW Corporate Data Repository);
- 34 (Set-Off/Money Recoverable by the Principal);
- 35 (Transition-Out Services);
- 37 (Notices); and
- 38 (Issue Resolution);

and any other provision of this Contract Agreement which contemplates performance or observance following any termination of this Contract Agreement or the provision of the Services will automatically cease.

- 33.1.2 The Contractor will fully co-operate with the Principal and any other party nominated by the Principal to arrange for the Services to be provided by another party nominated by the Principal and will provide the Transition-Out Services in accordance with clause 35 (Transition-Out Services) and all terms and conditions of the Contract Agreement.
- 33.1.3 The Contractor must promptly deliver to the Principal or any third party nominated by the Principal:
  - (a) all the Principal's Data and Nominal Insurer's Data;
  - (b) all other Confidential Information;
  - (c) all New Contract Material and the Principal's Material; and
  - (d) all copies of (a), (b) and (c) above, in whatever form (including but not limited to written, graphic or electromagnetic form) in its or its Subcontractors' possession or control.
- 33.2 Where any of the information specified in clause 33.1.3 is to be provided in an electronic form the Contractor must:
  - 33.2.1 provide the information in a form which is readily accessible to the Principal, and where necessary, provide to the Principal such software or hardware (including all rights of use pertaining thereto) as may be required by the Principal, in its absolute discretion, to enable it to store, access, view and reproduce the data without restriction. The Contractor must ensure that in any contracts with a third party supplier for software and hardware equipment, that the Contractor has the right to assign the Intellectual Property Rights to, or licence or sub-licence the use of the software or hardware to the Principal; and

- 33.2.2 provide to the Principal all relevant passwords, if any, to enable the Principal to access all the Principal's Data or Nominal Insurer's Data and all other data and information on the WorkCover NSW Corporate Data Repository or otherwise which have been in the Contractor's care or control during the Term.
- 33.3 Without limiting the Principal's rights in relation to this Contract Agreement, if the Principal has pre-paid any amounts to the Contractor for Services to be performed which at the date of termination have not been performed and this Contract Agreement is terminated for any reason:
- (a) the Contractor must refund to the Principal such prepaid amounts, within five (5) Business Days of termination of this Contract Agreement; and
  - (b) the Principal may recover in an appropriate court the balance of any prepaid amount not refunded as a debt due and payable by the Contractor to the Principal.

#### **34. SET-OFF/MONEY RECOVERABLE BY THE PRINCIPAL**

- 34.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Service.
- 34.2 Without limiting clause 34.1, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of the Contract Agreement may be deducted from money then due to the Contractor under the Contract Agreement. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be:
- (a) set off against any other money due to the Contractor by the Principal under this or any other Contract Agreement between the Principal and the Contractor; or
  - (b) recovered from the Contractor by the Principal in an appropriate court.
- 34.3 Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

**35. TRANSITION-OUT SERVICES**

- 35.1 The Contractor acknowledges that it is critical that there is continuity of the Services and, for that reason, the Principal relies significantly on the Contractor fulfilling the Transition-Out Services. Accordingly the Contractor must ensure that Transition-Out Services are performed in a timely and orderly manner by carrying out the Transition-Out Services during the Transition-Out Period, unless the Principal advises the Contractor in writing that it does not require the Contractor to provide Transition-Out Services.
- 35.2 If the Principal appoints a third party to take over the Services or perform any of the Services, the Contractor must provide all reasonable co-operation and assistance to that third party.
- 35.3 The Contractor must:
- (a) continue to provide the Services in accordance with the terms of this Contract Agreement during the Transition-Out Period unless otherwise directed by the Principal; and
  - (b) ensure that there is no degradation of quality of the Services during Transition-Out Period unless otherwise agreed with the Principal.
- 35.4 During the Transition-Out Period the Principal must provide all reasonable co-operation and assistance to the Contractor as reasonably required by the Contractor in relation to Transition-Out Services.
- 35.5 The Transition-Out Period shall be as specified in the definitions.
- 35.6 If the Term of this Contract Agreement is not extended as provided in clause 3. (Term):
- 35.6.1 the Primary Contractor and/or the Secondary Contractor, unless notified otherwise by the Principal, may be required to complete the 31 December 2009 Scheme Valuation as part of the services under the Contract Agreement, including consequential work flowing from the 31 December 2009 Scheme Valuation such as:
- Production of any 31 December 2009 monitoring and performance reports;
  - Assessment of any Scheme Agent remuneration based on 31 December 2009 data and responding to any Scheme Agent remuneration queries arising from the assessment/s;
  - Finalisation of 2010/11 Deposit Premiums including relevant briefings; and

- 35.6.2 unless notified otherwise by the Principal, the Primary Contractor and the Secondary Contractor may be required to complete a peer review of the 31 December 2009 Scheme Valuation reports, and any other report consequential on the 31 December 2009 Scheme Valuation completed by the Primary Contractor and the Secondary Contractor as requested by the Principal; and
- 35.6.3 in relation to any other work which may, or is likely to, extend beyond the Contract Agreement expiry date at its absolute discretion the Principal may allocate it to the Primary Contractor and the Secondary Contractor, any other contracted actuarial consultant or put it out to the market by way of a competitive process.
- 35.7 If the Term of this Contract Agreement is extended as provided in clause 3.2 (Term), the Primary Contractor and/or the Secondary Contractor unless notified otherwise by the Principal will be required to complete services as specified in any variation made under the Contract Agreement.

### **36. CAUSES BEYOND THE CONTROL OF THE PARTIES**

- 36.1 A party is not liable for failure to perform, or delay in performing, an obligation under this Contract Agreement if each of the following is satisfied:
- (a) the failure or delay arose from a cause beyond the control and without the fault or negligence of that party. Such causes include acts of God or the public enemy, acts of any government in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without the fault or negligence of the party or any Subcontractor. If the delay is caused by the default of a Subcontractor and arises out of causes beyond the control of both the party and Subcontractor and without the fault or negligence of either of them, the party shall not be liable for damages for the delay unless the supplies or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the party to meet the required performance timetable;
  - (b) the party took all reasonable precautions against that cause and did its best to mitigate its consequences. This does not require the party to settle a labour dispute if, in the party's opinion, that is not in its best interests; and
  - (c) the party gave the other party notice of the cause as soon as practicable after becoming aware of it.
- 36.2 If the cause and the resulting failure or delay lasts for more than 20 Business Days, either party is entitled to terminate this Contract Agreement immediately by giving the other party written notice.

**37. NOTICES**

- 37.1 A notice, direction consent, information, application or request that must or may be given or made to a party under this Contract Agreement is only given or made if it is in writing and:
- (a) delivered or posted to the representative of that party at its address as specified in the Contract Agreement Details;
  - (b) faxed to the representative of that party at its fax number as specified in the Contract Agreement Details; or
  - (c) sent to the email address of the representative of that party at the e-mail address as specified in the Contract Agreement Details.
- 37.2 If a party gives the other party three (3) Business Days notice of a change of its address, fax number or e-mail address, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted, faxed or e-mailed to the latest address, fax number or e-mail address.
- 37.3 A notice, consent, information, application or request is to be treated as given or made at any of the following times:
- (a) if it is delivered, when it is left at the relevant address.
  - (b) if it is sent by post, two (2) Business Days after it is posted.
  - (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
  - (d) if it is sent by email, on receipt and confirmation by the sender that the recipient has received the email.
- 37.4 If a notice, consent, information, application or request is delivered, an error free transmission report or confirmation by the sender in relation to it is received, after the normal business hours of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

**38. ISSUE RESOLUTION****38.1 General**

- 38.1.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed in this order until an issue is resolved:
- (a) Amicable Resolution (cl.38.2);



(b) Expert Determination (cl.38.3)

**38.2 Amicable Resolution**

- 38.2.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, (“the Issue Notice”) about the meaning or effect of the Contract Agreement or about any matter arising under or out of the Contract Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 38.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Contract Agreement, it must give the Issue Notice to the Principal.
- 38.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 38.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 38.2.5 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 38.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 38.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided (“the Referral Notice”).
- 38.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 38.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.

**38.3 Expert Determination**

- 38.3.1 If a Referral Notice is given under clause 38.2, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 38.3.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
  - (b) a person who has been connected with the Contract Agreement; or

- (c) a person on whom the Parties have not been able to agree on.
- 38.3.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination.
  - (b) the expert's fees.
  - (c) the procedure for the determination set out in Schedule 2.
  - (d) any other matter which is relevant to the engagement.
- 38.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 38.3.5 The procedure for expert determination is set out in Schedule 2.
- 38.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 38.3.7 If the expert determines that one Party must pay the other an amount exceeding \$100,000.00 (calculating the amount without including interest on it, and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 38.3.8 Unless a Party has a right to commence litigation under clause 38.3.7:
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
  - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

## **39. PERFORMANCE OF CONTRACT AGREEMENT DURING ISSUE RESOLUTION**

- 39.1 The Parties agree to continue performing their obligations under this Contract Agreement while the issue is being dealt with in accordance with clause 38.

## **40. MISCELLANEOUS**

- 40.1 Except as otherwise agreed by the Parties in writing, each Party must pay its own costs in relation to preparing, negotiating and executing this Contract Agreement and any document related to this Contract Agreement.

- 40.2 The Parties will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Contract Agreement.
- 40.3 No failure or delay by a Party in exercising any right, power or remedy under this Contract Agreement and no cause or dealing or grant by that Party or any time or other consideration, will operate as a waiver of a default by the other Party. Any waiver of a default in this Contract Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 40.4 No Party has any power or authority to act for or to assume any obligation or responsibility on behalf of another Party, to bind another Party to any agreement, negotiate or enter into any binding relationship for or on behalf of another Party or pledge the credit of another Party except as specifically provided in this Contract Agreement or by express agreement between the Parties.

#### **41. ENTRY TO OFFICIAL ESTABLISHMENTS**

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

#### **42. DAMAGE TO PROPERTY**

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

#### **43. ACCESS TO CONTRACTOR'S PREMISES**

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

#### **44. VARIATIONS**

- 44.1 This Contract Agreement may not be varied except in writing signed by both Parties.

**45. WAIVER**

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

**46. SEVERABILITY**

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

**47. COUNTERPARTS**

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

**48. APPLICABLE LAW**

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

**49. RIGHTS CUMULATIVE**

- 49.1 The rights and remedies provided under this Contract Agreement are cumulative and not exclusive of any rights or remedies provided by law or any other right or remedy.

**50. NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP**

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

**51. NON-MERGER**

- 51.1 The obligations of the parties under the Contract Agreement, do not conclude at the cessation of the Contract Agreement, whether such cessation be through termination, short-closure, suspension or expiry of the Contract Agreement.

This Contract Agreement is executed on

200--

**Execution by the Principal:**

**Signed** for and on behalf of **THE** )  
**WORKCOVER AUTHORITY OF NEW SOUTH** )  
**WALES** by XXXXXX but not so as to incur )  
personal liability in the presence of: )  
)

.....

(signature of witness)

.....

(print name of witness)

**Signed** for and on behalf of **THE WORKERS** )  
**COMPENSATION NOMINAL INSURER** by )  
XXXXXX but not so as to incur personal liability )  
in the presence of: )  
)

.....

(signature of witness)

.....

(print name of witness)

**Signed** for and on behalf of )

(insert name of Organisation as per the Contract Agreement Details)

(insert Organisation A.C.N.)

(insert name of Director)

(insert name of witness not a party to this Contract Agreement)

(insert name of Director or Company Secretary)

(insert name of witness not a party to this Contract Agreement)

## **SCHEDULE 1 CONTRACT AGREEMENT DETAILS**

This Schedule forms part of the Contract Agreement between the Principal and the Contractor.

---

### **Item 1.1 THE PRINCIPAL**

Name: WorkCover Authority of New South Wales

ABN: Xx xxx xxx xxx

Address 92 – 100 Donnison Street, Gosford, NSW 2250

### **Item 1.2 THE NOMINAL INSURER**

Name: Workers Compensation Nominal Insurer

ABN:

---

### **Item 2 CONTRACTOR**

Name: [insert name of company or individual]

ABN: [insert A.B.N]

Address: [insert street address]

---

### **Item 3 TERM**

(Clause 3)

Commencement [insert Commencement Date]  
Date:

Term: 3 years from Commencement Date

Extension Options: 2 x up to 1 year = at the sole discretion of the Principal

Transition Out Period: 3 months from cessation of Contract Agreement (refer clause 35).

---

---

**Item 4            CONTRACTOR'S REPRESENTATIVE**  
**(Clause 10)**

**Principal Actuary:**

Name:

Title:

Address (for service of notices):

Telephone:

Facsimile:

Email:

---

**Item 5            THE PRINCIPAL'S REPRESENTATIVE**  
**(Clause 10)**

Name:

Title:

Address (for service of notices):

Telephone:

Facsimile:

Email:

---

**Item 7            CONFLICT OF INTEREST**  
**(Clause 18)**

---

**Details of Conflict of Interest**

---

**Resolution Mechanism**

---

**Item 8            KEY PERSONNEL**  
**(Clause 21)**

<b>Title</b>	<b>Name</b>
Principal Actuary	<i>[insert name]</i>
<i>[Insert other Key Personnel and names]</i>	



## **SCHEDULE 2 EXPERT DETERMINATION PROCEDURE**

### **1. QUESTIONS TO BE DETERMINED BY THE EXPERT**

1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):

1.1.1 Is there an event, act or omission which gives the claimant a right to compensation under the Contract Agreement:

- (a) for damages for breach of the Contract Agreement, or
- (b) otherwise in law.

1.1.2 If so:

- (a) what is the event, act or omission?
- (b) on what date did the event, act or omission occur?
- (c) what is the legal right which gives rise to the liability to compensation?
- (d) is that right extinguished, barred or reduced by any provision of the Contract Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?

1.1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:

- (a) What compensation, if any, is due from one party to the other and when did it fall due?
- (b) What interest, if any, is due when the expert determines that compensation?

1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

### **2. SUBMISSIONS**

2.1 The procedure for submissions to the expert is as follows:

2.2 The Party to the Contract Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 38.3.3 of the Contract Agreement.

- 2.3 The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Party referred to in clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- 2.5 The other party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6 The expert must ignore any submission, response, reply, or comment not made within the time given in clause 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Contract Agreement gives information to the expert, it must at the same time give a copy to the other Party.

### **3. CONFERENCE**

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

### **4. ROLE OF EXPERT**

- 4.1 The Expert:
  - 4.1.1 acts as an expert and not as an arbitrator;
  - 4.1.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the expert's own expertise; and
  - 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 38.3.3 of the Contract Agreement.

- 4.2 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

### **SCHEDULE 3 SPECIFICATION OF SERVICES**

The Specification of Services is located at Part C2 and will be transferred to Schedule 3 upon formulation of the Contract Agreement Documents.

**SCHEDULE 4 SERVICE FEES SCHEDULE**

The Service Fees Schedule is located at Part C1 and will be transferred to Schedule 4 upon formulation of the Contract Agreement Documents

## **SCHEDULE 5 CONFIDENTIALITY DEED**

### **Deed of Confidentiality**

#### **BETWEEN**

1. The Principal as described in Annexure 1 to this Schedule ("Principal"); and
2. The Confidant as described in Annexure 1 to this Schedule ("Confidant").

#### **BACKGROUND**

- A. In the course of the Confidant performing certain services for the Principal (whether directly or indirectly), the Confidant may become aware of information belonging to or in the possession of the Principal that is confidential.
- B. Improper use or disclosure of that information may severely damage the Principal's ability to perform its functions.
- C. The Principal requires, and the Confidant agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Principal's and the NSW Government's Confidential Information is kept confidential and that the Confidant performs those services faithfully and without any conflicting interest.

#### **OPERATIVE PROVISIONS**

##### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Deed, unless the context otherwise requires:

**"Confidential Information"** means any information that is disclosed to the Confidant in connection with the services by the Principal, whether directly or indirectly, that:

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

and includes, but is not limited to, the Specified Information, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Deed;

- (b) is in the lawful possession of the Confidant without restriction in relation to disclosure before the date of receipt of the information; or
- (c) is required to be disclosed pursuant to law, government policy or legal process.

**“Deed”** means this deed and includes the attached annexure.

**“Express Purpose”** means the purpose described in the attached annexure.

**“Services”** means any services and any other work performed by the Confidant for the Principal (whether directly or indirectly).

**“Specified Information”** means the specified information described as such in the attached annexure.

1.2 Except where the context otherwise requires:

- (a) **Reconstitution of a party.** 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, refers to the person or body established or constituted in its place by which its functions have become exercisable.
- (b) **Rules of construction.** 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) **Headings.** The headings and index in this Deed are for convenience only and do not affect the interpretation of this Deed.
- (d) **References to gender.** Words importing a gender include any other gender.
- (e) **References to persons.** Persons will be taken to include any natural or legal person.
- (f) **Grammatical forms.** 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. NON DISCLOSURE

- 2.1 The Confidant 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.

**3. CONSENT**

- 3.1 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.
- 3.2 If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.3 Without limiting the generality of the preceding clause (Non-disclosure), the Principal may require that the Confidant procure the execution of a deed by the person to whom the Confidant proposes to disclose the Confidential Information, on terms substantially similar to the terms of this Deed.

**4. RESTRICTION ON USE**

- 4.1 The Confidant:
- (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 except for the purpose of performing the Services.
  - (c) must take all necessary precautions to prevent unauthorised access to or copying of the Confidential Information.
  - (d) must comply with any direction of the Principal regarding the safekeeping and storage of Confidential Information.

**5. DEPARTING EMPLOYEES**

- 5.1 If any person, being any partner, officer, agent, consultant, Subcontractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this Deed leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.

**6. SURVIVAL**

- 6.1 This Deed will survive termination of the Services and the expiry or termination of any agreement providing for the performance of the Services by the Confidant (whether directly or indirectly).



**7. RETURN OF CONFIDENTIAL INFORMATION**

- 7.1 Immediately upon request, the Confidant must deliver to the Principal all documents and any material in the possession or control of the Confidant containing Confidential Information.
- 7.2 If the Principal makes a demand for the return of documents or any material containing Confidential Information, and the Confidant is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant 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 and must use their best endeavours to obtain possession of the Confidential Information.
- 7.3 A reference to “documents” or “materials” in this clause (Return of Confidential Information) includes any form of storage of information, whether visible to the eye or not.

**8. CONFLICT OF INTEREST**

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

**9. NOTICES**

- 9.1 The provisions of clause 37.3 of Contract Agreement No. 0600938 apply to service of Notices under this Deed.

**10. MISCELLANEOUS**

- 10.1 The rights and obligations of the Confidant under this Deed may not be assigned or novated.
- 10.2 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.
- 10.3 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.
- 10.4 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 Confidant of any

time or other consideration, will operate as a waiver of the breach or a default by the Confidant. 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.

- 10.5 All amendments to this Deed must be in writing, signed by both parties and executed in the form of a deed.
- 10.6 All consents, approvals and waivers given under this Deed must be writing.
- 10.7 This Deed is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 10.8 Each party submits to the exclusive jurisdiction of the Courts exercising jurisdiction in the State of New South Wales.

The agreement is executed as a Deed on \_\_\_\_\_ **20**\_\_\_\_\_.

### Execution by the Principal:

**Signed, sealed and delivered for and on )  
behalf of ..... )**  
(insert full name of Principal as per Annexure 1) )  
)  
)  
**by..... )** ..... )  
(insert name of person signing on the Principal's behalf) ) (signature of Principal's representative)  
)  
)  
**in the presence of..... )** ..... )  
(insert name of witness) ) (signature of witness)  
)

### Execution by the Confidant:

**Guide Note:** Use the following execution clause where the Confidant is a corporation and that corporation has a common seal. Where the Confidant is a corporation but does not have a common seal, or where the Confidant is a natural person or a partnership, use the appropriate alternate execution clause, as provided below.

**The COMMON SEAL of..... )**  
..... )  
(insert name of Confidant as per Annexure 1) ) (Corporate Seal)  
)  
)  
**ACN: ..... )**  
(insert Confidant ACN) )  
)  
)  
**was duly affixed hereto at ..... )**  
(insert name of City/ Town) )  
)  
)  
**in the State of ..... )** ..... )  
(insert name of State / Territory) ) (signature of Director)  
)  
)  
**in the presence of..... )** ..... )  
(insert name of Secretary or other permanent officer) ) (signature of Secretary or other permanent officer)  
)

**[ALTERNATE – Where Confidant is a corporation –  
execution by two directors:]**

**Signed, sealed and delivered for and on )  
behalf of )**

..... )

..... )

(insert name of Confidant as per Annexure 1)

**A.C.N:** .....

(insert Confidant A.C.N.)

**by** .....

(insert name of Director)

.....  
(signature of Director)

**in the presence of**.....

(insert name of witness not a party to this Contract Agreement)

.....  
(signature of witness)

**and by** .....

(insert name of Director or Company Secretary)

.....  
(signature of Director or Company Secretary)

**in the presence of**.....

(insert name of witness not a party to this Contract Agreement)

.....  
(signature of witness)



**[ALTERNATE – Where Confidant is an individual:]**

**Signed, sealed and delivered by** ..... )  
 ..... )  
 (insert name of Confidant as per Annexure 1) )  
 )  
 )  
**at** ..... )  
 (insert name of City/ Town) )  
 )  
 )  
**in the State of** ..... ) .....  
 (insert name of State / Territory) ) (signature of Confidant)  
 )  
 )  
**in the presence of**..... ) .....  
 (insert name of witness not a party to this Contract Agreement) ) (signature of witness)



**[ALTERNATE – Where Confidant is a partnership:]**

**Signed, sealed and delivered by** ..... )  
 ..... )  
 (insert name of partner authorised to sign on behalf of the )  
 partnership) )  
 )  
 )  
**for an on behalf of** ..... )  
 (insert name of Confidant as per Annexure 1) )  
 )  
 )  
**at** ..... )  
 (insert name of City/ Town) )  
 )  
 )  
**in the State of** ..... ) .....  
 (insert name of State / Territory) ) (signature of Partner)  
 )  
 )  
**in the presence of**..... ) .....  
 (insert name of witness not a party to this Contract Agreement) ) (signature of witness)

## **ANNEXURE 1 TO SCHEDULE 5**

This schedule forms part of the Deed of Confidentiality between the Principal and the Confidant.

<b>Principal</b>	Name	[insert name of Government party]
	Representative	[insert name of representative]
	Address	[insert street address]
	Telephone	[insert fax number]
	Facsimile	[insert fax number]
	Email	[insert email address]
<b>Confidant</b>	Name	[insert name of company or individual]
	A.B.N	[insert A.B.N, if applicable]
	Address	[insert street address]
	Telephone	[insert fax number]
	Facsimile	[insert fax number]
	Email	[insert email address]
<b>Specific Confidential Information</b>	Types or examples of Confidential Information.	[insert types or examples of Confidential Information]
<b>Express Purpose</b>	For the purpose of providing the Services to the Principal.	

## **SCHEDULE 6 – WORKCOVER NSW STATEMENT OF BUSINESS ETHICS**

**WorkCover NSW relies upon our business associates being aware of and adhering to certain the same values when carrying out work on our behalf.**

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

The provisions of this Statement do not apply to the extent that they are inconsistent with any of the provisions of this Contract Agreement.

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

### **Business principles**

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

Achieving value for money does not always mean selecting the lowest price. Rather, WorkCover NSW will balance all relevant factors in determining true value for money including:

- compliance with specification
- quality
- whole of life cost
- initial and ongoing costs
- reliability
- timeliness.

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

### **Responsibilities of contractors, clients and agencies**

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

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

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



## **Fairness and equity**

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

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

## **What we ask of you**

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

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

WorkCover NSW also requires that all suppliers not engage in business practices that will restrict or limit competition. In particular:

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

## **Why is following this Statement of Business Ethics important?**

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

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

- termination of contracts
- loss of future work opportunities
- loss of reputation

- investigation for corruption
- matters being referred for criminal investigation.

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

## **Guidance**

### **Incentives, gifts and benefits**

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

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

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

### **Conflicts of interest**

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

### **Confidentiality**

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

### **Intellectual property rights**

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

### **Secondary employment of our staff**

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

### **Use of WorkCover NSW equipment, resources and information**

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

### **Public comment or statement**

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

**Protected disclosures**

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

**Personal information**

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

**Alcohol and drugs**

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

**Who to contact**

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

Phone: 02 4321 5000

Email: [complaints@workcover.nsw.gov.au](mailto:complaints@workcover.nsw.gov.au)

Correspondence marked *Confidential* to:

Director, Internal Audit, or

Director, Business Risk Management and Site Services

WorkCover NSW

92-100 Donnison St

Gosford NSW 2250



**NSW Procurement is a Business Unit of the NSW Department of  
Commerce**

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

## **PART C**

### **TENDER RESPONSE**

**Contract 0600938 - Actuarial, Financial Management  
and Information Services for the WorkCover  
Authority of New South Wales**

**Period: 3 years with the option to extend for 2  
further periods each of up to 1 year in duration.**

**Closing Date/Time:  
Wednesday 13 September 2006 (by 9:30am)**

Your Company's Legal Entity: \_\_\_\_\_

Your Company's Trading Name: \_\_\_\_\_

Your Company's ABN: \_\_\_\_\_

Contact Name: \_\_\_\_\_  
<insert name to whom enquiries should be directed>

Contact Phone: \_\_\_\_\_

*Note: If a tender is not submitted electronically, the tenderer must submit the original tender, plus four copies of the tender. Tenders are to be marked "Original", "Copy 1," "Copy 2" "Copy 3 and" "Copy 4" accordingly.*

*Actuarial, Financial Management and Information Services  
for  
the WorkCover Authority of NSW*

---

TABLE OF CONTENTS

<b>PART C1</b>	<b>INFORMATION SUPPLIED IN RESPONSE TO PART A .....</b>	<b>3</b>
1.	INTRODUCTION.....	3
2.	PRICING AND RELATED FACTORS .....	3
3.	SELECTION CRITERIA.....	19
4.	ADDITIONAL INFORMATION TO BE PROVIDED BY TENDERER.....	30
5.	SCHEDULE OF INSURANCES.....	34
<b>ANNEXURE 2 TO PART C1 – STATEMENT OF COMPLIANCE .....</b>		<b>37</b>
1.	INTRODUCTION.....	41
2.	BACKGROUND.....	41
3.	GENERAL REQUIREMENTS.....	41
4.	SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL AND FINANCIAL MANAGEMENT AND INFORMATION SERVICES PRIMARY CONTRACTOR .....	41
5.	SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL, FINANCIAL MANAGEMENT AND INFORMATION SERVICES SECONDARY CONTRACTOR.....	42
6.	ACTUARIAL SERVICES REQUIREMENTS TO BE ASSIGNED .....	43
7.	OTHER REQUIREMENTS.....	43
<b>PART C2</b>	<b>SPECIFICATION OF SERVICES.....</b>	<b>44</b>
1.	INTRODUCTION.....	46
2.	BACKGROUND.....	46
3.	GENERAL REQUIREMENTS.....	47
4.	SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL AND FINANCIAL MANAGEMENT AND INFORMATION SERVICES PRIMARY CONTRACTOR .....	48
5.	SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL, FINANCIAL MANAGEMENT AND INFORMATION SERVICES SECONDARY CONTRACTOR.....	60
6.	ACTUARIAL SERVICES REQUIREMENTS TO BE ASSIGNED .....	73
7.	OTHER REQUIREMENTS.....	75
<b>ATTACHMENT A TO PART C2.....</b>		<b>77</b>
<b>PART C3</b>	<b>TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER.....</b>	<b>78</b>
1.	TENDERER IDENTIFICATION DETAILS.....	78
2.	ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER.....	79

## PART C THE TENDER

### **PART C1 INFORMATION SUPPLIED IN RESPONSE TO PART A**

#### **1. INTRODUCTION**

- 1.1 The information provided in this Part will be used in the assessment of Tenders. Questions have been framed to ensure responses are relevant to the selection criteria. Please provide attachments where necessary, clearly labelled and cross-referenced.
- 1.2 References to “you” in this Part are references to the tenderer and all responses given will be taken to be responses of the tenderer.

#### **2. PRICING AND RELATED FACTORS**

##### **2.1 Service Fee Schedule**

- 2.1.1 You must complete the Service Fee Schedules provided below.
- 2.1.2 The following Service Fee Schedules provide for three categories of work as follows:-  
1. Primary Contractor  
2. Secondary Contractor  
3. To Be Assigned.
- 2.1.3 Tenderers tendering for either one of the Primary and/or Secondary Contractor roles MUST also tender for the “To Be Assigned” Services at Service Fee Schedule 2.6 and 2.7.
- 2.1.4 Within each category the same hourly rate for each level of staff MUST be applied across all Services within that category including Maximum Fee Services. Any discounts offered are to be reflected in the tendered hourly rate and applied across all Services within a category. Discounts offered solely in relation to a Maximum Fee will not be considered for evaluation purposes.
- 2.1.5 Tenders that do not provide pricing in the required format may be excluded from the tender process without further consideration at the Board’s discretion.
- 2.1.6 The tendered Hourly Rates and Maximum Fee must cover all costs of performing the Contract Agreement including out-of-pocket expenses and disbursements incurred by it in providing the Services, including but not limited to photocopying, account keeping/processing or management fees, facsimile and telephone charges, travel, accommodation, meals and parking.
- 2.1.7 Tenderers may tender for both the Primary and Secondary Contractor roles, however, both roles will not be awarded to the same tenderer.

## 2.2 Primary Contractor – Hourly Rates Applicable To All Services Including Maximum Fee Services

**NOTE:** Tenderers are to note that although the Principal has nominated a number of projects to which hourly rates may apply, the Principal reserves the right during the term of the Contract Agreement to request that Maximum Fees be provided.

Item No.	Staff Category	Hourly Rate (\$ per hour) GST exclusive	GST Applicable	Total Hourly Rate GST Inclusive
1.	Principal Actuary	\$	\$	\$
2.	Senior Actuaries	\$	\$	\$
3.	Consulting Actuary – 1	\$	\$	\$
4.	Consulting Actuary – 2	\$	\$	\$
5.	Consulting Actuary – 3	\$	\$	\$
6.	Management Consultant	\$	\$	\$
7.	Senior Analyst – 1	\$	\$	\$
8.	Senior Analyst – 2	\$	\$	\$
9.	Analyst – 1	\$	\$	\$
10.	Analyst – 2	\$	\$	\$
	<b>Other Please Specify</b>	\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$

## 2.3 Primary Contractor – Maximum Fees

Item No	Description of Work	Maximum Fee GST exclusive	GST Applicable	Maximum Fee GST Inclusive
	<b>WORKERS COMPENSATION SYSTEM VALUATIONS</b> In accordance with Specification Of Services (Part C2), Clause 4.2.1			
1.	(Part C2) Clause 4.2.1.1 NSW Workers Compensation Scheme Valuation and Review as at 31 December	Per valuation and review \$	Per valuation and review \$	Per valuation and review \$
2.	(Part C2) Clause 4.2.1.2 NSW Workers Compensation Scheme Valuation and Review as at 30 June	Per valuation and review \$	Per valuation and review \$	Per valuation and review \$
3.	(Part C2) Clause 4.2.1.3 Presentation of Results	Per presentation \$	Per presentation \$	Per presentation \$
	<b>MONITORING AND REPORTING</b> In accordance with Specification of Services (Part C2), Clause 4.2.2			
4.	(Part C2) Clause 4.2.2.1 NSW Workers Compensation Scheme Quarterly Performance Report	Per report \$	Per report \$	Per report \$
5.	(Part C2) Clause 4.2.2.2 NSW Workers Compensation Scheme Monthly Monitoring Tool Report	Per report \$	Per report \$	Per report \$

Item No	Description of Work	Maximum Fee GST exclusive	GST Applicable	Maximum Fee GST Inclusive
	<b>PEER REVIEW REQUIREMENTS</b> In accordance with Specification of Services (Part C2) Clause 4.5			
6.	(Part C2) Clause 4.5.1 Peer Review of System Valuations	Per review \$ _____	Per review \$ _____	Per review \$ _____
7.	(Part C2) Clause 4.5.2 Peer Review of Premium Rate Recommendations Report as at 31 December	Per review \$ _____	Per review \$ _____	Per review \$ _____

## 2.4 Secondary Contractor – Hourly Rates Applicable To All Services Including Maximum Fee Services

**NOTE:** Tenderers are to note that although the Principal has nominated a number of projects to which hourly rates may apply, the Principal reserves the right during the term of the Contract Agreement to request that Maximum Fees be provided.

Item No.	Staff Category	Hourly Rate (\$ per hour) GST exclusive	GST Applicable	Total Hourly Rate GST Inclusive
1.	Principal Actuary	\$ _____	\$ _____	\$ _____
2.	Senior Actuaries	\$ _____	\$ _____	\$ _____
3.	Consulting Actuary – 1	\$ _____	\$ _____	\$ _____
4.	Consulting Actuary – 2	\$ _____	\$ _____	\$ _____
5.	Consulting Actuary – 3	\$ _____	\$ _____	\$ _____
6.	Management Consultant	\$ _____	\$ _____	\$ _____
7.	Senior Analyst – 1	\$ _____	\$ _____	\$ _____
8.	Senior Analyst – 2	\$ _____	\$ _____	\$ _____
9.	Analyst – 1	\$ _____	\$ _____	\$ _____
10.	Analyst – 2	\$ _____	\$ _____	\$ _____
	<b>Other Please Specify</b>	\$ _____	\$ _____	\$ _____
		\$ _____	\$ _____	\$ _____
		\$ _____	\$ _____	\$ _____
		\$ _____	\$ _____	\$ _____



## 2.5 Secondary Contractor – Maximum Fees

Item No	Description of Work	Maximum Tendered Fee GST exclusive	GST Applicable	Total Maximum Tendered Fee GST inclusive
<b>WORKERS COMPENSATION SYSTEM VALUATIONS</b> In accordance with Specification Of Services (Part C2), Clause 5.2.1				
1.	(Part C2) Clause 5.2.1.1 Uninsured Liability and Indemnity Scheme (ULIS) Valuation and Review as at 30 June	Per valuation and review \$ _____	Per valuation and review \$ _____	Per valuation and review \$ _____
2.	(Part C2) Clause 5.2.1.2 Bush Fire Fighters Compensation Fund Valuation and Review as at 30 June	Per valuation and review \$ _____	Per valuation and review \$ _____	Per valuation and review \$ _____
3.	(Part C2) Clause 5.2.1.3 Emergency and Rescue Workers Compensation Fund Valuation and Review as at 30 June	Per valuation and review \$ _____	Per valuation and review \$ _____	Per valuation and review \$ _____
4.	(Part C2) Clause 5.2.1.4 Insurers Guarantee Fund Valuation and Review as at 30 June	Per valuation and review \$ _____	Per valuation and review \$ _____	Per valuation and review \$ _____
5.	(Part C2) Clause 5.2.1.5 NSW Sporting Injuries Scheme Valuation and Review as at 30 June	Per valuation and review \$ _____	Per valuation and review \$ _____	Per valuation and review \$ _____
6.	(Part C2) Clause 5.2.1.6 Presentation of Results	Per presentation \$ _____	Per presentation \$ _____	Per presentation \$ _____
<b>PREMIUM FUNCTIONS</b> In accordance with Specification of Services (Part C2), Clause 5.2.2				
7.	(Part C2) Clause 5.2.2.1 Premium Rates Recommendation Report as at 31 December	Per report \$ _____	Per report \$ _____	Per report \$ _____
8.	(Part C2) Clause 5.2.2.2 Presentation of Results	Per presentation \$ _____	Per presentation \$ _____	Per presentation \$ _____
<b>PEER REVIEW REQUIREMENTS</b> In accordance with Specification of Services (Part C2) Clause 5.5				
9.	(Part C2) Clause 5.5.1 Peer Review of Scheme Valuations	Per review \$ _____	Per review \$ _____	Per review \$ _____

**2.6 To Be Assigned - Hourly Rates Applicable To All Services Including To Maximum Fee Services.**

**NOTE:** Tenderers are to note that although the Principal has nominated a number of projects to which hourly rates may apply, the Principal reserves the right during the term of the Contract Agreement to request that Maximum Fees be provided.

Item No.	Staff Category	Hourly Rate (\$ per hour) GST exclusive	GST Applicable	Total Hourly Rate GST Inclusive
1.	Principal Actuary	\$	\$	\$
2.	Senior Actuaries	\$	\$	\$
3.	Consulting Actuary – 1	\$	\$	\$
4.	Consulting Actuary – 2	\$	\$	\$
5.	Consulting Actuary – 3	\$	\$	\$
6.	Management Consultant	\$	\$	\$
7.	Senior Analyst – 1	\$	\$	\$
8.	Senior Analyst – 2	\$	\$	\$
9.	Analyst – 1	\$	\$	\$
10.	Analyst – 2	\$	\$	\$
	<b>Other Please Specify</b>	\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$

**2.7 To Be Assigned - Maximum Fees**

Item No	Description of Work	Maximum Tendered Fee GST exclusive	GST Applicable	Total Maximum Tendered Fee GST inclusive
1.	(Part C2) Clause 6.1 Workers Compensation Dust Diseases Scheme Valuation and Review as at 30 June	Per valuation and review \$	Per valuation and review \$	Per valuation and review \$
2.	(Part C2) Clause 6.2 Presentation of Results	Per presentation \$	Per presentation \$	Per presentation \$
<b>PEER REVIEW REQUIREMENTS</b> In accordance with Specification of Services (Part C2) Clause 6.3				
3.	(Part C2) Clause 6.3.1 Peer Review of System Valuations	Per review \$	Per review \$	Per review \$

## 2.8 Commercial Discounts

Tenderers shall detail below the discount offered on Labour rates in 2.2, 2.4 and 2.6 above from their normal commercial rates.

Item No.	Staff Category	Nominated Personnel (for key positions)	% Discount from tenderer's commercial rates
1.	Principal Actuary		%
2.	Senior Actuaries		%
3.	Consulting Actuary – 1		%
4.	Management Consultant		%
5.	Senior Analyst – 1		%
6.	Analyst – 2		%
	Other Please specify		%

## 2.9 Additional Charges

Tenderers are to detail hereunder any additional charges that are to apply.

*Note: Out-of-pocket expenses and disbursements incurred in providing the Services, including but not limited to photocopying, account keep/processing or management fees, facsimile and telephone charges, travel, accommodation, meals and parking are to be included in the hourly rate and Maximum Fees and NOT to be detailed hereunder.*

Item	Tendered Price GST Inclusive

## 2.10 Details Of Maximum Fee Services

For each of the Maximum Fee Services tendered at Clauses 2.3, 2.5 and 2.7, provide details of nominated personnel, number of hours and work to be performed in the format provided below.

### Clause 2.3 Item 1

#### NSW Workers Compensation Scheme Valuation and Review as at 31 December

Staff Category	Nominated Personnel	No. of Hours	Roles, Responsibilities and Details of Work To Be Performed
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
Other Please Specify			
	Total No. of Hours	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

### Clause 2.3 Item 2

**NSW Workers Compensation Scheme Valuation and Review as at 30 June**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

**Clause 2.3 Item 3**  
**Presentation of Results**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

**Clause 2.3 Item 4****NSW Workers Compensation Scheme Quarterly Performance Report**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

**Clause 2.3 Item 5****NSW Workers Compensation Scheme Monthly Monitoring Report**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

**Clause 2.3 Item 6****Peer Review of System Valuations**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

**Clause 2.3 Item 7****Peer Review of Premium Rates Recommendation Report as at 31 December**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.3

**Clause 2.5 Item 1****Uninsured Liability and Indemnity Scheme (ULIS) Valuation and Review as at 30 June**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.5

**Clause 2.5 Item 2****Bush Fire Fighters Compensation Fund Valuation and Review as at 30 June**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.5

**Clause 2.5 Item 3****Emergency and Rescue Workers Compensation Fund Valuation and Review as at 30 June**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* *Insert no. of hours used to calculate Maximum Fee at clause 2.5*

**Clause 2.5 Item 4****Insurers Guarantee Fund Valuation and Review as at 30 June**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* *Insert no. of hours used to calculate Maximum Fee at clause 2.5*



**Clause 2.5 Item 5****NSW Sporting Injuries Insurance Scheme Valuation and Review as at 30 June**

Staff Category	Nominated Personnel	No. of Hours	Roles, Responsibilities and Details of Work To Be Performed
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.5

**Clause 2.5 Item 6****Presentation of Results**

Staff Category	Nominated Personnel	No. of Hours	Roles, Responsibilities and Details of Work To Be Performed
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.5

**Clause 2.5 Item 7****Premium Rates Recommendation Report as at 31 December**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.5

**Clause 2.5 Item 8****Presentation of Results**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

\* Insert no. of hours used to calculate Maximum Fee at clause 2.5

**Clause 2.5 Item 9****Peer Review of Scheme Valuations**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of hours *</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

*\*Insert no. of hours used to calculate Maximum Fee at clause 2.5*

**Clause 2.7 Item 1****Workers Compensation Dust Diseases Scheme Valuation and Review as at 30 June**

<b>Staff Category</b>	<b>Nominated Personnel</b>	<b>No. of Hours</b>	<b>Roles, Responsibilities and Details of Work To Be Performed</b>
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

*\* Insert no. of hours used to calculate Maximum Fee at clause 2.7*

**Clause 2.7 Item 2**  
**Presentation of Results**

Staff Category	Nominated Personnel	No. of Hours	Roles, Responsibilities and Details of Work To Be Performed
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

*\* Insert no. of hours used to calculate Maximum Fee at clause 2.7*

**Clause 2.7 Item 3**  
**Peer Review of System Valuations**

Staff Category	Nominated Personnel	No. of hours *	Roles, Responsibilities and Details of Work To Be Performed
Principal Actuary			
Senior Actuaries			
Consulting Actuary – 1			
Consulting Actuary – 2			
Consulting Actuary – 3			
Management Consultant			
Senior Analyst – 1			
Senior Analyst – 2			
Analyst – 1			
Analyst – 2			
<b>Other Please Specify</b>			
	<b>Total No. of Hours</b>	*	

*\*Insert no. of hours used to calculate Maximum Fee at clause 2.7*

## 2.11 Price Basis

2.11.1 Tenderers are to detail hereunder the price basis tendered by deleting that which is not applicable (either a or b), and complete % increases where (b) is nominated.

*Note: Any nominated increase will be taken into account for evaluation purposes*

2.11.2 Subject to the conditions of Part B, Clause 9:

*Delete (a) or (b) which is not applicable.*

- (a) The tendered price/s shall remain firm for the duration of the Contract Agreement including any optional extension periods; **OR**
- (b) The tendered price/s shall remain firm for the duration of the initial one year of the Contract Agreement, then,

On the date which is the date of the first anniversary of the Contract Agreement, the tendered price/s may be increased by up to a maximum of \_\_\_\_%. The increased price/s will then remain firm for the second year of the Contract Agreement.

On the date which is the date of the second anniversary of the Contract Agreement, the tendered price/s may be increased by up to a maximum of \_\_\_\_%. The increased price/s will then remain firm for the third year of the Contract Agreement.

Should the Principal exercise its option to extend for a further period of up to one (1) year (Year 4 or part thereof), on the date which is the date of the third anniversary of the Contract Agreement, the tendered price/s may be increased by up to a maximum of \_\_\_\_%. The increased price/s will then remain firm for the fourth year or part thereof of the Contract Agreement.

Should the Principal exercise its option to extend for a further period of up to one (1) year (Year 5 or part thereof), on the date which is the date of the fourth anniversary of the Contract Agreement, the price/s may be increased by up to a maximum of \_\_\_\_%. The increased price/s will then remain firm for the fifth year or part thereof of the Contract Agreement.

## 2.12 Settlement Discount

2.12.1 The tendered prices are subject to a settlement discount of:

- (a) \_\_\_\_\_ % for payment within 14 days from the date of receipt of claim or acceptance, whichever date is the later.
- (b) \_\_\_\_\_ % for payment made during the month following that in which the supplies have been received or the account rendered, whichever date is the later.
- (c) \_\_\_\_\_ % for payment within \_\_\_\_\_ days from the date of receipt of claim or acceptance of supplies, whichever date is later.

(N.B.: If this condition is not completed, the prices tendered will be deemed to be NETT).

**2.13 Tender Validity Period**

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

(N.B.: The minimum validity period is as stated in cl. 5.4 of Part A).

**3. SELECTION CRITERIA**

Tenderers are required to respond directly and individually to each of the selection criteria outlined in the following spaces. The information provided will be used in the assessment of tenders. Responses are to be concise and focus on key elements of the tenderer's proposal as it relates to each of the selection criteria. Tenderers who wish to provide details of their company profile or marketing material should do so as a separate attachment and not include this information in the selection criteria.

**A. Cost considerations**

*No response required. Information provided at 2.2 to 2.12 will be used to assess this criterion.*

**B. Demonstrated understanding of WorkCover NSW and its requirements including:****i. Demonstrated understanding of WorkCover NSW's role, functions and objectives.**


---



---

**ii. Demonstrated understanding of WorkCover NSW's requirements for actuarial, financial management and information services.**


---



---

**iii. Demonstrated understanding of the features of various funds and schemes within the NSW Workers Compensation System.**


---



---

**C. The tenderer's previous experience providing comparable services, including:****General**

*Tenderers shall provide the information detailed below:*

- Years in Business

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

---

State the number of years providing the required Service: \_\_\_\_\_

History and scope of tenderer's current business activities

\_\_\_\_\_

Market segments in which the tenderer competes, and percent of Australian revenue that each segment represents

\_\_\_\_\_

\_\_\_\_\_

Geographic operating regions

\_\_\_\_\_

\_\_\_\_\_

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

**Note: Persons nominated below may be contacted for references in addition to the Referees nominated at clause 3G.**

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

*Demonstrate expertise, experience and proven track record in the provision of Actuarial, financial management and information services and consultancy services (in the last four (4) years) relevant to this RFT.*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*If you have undertaken any previous Contracts provide details of any assessment undertaken of your performance. If performance reports were prepared in respect of your performance, please provide copies.*

\_\_\_\_\_

\_\_\_\_\_

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

---



---

- ii. **Demonstrated experience in providing reports (actuarial, information, statistical and consultancy reports) and presenting on results to meet WorkCover NSW's needs and in a way which is readily understood by non-technical users.**

---



---

- iii. **Demonstrated experience and success in building its clients' staff's knowledge and capacity in actuarial, financial management and/or insurance related matters.**

*Previous examples of formal and informal training provided to clients are to be provided.*

---



---

**D. Tenderer's ability and capacity to meet the requirements including:-**

- i. **Resource capability to perform the services including demonstrated knowledge, qualifications, skills, experience, suitability, availability and proposed roles of the personnel proposed to be assigned to the Services, including the designated principal actuary for each tendered Service, and level of staff and corresponding hours offered against each Maximum Fee Service.**

*NOTE: 1. The information provided at clause 2.10 will also be used to assess this criterion.*

*2. CVs are to be provided for all nominated staff.*

*3. Signed Statutory Declarations are to be provided by each nominated Key Personnel confirming their availability to work for the tenderer in the nominated capacity, including the estimated number of hours per year, should the tenderer be successful.*

---



---

*Provide details of the tenderer's capacity to perform the Contract in the context of the current commitments of the tenderer.*

---



---



*Tenderers shall describe any significant actuarial services that it has submitted a tender for in Australia, prior to the closing date of this RFT, and for which the outcome is pending.*

---



---

Total No of Employees: Organisation: \_\_\_\_\_  
 To be utilised on proposed Contract Agreement: \_\_\_\_\_

Details of Employee Nos:

Organisation:

	Management	Professional	Administration
Full-time			
Part-time			

To be utilised on proposed Contract Agreement:

	Management	Professional	Administration
Full-time			
Part-time			

Key Personnel:

*Tenderers are to provide in the format below the following additional details for each Key Personnel listed at clause 2.10.to be utilised for the purposes the Contract Agreement.*

Staff Category	NAME	POSITION	LENGTH OF SERVICE	EMPLOYMENT STATUS (IE. EMPLOYEE/SUB- CONTRACTOR)	QUALIFICATIONS	NO. OF YEARS RELEVANT EXPERIENCE
Principal Actuary						
Senior Actuaries						
Consulting Actuary – 1						
Management Consultant						
Senior Analyst – 1						
Analyst – 2						
Other Please specify						

- ii. **Capacity to undertake the required valuation and peer review of the WorkCover NSW Scheme Statutory Funds for the year ending 31 December 2006.**

---



---

- iii. **Demonstrated ability to meet tight deadlines and availability of additional resources to meet peak demands, provide specialist support and meet additional requirements.**

---



---

- iv. **Possession of and access to modern analytical tools, models and computer technology to undertake actuarial analyses.**

---



---

- v. **The tenderer's financial capacity and stability.**

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

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

*If a company, please submit a copy of each of your annual financial reports for the last three financial years with your Tender.*

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

---



---



---



---

**E. Suitability of tenderer's proposed methodologies:**

- i. **Proposed approach and methodology for meeting WorkCover NSW's requirements including how Scheme structural changes will be addressed eg. Premium changes, benefit changes, etc.**

---



---

- 
- ii. How the tenderer proposes to manage all aspects of the Services including quality management, staff supervision, client management, project planning, liaison with the other Actuarial Contractor, reporting arrangements and control of costs, and details of systems in place to support such management.

---



---



---

- iii. How the tenderer proposes to add value to the required Services.

*Past examples should be provided by the tenderer, outlining the tenderer's contribution to the improvement of business outcomes*

---



---



---

- iv. Appropriate mechanism for avoiding and dealing with conflicts of interests including performance of work on behalf of Scheme Agents.

---



---



---

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

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

---



---



---

- v. Details of how the tenderer proposes to take-over remuneration tools and requirements of Workers Compensation Claims and Policy Services – Schedule 3 – Remuneration (Schedule 3, Attachment B) and existing projects to ensure continuity.

---



---



---

**F. Commercial and contractual factors, including:**

**i. Degree of Compliance with the Terms and Conditions of the Contract Agreement.**

Do the tendered service fully comply with the proposed Conditions of Contract Agreement at Part B.

YES/NO (delete whichever is inapplicable)

- Note: 1. A full Statement of Compliance is to be provided at Part C1 Annexure 2 against each clause listed at Part B – Conditions of Contract Agreement.**
- 2. If you state compliance at Annexure 2 and answer “yes” to this question, the stated Conditions of Contract at Part B will not be subject to any negotiation should your tender be successful.**

If “No”, please list clause numbers not fully complied with below and provide full details of deviations below.

---



---



---

**ii. Degree of Compliance with the Specification of Services.**

Do the tendered Service/s fully comply with the Specification of Services at Part C2?

YES/NO (delete whichever is inapplicable)

- Note: 1. A full Statement of Compliance is to be provided at Part C1 Annexure 2 against each clause listed at Part C2 – Specification of Services.**
- 2. If you state compliance at Annexure 2 and answer “yes” to this question, the stated Specification of Services will not be subject to any negotiation should your tender be successful.**

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

---



---

iii. **Probity and integrity declarations.**

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

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

- **Occupational Health and Safety Act 2000**

---



---

- **Workers Compensation Act 1987**

---



---

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

---



---

- **Industrial Relations Act 1996**

---



---

v. **Demonstrated commitment to and capacity to comply with:**

- **NSW Government Procurement Policy: and**
- **NSW Government Code of Practice for Procurement and benefits offered in relation to the Policy.**

Code of Practice for Procurement

Have you read the [NSW Government Code of Practice for Procurement](#) and taken it into consideration in preparing and submitting your Tender?

**Yes/No**

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

**Yes/No**

Provide any other relevant information below

---

Provide details of any initiatives/strategies/policies you have or propose to implement under any resultant contract in relation to the following areas of the NSW Government's Procurement Policy:

- training and skills formation;
- affirmative action;
- occupational health and safety;
- workplace and industrial relations practices;
- improving workplace diversity;
- employment opportunities for Aboriginal people; and
- environmental management and performance.

---

---

---

---

---

---

---

---

---

---

**G. Quality of Referee Reports**

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

**Referee No 1.**

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

Position: \_\_\_\_\_

Company: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Referee No 2.**

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

Position: \_\_\_\_\_

Company: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Referee No 3.**

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

Position: \_\_\_\_\_

Company: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

---



**Principal Banker**

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

Position: \_\_\_\_\_

Company: \_\_\_\_\_

No. of Years tenderer has banked with this bank \_\_\_\_\_ years

Telephone No: \_\_\_\_\_

Fax No: \_\_\_\_\_

Email Address: \_\_\_\_\_

**4. ADDITIONAL INFORMATION TO BE PROVIDED BY TENDERER****4.1 Category/Categories of Work Tendered For**

Tenderers are to nominate which aspect of the tender is/are being tendered for:

Primary Contractor: YES/NO (delete whichever is inapplicable)

Secondary Contractor: YES/NO (delete whichever is inapplicable)

If you have tendered for both roles, please nominate which is your preferred role, ie. Primary or Secondary Contractor.

Preferred role: \_\_\_\_\_

***Tenderers are advised that separate Contractors will be appointed as the Primary and Secondary Contractors.***

**4.2 Subcontractors****4.2.1 Is any part of the Service to be provided through sub-contract?**

**Yes/No**

If “Yes”, give details of item, name, address and ABN of proposed subcontractor(s).

---



---



---

**4.3 Suitability of proposed subcontractors**

- 4.3.1 Provide details of proposed subcontractors' legal status (company, partnership, individual etc) and their experience and qualifications in the provision of similar Services.

---

---

---

**4.4 Details of ownership**

- 4.4.1 If you are a company, please provide details of your ownership, that is, Australian, Overseas, largest shareholder, paid-up capital and other relevant details.

---

---

---

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

---

---

---

- 4.4.3 Corporate Group Structure

---

---

- 4.4.4 Overall structure of the business

---

---

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

---

---

- 4.4.6 Details of the tenderer's business relationships (including shareholdings, alliances, partnerships and similar relationships with other entities in or related to the tenderer's industry or the services to be provided under the contract).

---

---

**4.5 Contracting as agent/trustee**

- 4.5.1 If awarded a contract, do you intend to enter the contract in your own right or as agent or trustee for some other entity or entities? If the latter, provide full details.

---

---

---

**4.6 Current Legal Proceedings**

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

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

**Yes/No**

If **"Yes"**, please supply full details below:

---

---

---

---

---

---

---

**4.7 Addenda to this RFT After Issue**

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

**YES/NO/THERE HAVE BEEN NO ADDENDA BY THE BOARD**

If **NO**, provide reasons below

---

---

---

---

---

---

---

---

---

---

**5. SCHEDULE OF INSURANCES****5.1 Worker's Compensation Insurance**

Insurance Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone number: \_\_\_\_\_  
Policy number: \_\_\_\_\_  
Expiry Date: \_\_\_\_\_

**5.2 Public Liability Insurance**

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

**5.3 Professional Indemnity**

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

**5.4 Fidelity Insurance**

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

**ANNEXURE 1 TO PART C1 - PROBITY AND INTEGRITY DECLARATIONS.**

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

- 1 To the best of the Tenderer's knowledge and belief, after due inquiry, no family relationship exists between:
  - (a) on the one hand, the Tenderer or any employee of the Tenderer directly or indirectly involved in the preparation or submission of the Tender; and
  - (b) on the other hand, any employee of WorkCover NSW or the Department of Commerce ("**the Agencies**") involved in evaluation of tenders or administration of contracts or in possession of confidential information relating to the Tender or the Contract.

OR

Family relationships existing between:

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

are disclosed in this Annexure.

- 2 Disclosure of family relationships with the Agencies' employees must include details of the nature and extent of the relationship or association.
- 3 The Tenderer has not engaged in any unethical behaviour or sought and/or obtained an unfair advantage in obtaining business with the Agencies (whether through lobbying of Ministers or the Agencies or other government officials or by any other means) and will not in relation to this Tender and Contract.
- 4 Unless stated below, the Tenderer has not been nor presently is an employee of the Agencies.
- 5 The Tenderer shall notify the Agencies in writing immediately any provision of this declaration becomes incorrect, with full details of the reasons.

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

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

Date \_\_\_\_\_

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

**Yes/No**

---

Print Name and Title

## **ANNEXURE 2 TO PART C1 – STATEMENT OF COMPLIANCE**

The Service/s are required to be in accordance with the Conditions of Contract detailed at Part B and the Specification of Services detailed at Part C2.

Tenderers must state hereunder whether the Service/s offered comply with the Conditions of Contract and conform to the Specification of Services

The following terms are appropriate in providing a statement of compliance:

**COMPLIES** means:

- (a) in the case of a clause which is of an informative nature only, that the clause has been read and understood;
- (b) in the case of a clause which specifies a requirement or performance standard to be met by the Service/s to be provided, that the offer is to provide the requirement or standard.

Where appropriate, tenderers should state or describe how the requirement is to be met.

**PARTIALLY COMPLIES** means, in the case of a clause which specifies a requirement or performance standard, it can only be met subject to certain conditions. Where this is the case and the tenderer is prepared to make good on the condition, requirement or performance standard the tenderer must explain and cost the required change.

**DOES NOT COMPLY** means that the requirement or performance standard of the clause is not met by the offer. Full details of non-compliance must be stated.

**ALTERNATIVE** means that the tenderer's method, system or process either does not require the feature or the tenderer's method, system or process fully complies in a manner different to that described. In both cases a description must be provided.

**SIGNIFICANTLY EXCEEDS REQUIREMENTS** means, in some cases, the Services offered may significantly exceed the specified requirements. As this may have a bearing on the evaluation process, full details must be stated.

The Specification is indicative of the needs of the Principal, and any Service/s offered must be of at least the same standard and potential. Consideration may be given, however, to Service of a higher standard if they are available and better suited to the Principals requirements.

Any failure by the tenderer to make clear the extent of compliance or non-compliance with any clause or paragraph of the Conditions of Contract and the Specification of Services may be interpreted as failure to comply with the requirement concerned when assessing the relative merits of tenders.



**STATEMENT OF COMPLIANCE – PART B CONDITIONS OF CONTRACT AGREEMENT**

CONDITION OF CONTRACT AGREEMENT CLAUSE NO.	COMPLIANCE STATEMENT
1. INTERPRETATION	
2. NATURE OF CONTRACT BETWEEN THE PRINCIPAL AND THE CONTRACTOR	
3. TERM	
4. THE PRINCIPAL'S OBJECTIVES	
5. PROVISIONS OF SERVICES	
6. RIGHT TO OBTAIN SERVICES ELSEWHERE	
7. THE PRINCIPAL'S REQUIREMENTS	
8. CONTRACTOR'S WARRANTIES	
9. PRICE BASIS	
10. MANAGEMENT OF THE SERVICES	
11. THE PRINCIPAL'S RESPONSIBILITIES	
12. DELAY	
13. SERVICE FEES AND INVOICING	
14. TAXES AND GST	
15. PERFORMANCE MONITORING	
16. MISTAKES IN INFORMATION	
17. COMPLIANCE WITH LAW	
18. CONFLICT OF INTEREST	
19. INTELLECTUAL PROPERTY RIGHTS	
20. DELIVERY OF CONTRACT MATERIAL	
21. PERSONNEL	
22. PAYMENT OF WAGES AND ALLOWANCES	
23. INDEMNITY BY THE CONTRACTOR	
24. MINIMUM INSURANCE REQUIREMENTS	

CONDITION OF CONTRACT AGREEMENT CLAUSE NO.	COMPLIANCE STATEMENT
25. CONFIDENTIAL INFORMATION	
26. PRIVACY	
27. PRINCIPAL'S DATA AND NOMINAL INSURER'S DATA	
28. WORKCOVER NSW CORPORATE DATA REPOSITORY	
29. ASSIGNMENT AND SUBCONTRACTING	
30. EXCHANGE OF INFORMATION BETWEEN GOVERNEMENT AGENCIES	
31. SUSPENSION	
32. TERMINATION	
33. CONSEQUENCES OF TERMINATION	
34. SET-OFF/MONEY RECOVERABLE BY THE PRINCIPAL	
35. TRANSITION-OUT SERVICES	
36. CAUSES BEYOND THE CONTROL OF THE PARTIES	
37. NOTICES	
38. ISSUE RESOLUTION	
39. PERFORMANCE OF CONTRACT AGREEMENT DURING ISSUE RESOLUTION	
40. MISCELLANEOUS	
41. ENTRY TO OFFICIAL ESTABLISHMENTS	
42. DAMAGE TO PROPERTY	
43. ACCESS TO CONTRACTOR'S PREMISES	
44. VARIATIONS	
45. WAIVER	
46. SEVERABILITY	
47. COUNTERPARTS	

CONDITION OF CONTRACT AGREEMENT CLAUSE NO.		COMPLIANCE STATEMENT
48.	APPLICABLE LAW	
49.	RIGHTS CUMULATIVE	
50.	NO AGENCY/NO EMPLOYMENT/NO PARTNERSHIP	
51.	NON-MERGER	
SCHEDULE 1	CONTRACT AGREEMENT DETAILS	
SCHEDULE 2	EXPERT DETERMINATION PROCEDURES	
SCHEDULE 3	SPECIFICATION OF SERVICES	
SCHEDULE 4	SERVICE FEES SCHEDULE	
SCHEDULE 5	CONFIDENTIALITY AGREEMENT	
SCHEDULE 6	WORKCOVER NSW STATEMENT OF BUSINESS ETHICS	

**STATEMENT OF COMPLIANCE – PART C2 SPECIFICATION OF SERVICES**

<b>REQUIRED SPECIFICATION</b>		<b>TENDERED SPECIFICATION</b>
<b>1.</b>	<b>INTRODUCTION</b>	
<b>2.</b>	<b>BACKGROUND</b>	
<b>3.</b>	<b>GENERAL REQUIREMENTS</b>	
<b>3.1</b>	<b>Term</b>	
<b>3.2</b>	<b>Personnel</b>	
<b>3.3</b>	<b>Principal Actuary</b>	
<b>4.</b>	<b>SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL AND FINANCIAL MANAGEMENT AND INFORMATION SERVICES PRIMARY CONTRACTOR</b>	
<b>4.1</b>	<b>Overview of Requirements</b>	
4.1.1	Introduction	
4.1.2	Commencement of Services	
4.1.3	Transition and Implementation	
4.1.4	Timetable for Delivery of Services	
<b>4.2</b>	<b>Actuarial Services Requirements</b>	
4.2.1	Workers Compensation System Valuations	
4.2.2	Monitoring and Reporting	
4.2.3	Scheme Agent Remuneration	
<b>4.3</b>	<b>Financial Management Services Requirements</b>	
4.3.1	Strategic Reviews and Advice	
<b>4.4</b>	<b>Information Services Requirements</b>	
4.4.1	WorkCover NSW Corporate Data Repository (CDR)	
4.4.2	Training and Development	

REQUIRED SPECIFICATION		TENDERED SPECIFICATION
<b>4.5</b>	<b>Peer Review Requirements</b>	
4.5.1	Peer Review of System Valuations	
4.5.2	Peer Review of Premium Rates Recommendation Report as at 31 December	
4.5.3	Peer Review of Other Work	
<b>5.</b>	<b>SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL, FINANCIAL MANAGEMENT AND INFORMATION SERVICES SECONDARY CONTRACTOR</b>	
<b>5.1</b>	<b>Overview of Requirements</b>	
5.1.1	Introduction	
5.1.2	Commencement of Services	
5.1.3	Transition and Implementation	
5.1.4	Timetable for Delivery of Services	
<b>5.2</b>	<b>Actuarial Services Requirements</b>	
5.2.1	Workers Compensation System Valuations	
5.2.2	Premium Functions	
5.2.3	Monitoring and Reporting	
<b>5.3</b>	<b>Financial Management Services Requirements</b>	
5.3.1	Strategic Reviews and Advice	
<b>5.4</b>	<b>Information Services Requirements</b>	
5.4.1	WorkCover NSW Corporate Data Repository (CDR)	
5.4.2	Training and Development	
<b>5.5</b>	<b>Peer Review Requirements</b>	

REQUIRED SPECIFICATION		TENDERED SPECIFICATION
6.	ACTUARIAL SERVICES REQUIREMENTS TO BE ASSIGNED	
6.1	Workers Compensation Dust Diseases Scheme Valuation and Review as at 30 June	
6.2	Presentation of Result	
6.3	Peer Review Requirements	
7.	OTHER REQUIREMENTS	
7.1	Transition Out Arrangements	

## **PART C2 SPECIFICATION OF SERVICES**

**This Specification of Services includes the following attachments:**

**Attachment A:** Representative Timetable for Delivery of Services

**Attachment B:** Workers Compensation Claims and Policy Services – Schedule 3 – Remuneration (*Restricted Information – refer Part A, clause 3.2*)

**Attachment C:** Workers Compensation Claims and Policy Services – Schedule 5 – KPIs (*Restricted Information – refer Part A, clause 3.2*)

**Attachment D:** Insurer Guidelines on Remuneration for 01/02 to 05/05 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment E:** Government Gazette No. 70 Friday, 26 May 2006 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment F:** Scheme Valuation 30 June 2005 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment G:** Uninsured Liability and Indemnity Scheme Valuation 30 June 2005 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment H:** Insurers Guarantee Fund Valuation 30 June 2005 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment I:** Bush Fire Fighters Compensation Fund and Emergency and Rescue Workers Compensation Fund Valuations 30 June 2005 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment J:** Workers Compensation (Dust Diseases) Fund Valuation 30 June 2005 (*Restricted Information – refer Part A, clause 3.2*)

**Attachment K:** NSW Sporting Injuries Insurance Scheme Valuation 30 June 2005 (*Restricted Information – refer Part A, clause 3.2*)

**Specification of Services**  
**for**  
**Actuarial, Financial Management and Information Services**  
**for the**  
**WorkCover Authority of New South Wales**

**July 2006**



## **WorkCover Authority of New South Wales**

### **Actuarial, Financial Management and Information Services Specification**

#### **1. INTRODUCTION**

- 1.1 WorkCover NSW is seeking tenders from organisations interested in providing actuarial, financial management and information services to WorkCover NSW.
- 1.2 Unless a contrary intention appears words or terms which are not defined in this document have the same meaning given to them in the Contract Conditions forming Part B of the Request for Tender No. 0600938 and dated 31 July 2006 and herein referred to as the "Contract Agreement".
- 1.3 The purpose of this document is to specify the services required to be delivered under the Contract Agreement.

#### **2. BACKGROUND**

- 2.1 WorkCover NSW is a statutory corporation, representing the Crown, constituted by section 14 of the 1998 Act. WorkCover NSW administers the operation of the NSW workers compensation system, which provides statutory workers compensation insurance for employers and workers of NSW. Specifically, WorkCover NSW is responsible for setting premium rates, monitoring and reviewing benefit levels, and maintaining the overall viability of the workers compensation system. The NSW workers compensation system consists of:
  - i. the NSW workers compensation scheme;
  - ii. self-insurers under Division 5 of Part 7 of the 1987 Act;
  - iii. specialised insurers under Division 3 of Part 7 of the 1987 Act;
  - iv. Government employers covered by the Government's managed fund scheme, as referred to in section 211B of the 1987 Act;
  - v. the statutory funds listed at Clause 2.3.
- 2.2 The NSW workers compensation scheme, which forms part of the NSW workers compensation system, incorporates the following statutory fund:
  - i. the Workers Compensation Insurance Fund.
- 2.3 The other statutory funds within the NSW workers compensation system are:
  - i. the Uninsured Liability and Indemnity Scheme;
  - ii. the Insurers Guarantee Fund;
  - iii. the Bush Fire Fighters Compensation Fund;
  - iv. the Emergency and Rescue Workers Compensation Fund;
  - v. the Workers Compensation (Dust Diseases) Fund; and
  - vi. the NSW Sporting Injuries Insurance Scheme.

- 2.4 WorkCover NSW requires two providers of actuarial, financial management and information services:
- i. an “Actuarial, Financial Management and Information Services Primary Contractor” (Primary Contractor); and
  - ii. an “Actuarial, Financial Management and Information Services Secondary Contractor” (Secondary Contractor).
- 2.5 General requirements which apply to both the Primary and Secondary Contractor are set out below in Clause 3. The services required from the Primary Contractor are set out in Clause 4. The services required from the Secondary Contractor are set out in Clause 5. Service requirements that will be assigned to either the Primary Contractor or the Secondary Contractor at the absolute discretion of the Dust Diseases Board are set out in Clause 6. Other requirements which apply to both the Primary Contractor and the Secondary Contractor are set out in Clause 7.

### **3. GENERAL REQUIREMENTS**

#### **3.1 Term**

- 3.1.1 The Primary and Secondary Contractors will be required to provide services in respect of WorkCover NSW activities for the financial years 2006/07, 2007/08, 2008/09 and 2009/10.
- 3.1.2 The Contract Agreements will run for a term of three (3) years from the Commencement Date and may be extended by two (2) further periods each of up to one (1) year in duration. Any such extension will be at the sole discretion of WorkCover NSW and will be in accordance with the terms and conditions of the Contract Agreement.
- 3.1.3 For operational purposes, WorkCover NSW has a preference for any Contract Agreement to conclude on 31 March. Such preference may be taken into consideration when determining the period of any optional extension exercised.

#### **3.2 Personnel**

- 3.2.1 Both the Primary and Secondary Contractors are required to nominate a team of personnel (the “Key Personnel”) to undertake the work required. The team is expected to be made up of a mix of appropriately qualified staff to undertake all the tasks required, and to accommodate peak demands and reasonable additional work within the specified or agreed timeframes.

#### **3.3 Principal Actuary**

- 3.3.1 Within their team of Key Personnel the Primary and Secondary Contractors are to nominate a Principal Actuary. The Principal Actuary is to have ultimate professional and management responsibility for the delivery of services under the Contract Agreement.

### 3.3.2 The Principal Actuary will be required to:

- i. sign off on all reports and advice (unless otherwise agreed by WorkCover NSW in advance);
- ii. manage the delivery of tasks under the Contract Agreement and in accordance with the relevant professional standards and the specified requirements and timetable;
- iii. be the point of contact for official correspondence under the Contract Agreement;
- iv. present to WorkCover NSW, the WorkCover NSW Board, the Workers Compensation and Workplace Occupational Health and Safety Council, WorkCover NSW Investment Board, WorkCover NSW Executive and Staff, NSW Government (including the Minister, NSW Treasury and NSW Audit Office and their actuaries) and other parties nominated by WorkCover NSW from time to time on their results and conclusions;
- v. submit invoices and monthly status reports; and
- vi. meet with WorkCover NSW regularly, and at a minimum bi-monthly (every two (2) months), to discuss performance, work plans and timetables.

## 4. SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL AND FINANCIAL MANAGEMENT AND INFORMATION SERVICES PRIMARY CONTRACTOR

### 4.1 Overview of Requirements

#### 4.1.1 Introduction

##### 4.1.1.1 The role of the Primary Contractor incorporates:

1. **Actuarial Services.** Responsibility for undertaking valuations, assessing performance related fees for Scheme Agents, budget projections and other actuarial services in respect of the NSW workers compensation scheme, and peer review of the valuations of the other statutory funds. The Primary Contractor will also be required to provide advice and supporting reports to assist in the determination of queries or disputes that may arise from time to time on matters relating to Scheme Agent remuneration arrangements.
2. **Financial Management Services.** Responsibility for providing financial management, insurance and related consultancy services, assisting in policy development and related matters for WorkCover NSW.

3. **Information Services.** Assist WorkCover NSW with the maintenance and improvement of the WorkCover NSW Corporate Data Repository and the development of standard and ad-hoc reports for WorkCover NSW. The Primary Contractor will also be required to provide ongoing assistance in the specification and testing of changes; development of any additional reports; and in resolving data quality and consistency problems in relation to the WorkCover NSW Corporate Data Repository. Additionally, the Primary Contractor will be required to provide ongoing assistance in the training and education of WorkCover NSW Staff, and supporting WorkCover NSW to build in-house capability and skills.

#### **4.1.2 Commencement of Services**

- 4.1.2.1 The current contract for actuarial services is due to expire 31 October 2006. It is the intention of WorkCover NSW, however, to seek an extension to that Term and it is envisaged that services provided under the new contract agreement is likely to commence 1 January 2007. The first outstanding claims liability estimate (valuation) required from the Primary Contractor under the Contract Agreement is likely to be in respect of 31 December 2006.
- 4.1.2.2 The Primary Contractor will be required to commence provision of financial management and information services upon execution of the Contract Agreement, as well as the requirements of 4.1.3 Transition and Implementation.

#### **4.1.3 Transition and Implementation**

- 4.1.3.1 The Primary Contractor is required to work closely and cooperatively and generally in good faith with the existing actuarial services providers, newly appointed providers and other existing providers (including without limitation PricewaterhouseCoopers, Finity Consulting, the Secondary Contractor and other providers) as well as WorkCover NSW to ensure a smooth transition of responsibility.
- 4.1.3.2 The existing actuarial services providers will supply the Primary Contractor with historical data and records, specifications, models and/or computer programs and one on one briefings related to the services required to be delivered.

#### **4.1.4 Timetable for Delivery of Services**

- 4.1.4.1 For each specific service (as detailed below in Clauses 4.2, 4.3, 4.4 and 4.5, and Clause 6.1 and 6.2, and/or 6.3 where allocated), WorkCover NSW will determine, in consultation with the Primary Contractor, a timetable for delivery of the services. This timetable will align with deadlines for financial reporting and other key processes, in particular the scheduled meeting dates for the WorkCover NSW Board. The Primary Contractor must meet the timetable determined for the task.
- 4.1.4.2 A Representative Timetable for Delivery of Services can be found at Attachment A.

## 4.2 Actuarial Services Requirements

The following actuarial services are to be provided by the Primary Contractor.

### 4.2.1 Workers Compensation System Valuations

Workers Compensation System Valuations are undertaken either twice yearly for the periods ending 31 December and 30 June each year or annually for the period ending 30 June only. They provide statements of the financial status of the Workers Compensation System for inclusion in WorkCover NSW's accounts in the Annual Report and other published financial statements.

#### 4.2.1.1 NSW Workers Compensation Scheme Valuation and Review as at 31 December

4.2.1.1.1 Complete a valuation of Scheme liabilities as at 31 December and review actuarial assumptions based on data to 31 December. The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS). The valuation is to be completed for WorkCover NSW acting on behalf of the Nominal Insurer.

4.2.1.1.2 The results are to be used to update liability figures in quarterly unaudited financial statements, as a basis for premium setting for the following financial year and to assist in the management of Scheme Agents, WorkCover NSW and the System.

4.2.1.1.3 The Primary Contractor is required to:

- i. progressively provide information to the Secondary Contractor throughout the completion of this work to enable the Secondary Contractor to complete its peer review;
- ii. provide the Secondary Contractor with the estimated breakeven rate to enable contribution to creation of the Insurance Premiums Order (IPO);
- iii. provide WorkCover NSW and the Secondary Contractor with a draft report of their findings, results and conclusions; and
- iv. consult with WorkCover NSW and the Secondary Contractor and is to consider all feedback from WorkCover NSW and the Secondary Contractor prior to submitting its final report to WorkCover NSW.

4.2.1.1.4 The valuation must include, as a minimum:

##### 4.2.1.1.4.1 Scheme Valuation Executive Summary Report

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to WorkCover NSW acting on behalf of the Nominal Insurer, and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

##### 4.2.1.1.4.2 Scheme Valuation Report

This report must include:

- i. Estimated outstanding claims liability as at 31 December each year;

- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Statutory Funds/Scheme in 1987 up to and including the current year;
- iii. Estimated premium collection for each policy year from inception of the Statutory Funds/Scheme in 1987 up to and including the current year;
- iv. Estimated breakeven rate for each policy year from inception of the Statutory Funds/Scheme in 1987 up to and including the current year;
- v. Estimated funding ratio projections for the Scheme;
- vi. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Scheme and other Funds; and
- vii. Recommendations on enhancements to the Scheme, the Scheme Valuation Report and/or the Scheme Valuation process.

#### **4.2.1.2 NSW Workers Compensation Scheme Valuation and Review as at 30 June**

4.2.1.2.1 Complete a valuation of Scheme liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS). The valuation is to be completed for WorkCover NSW acting on behalf of the Nominal Insurer.

4.2.1.2.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of Scheme Agents, WorkCover NSW and the System.

4.2.1.2.3 The Primary Contractor is required to:

- i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
- ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;
- iii. progressively provide information to the Secondary Contractor throughout the completion of this work and to meet with and respond to queries from the Secondary Contractor, to enable the Secondary Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Secondary Contractor with a draft report of its findings, results and conclusions; and
- v. consult with WorkCover NSW and the Secondary Contractor and is to consider all feedback from WorkCover NSW and Secondary Contractor prior to submitting its final report to WorkCover NSW.

4.2.1.2.4 The valuation must include as a minimum:

##### **4.2.1.2.4.1 Scheme Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to WorkCover NSW acting on behalf of the Nominal Insurer, and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

#### **4.2.1.2.4.2 Scheme Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Statutory Funds/Scheme in 1987 up to and including the current year;
- iii. Estimated premium collection for each policy year from inception of the Statutory Funds/Scheme in 1987 up to and including the current year;
- iv. Estimated funding ratio projections for the Scheme;
- v. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Scheme and other Funds; and
- vi. Recommendations on enhancements to the Scheme, the Scheme Valuation Report and/or the Scheme Valuation process.

#### **4.2.1.2.4.3 Scheme 10 Year Funding Simulations**

Production of a 10 Year stochastic forecast of the balance sheet for the Scheme. These results will be used by NSW Treasury to assist in the NSW Government's financial rating. The results will require formal presentation by the Primary Contractor to NSW Treasury.

#### **4.2.1.3 Presentation of Results**

4.2.1.3.1 The Primary Contractor may be required to attend and present its valuation results to WorkCover NSW Executive and Staff, the WorkCover NSW Board, the Minister, NSW Treasury, and other stakeholders as directed from time to time by WorkCover NSW.

4.2.1.3.2 The Primary Contractor must present its reports and presentations in plain English.

#### **4.2.2 Monitoring and Reporting**

The Primary Contractor is to use the WorkCover NSW CDR as a source for monitoring, benchmarking and reporting on the performance at a Scheme and Scheme Agent portfolio level. These reports are to incorporate analysis and interpretation of trends and their implications, as well as such other information that WorkCover NSW may request from time to time.

#### **4.2.2.1 NSW Workers Compensation Scheme Quarterly Performance Report**

4.2.2.1.1 Provide a quarterly report, in a format agreed with WorkCover NSW, on the performance of the Scheme including actual results for the concluded quarter and projected results for the forthcoming quarters. Results are to be provided together with a detailed explanation of any material variations. The reports are to be prepared for WorkCover NSW acting on behalf of the Nominal Insurer. The reports are to be provided to the WorkCover NSW Board and Workers Compensation and Workplace Occupational Health and Safety Council.

4.2.2.1.2 This report must include, as a minimum:

- i. Comparison of projected and actual results for:
  - Number of claims;
  - Claim payments;
  - Premiums;
  - Wages;
  - Average claim payments;
  - Return to work; and
  - Any additional factors considered necessary to monitor or explain diverging trends in Scheme performance;
- ii. Analysis and explanation of any deviation between projected and actual results;
- iii. Quarterly outstanding claims provision (based on June/December valuations); and
- iv. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Scheme and other funds.

#### **4.2.2.2 NSW Workers Compensation Scheme Monthly Monitoring Tool Report**

4.2.2.2.1 Provide a monthly report, in a format agreed with WorkCover NSW, on the claims cost performance of the Scheme. Reports are to be produced at Scheme, Scheme Agent portfolio and Scheme Agent comparison levels. The reports are to be prepared for WorkCover NSW acting on behalf of the Nominal Insurer.

#### **4.2.2.3 Workers Compensation Commission Bi-Annual Performance Monitoring**

4.2.2.3.1 Conduct a bi-annual (every six (6) months) meeting with the WCC President on the performance of the Workers Compensation Commission. Outcomes and information from these meetings is to be utilised in the Scheme Valuation reports.

#### **4.2.2.4 Ad-hoc Reports**

4.2.2.4.1 Provide ad-hoc reports as and when requested by WorkCover NSW from time to time. WorkCover NSW will identify when these reports are being provided to WorkCover NSW acting on behalf of the Nominal Insurer.

#### **4.2.2.5 Presentation of Results**

4.2.2.5.1 The Primary Contractor may be required to attend and present its reports to WorkCover NSW Executive and Staff, the WorkCover NSW Board, the Minister, Treasury, and other stakeholders as directed from time to time by WorkCover NSW.

4.2.2.5.2 The Primary Contractor must present its reports and presentations in plain English.



### **4.2.3 Scheme Agent Remuneration**

4.2.3.1 The Primary Contractor is required to set and/or apply targets, prepare valuations of portfolios, and assist in the validation of various elements of the remuneration available to Scheme Agents. The remuneration arrangements for Scheme Agents are attached - see Attachment B (Workers Compensation Claims and Policy Services – Schedule 3 Remuneration) - and apply until 31 December 2008. This work is performed for WorkCover NSW acting on behalf of the Nominal Insurer.

4.2.3.2 As a minimum, the Primary Contractor will be required to calculate the following:

- i. Service Fee Pool;
- ii. Performance Fee Pool;
- iii. Incentive Fee Pool;
- iv. Innovation Fee Pool;
- v. Additional Incentive Fee Pool;
- vi. Quarterly Service Fees;
- vii. Financial Outcome Measure (FOM) Targets;
- viii. Return To Work (RTW) Targets; and
- ix. Performance Fee Baseline Metrics.

4.2.3.3 WorkCover NSW will provide details of any Scheme Agent specific remuneration arrangements once the Contract Agreement is executed. WorkCover NSW will also provide to the Primary Contractor, from time to time, details of any agreed variations to remuneration arrangements.

4.2.3.4 The Primary Contractor is also required to assist in the calculation and validation of remuneration available to former Licensed Insurers where the outcome is actuarially assessed. The Remuneration arrangements for former Licensed Insurers are attached – see Attachment D (Insurer Guidelines on Remuneration 01/02 to 05/05).

### **4.2.3.5 Performance and Remuneration Valuation**

4.2.3.5.1 The Primary Contractor will be required to provide support, assistance and advice in the calculation and validation of Scheme Agent and/or former Licensed Insurer performance and remuneration. This support, assistance and/or advice is to be provided to WorkCover NSW acting on behalf of the Nominal Insurer in the case of Scheme Agents. This may involve, but is not limited to:

- development and/or running of models and tools;
- validation of WorkCover NSW calculations;
- evaluation/comparison of results achieved; and
- advice and recommendations on variations and/or improvements to remuneration arrangements.

#### **4.2.3.6 Identify and Provide Commentary on Significant External Impacts**

- 4.2.3.6.1 Identify and assess whether remuneration arrangements for one or more of the Scheme Agents have been affected by a significant external impact and if so to quantify and advise on the impact. The Primary Contractor may make such assessments independently or WorkCover NSW or a Scheme Agent may request that the Primary Contractor investigate and provide such advice. This commentary is to be provided to WorkCover NSW acting on behalf of the Nominal Insurer.

#### **4.2.3.7 Remuneration Queries and/or Disputes**

- 4.2.3.7.1 The Primary Contractor will be required to provide advice and supporting reports to assist in the answering of queries that may arise from time to time on matters relating to Scheme Agent remuneration arrangements. This assistance is to be provided to WorkCover NSW acting on behalf of the Nominal Insurer.
- 4.2.3.7.2 The Primary Contractor will be required to provide advice and supporting reports to assist in the determination of disputes that may arise from time to time on matters relating to Scheme Agent remuneration arrangements. This assistance is to be provided to WorkCover NSW acting on behalf of the Nominal Insurer and follows appointment of the Primary Contractor to undertake these tasks by the Nominal Insurer. Determinations made will be final and binding on the Nominal Insurer and Scheme Agent/s in the absence of obvious error. The Primary Contractor may adopt its own process in making the determination/s provided that, at a minimum, the process includes opportunity for each party to make a written submission or oral presentation prior to the determination being made.

#### **4.2.3.8 Scheme Agent Meetings**

- 4.2.3.8.1 The Primary Contractor will be required to meet with a Scheme Agent either by itself or with other Scheme Agents (as appropriate) to discuss any aspects of Scheme Agent remuneration arrangements and/or other performance matters, as determined by WorkCover NSW from time to time. These meetings are to be conducted at least annually. These meetings are to be conducted for WorkCover NSW acting on behalf of the Nominal Insurer.

### **4.3 Financial Management Services Requirements**

The types of financial management, insurance or other related consultancy services which the Primary Contractor may be requested to provide includes, but is not limited to:

#### **4.3.1 Strategic Reviews and Advice**

##### **4.3.1.1 Reform Options**

- 4.3.1.1.1 Provide analysis and advice on options for financial management, insurance and/or other related reforms including assessments of the estimated cost, premium impacts, and other relevant impacts (for example this may include advice on impacts to WorkCover NSW operations).

#### **4.3.1.2 Cost Impact of Reforms**

- 4.3.1.2.1 Evaluate the cost impact of financial management, insurance and/or other related reforms (or other changes within the Workers Compensation System) and provide reports and analysis on the implementation of those reforms.

#### **4.3.1.3 Reviews**

- 4.3.1.3.1 Undertake comprehensive strategic reviews of the Workers Compensation System, other aspects of workers compensation arrangements, financial management or insurance arrangements generally as requested by WorkCover NSW. These reviews may include, but are not limited to:

- Changes to benefits
- Scheme design
- Investment modelling
- Scheme Agent Remuneration Arrangements
- Reviews of existing employers' liability under S208AA of the 1987 Act.

- 4.3.1.3.2 Such reviews may be used to contribute to WorkCover NSW or NSW Government decision-making, or during discussions with stakeholders, as well as provide the basis for public debate.

#### **4.3.1.4 Industry Advice**

- 4.3.1.4.1 Provide advice either proactively to or on request by WorkCover NSW on developments and trends both in Australia and internationally which may affect the Workers Compensation System. This may include, but is not limited to, information on best practice initiatives in financial management, insurance, claims management and other systems, and comparison against other jurisdictions.

### **4.4 Information Services Requirements**

The types of information services which the Primary Contractor may be requested to provide includes, but is not limited to:

#### **4.4.1 WorkCover NSW Corporate Data Repository (CDR)**

##### **4.4.1.1 Specification of Requirements**

- 4.4.1.1.1 Assisting WorkCover NSW with the definition and documentation of new, additional and/or ongoing business requirements for WorkCover NSW's Corporate Data Repository to meet actuarial and reporting requirements including data definitions, consistency checks, data quality checks, standard reports (including standard Scheme Agent reports, benchmarking and performance reports), conversion of existing data and any anticipated future requirements.

**4.4.1.2 Acceptance Testing**

- 4.4.1.2.1 Participating in acceptance testing of changes and enhancements to WorkCover NSW's Corporate Data Repository to ensure it meets the specified requirements.

**4.4.1.3 Implementation**

- 4.4.1.3.1 Assisting in the implementation of enhancements to the WorkCover NSW Corporate Data Repository including the reconciliation of any historical converted data and training of WorkCover NSW staff as required. The Primary Contractor will be required to certify to WorkCover NSW that all relevant historical data used for actuarial analysis has been successfully converted following implementation of the enhancements.

**4.4.1.4 Notify Data Quality and Consistency Issues**

- 4.4.1.4.1 Advise WorkCover NSW of any data quality and/or consistency issues identified through any analysis, checking or reporting undertaken by the Primary Contractor. Assist WorkCover NSW in the resolution of those issues including if necessary, specification and testing of changes to WorkCover NSW's Corporate Data Repository.

**4.4.1.5 Assistance in Resolution of Data Issues**

- 4.4.1.5.1 Assist WorkCover NSW in resolving data or reporting related issues as requested from time to time by WorkCover NSW, including but not limited to data definition and consistency issues, problems with standard or other reports and including if necessary, specification and testing of changes to WorkCover NSW's Corporate Data Repository.

**4.4.1.6 Ad-hoc Reports**

- 4.4.1.6.1 Produce ad-hoc reports for WorkCover NSW and (subject to WorkCover NSW approval) for other stakeholders and/or assist with the specification and testing of any new standard reports as required.

**4.4.1.7 Changes to Workers Compensation System Structure**

- 4.4.1.7.1 Assist in monitoring, assessing and/or implementing any pilots or changes to Workers Compensation System structure and to specifying and implementing any consequential changes to WorkCover NSW's Corporate Data Repository to give effect to such change ensuring the correct allocation of claims history for premium and benchmarking purposes.

## **4.4.2 Training and Development**

### **4.4.2.1 Training and Development of WorkCover Staff**

4.4.2.1.1 Provide as requested by WorkCover NSW training and development of WorkCover NSW staff to build staff knowledge and capacity on insurance related matters and to improve WorkCover NSW's capacity to manage the Workers Compensation System. This training is to be both formal and informal. It is to cover all aspects of workers compensation management including but not limited to:

- Monitoring performance of a Portfolio and Scheme Agents;
- Understanding Agent Remuneration;
- Using Primary Contractor developed evaluation and modelling tools;
- Using WorkCover NSW's Corporate Data Repository (and/or other reporting or analysis tools);
- Actuarial analysis and modelling techniques; and
- Understanding valuations.

### **4.4.2.2 Training and Development of other Stakeholders**

4.4.2.2.1 Provide as requested by WorkCover NSW training and development of other stakeholders to build knowledge on insurance related matters. This training is to be on a formal basis. It is to cover various aspects of workers compensation management including but not limited to:

- Understanding Agent Remuneration; and
- Actuarial analysis and modelling techniques.

## **4.5 Peer Review Requirements**

The following peer review services are to be provided by the Primary Contractor.

### **4.5.1 Peer Review of System Valuations**

4.5.1.1 Undertake a review of the June valuations undertaken by the Secondary Contractor, including a review of the methodology and assumptions and to provide a report to WorkCover NSW on the results of their review. Prior to the commencement of the review the Primary Contractor and WorkCover NSW are to agree on the scope and priorities for the review.

4.5.1.2 The Primary Contractor is to work concurrently with the Secondary Contractor as they undertake the valuations and is to progressively provide feedback to the Secondary Contractor during the valuation process (both prior to and after the delivery of the draft reports), with the objective of ensuring all issues raised are addressed by the Secondary Contractor and the Primary Contractor in their respective final reports and the reports are delivered to timetable.

- 4.5.1.3 The Primary Contractor, the Secondary Contractor and WorkCover NSW are to meet within 5 business days of the Primary Contractor providing its draft report to WorkCover NSW, to discuss the relevant draft Valuation Reports of the Secondary Contractor and the related draft Peer Review Report. The parties are to agree on what action is to be taken to resolve any issues identified prior to the finalisation of the Valuation Reports and Peer Review Report. The Primary Contractor is to acknowledge in their final report any steps taken by the Secondary Contractor to address issues raised by them.

#### **4.5.2 Peer Review of Premium Rates Recommendation Report as at 31 December**

- 4.5.2.1 Undertake a review of the Insurance Premiums Order Report prepared by the Secondary Contractor, including a review of the methodology and assumptions and to provide a report to WorkCover NSW on the results of their review. Prior to the commencement of the review the Primary Contractor and WorkCover NSW are to agree on the scope and priorities for the review.
- 4.5.2.2 The Primary Contractor is to work concurrently with the Secondary Contractor as they develop the Insurance Premiums Order Report and is to progressively provide feedback to the Secondary Contractor during the process (both prior to and after the delivery of the draft report), with the objective of ensuring all issues raised are addressed by the Secondary Contractor and the Primary Contractor in their respective final reports and the reports are delivered to timetable.
- 4.5.2.3 The Primary Contractor, the Secondary Contractor and WorkCover NSW are to meet within 5 business days of the Primary Contractor providing its draft report to WorkCover NSW, to discuss the relevant draft Insurance Premiums Order Report of the Secondary Contractor and the related draft Peer Review Report. The parties are to agree on what action is to be taken to resolve any issues identified prior to the finalisation of the Insurance Premiums Order Report and Peer Review Report. The Primary Contractor is to acknowledge in their final report any steps taken by the Secondary Contractor to address issues raised by them.

#### **4.5.3 Peer Review of Other Work**

- 4.5.3.1 On request by WorkCover NSW, undertake a review of other work undertaken by the Secondary Contractor and provide a report on the results of their review. Prior to the commencement of the review the Primary Contractor and WorkCover NSW are to agree the timetable, scope and priorities for the review.
- 4.5.3.2 The Primary Contractor is to work concurrently with the Secondary Contractor as they undertake the work and is to progressively provide feedback to the Secondary Contractor during the process (both prior to and after the delivery of the draft reports), with the objective of ensuring all issues raised are addressed by the Secondary Contractor and the Primary Contractor in their respective final reports and the reports are delivered to timetable.

- 4.5.3.3 The Primary Contractor, the Secondary Contractor and WorkCover NSW are to meet within 5 business days of the Primary Contractor providing its draft report to WorkCover NSW, to discuss the relevant draft reports of the Secondary Contractor and the related draft Peer Review Report. The parties are to agree on what action is to be taken to resolve any issues identified prior to the finalisation of the reports and Peer Review Report. The Primary Contractor is to acknowledge in their final report any steps taken by the Secondary Contractor to address issues raised by them.

## **5. SPECIFICATION OF REQUIREMENTS FOR ACTUARIAL, FINANCIAL MANAGEMENT AND INFORMATION SERVICES SECONDARY CONTRACTOR**

### **5.1 Overview of Requirements**

#### **5.1.1 Introduction**

- 5.1.1.1 The role of the Secondary Contractor incorporates:

1. **Actuarial Services.** Responsibility for undertaking valuations, premium setting, budget projections and other actuarial services in respect of the NSW Workers Compensation System, and peer review of the valuation of the NSW Workers Compensation Scheme.
2. **Financial Management Services.** Responsibility for providing financial management, insurance and related consultancy services, assisting in policy development and related matters for WorkCover NSW.
3. **Information Services.** Assist WorkCover NSW with the maintenance and improvement of the WorkCover NSW Corporate Data Repository and the development of standard and ad-hoc reports for WorkCover NSW. The Secondary Contractor will also be required to provide ongoing assistance in the specification and testing of changes; development of any additional reports; and in resolving data quality and consistency problems in relation to the WorkCover NSW Corporate Data Repository. Additionally, the Secondary Contractor will be required to provide ongoing assistance in the training and education of WorkCover NSW Staff, and supporting WorkCover NSW to build in-house capability and skills.

## **5.1.2 Commencement of Services**

- 5.1.2.1 The current contract for actuarial services is due to expire 31 October 2006. It is the intention of WorkCover NSW, however, to seek an extension to that Term and it is envisaged that services provided under the new contract agreement are likely to commence 1 January 2007. The first outstanding claims liability estimate (valuation) required from the Secondary Contractor under this Agreement is in respect of 30 June 2007. The Secondary Contractor will likely also be required to undertake a peer review of the 31 December 2006 valuation undertaken by the Primary Contractor.
- 5.1.2.2 The Secondary Contractor will be required to commence provision of financial management and information services upon execution of the Agreement, as well as the requirements for 5.1.3 Transition and Implementation.

## **5.1.3 Transition and Implementation**

- 5.1.3.1 The Secondary Contractor is required to work closely and cooperatively and generally in good faith with the existing actuarial services providers, newly appointed providers and other existing providers (including without limitation PricewaterhouseCoopers, Finity Consulting, the Primary Contractor and other providers) as well as WorkCover NSW to ensure a smooth transition of responsibility.
- 5.1.3.2 The existing actuarial services providers will supply the Secondary Contractor with historical data and records, specifications, models and/or computer programs and one on one briefings related to the services required to be delivered.

## **5.1.4 Timetable for Delivery of Services**

- 5.1.4.1 For each specific requirement (as detailed below in clauses 5.2, 5.3, 5.4 and 5.5, and Clause 6.1 and 6.2, and/or 6.3 where allocated), WorkCover NSW will determine in consultation with the Secondary Contractor, a timetable for delivery of the services. This timetable will align with deadlines for financial reporting and other key processes, in particular the scheduled meeting dates for the WorkCover NSW Board. The Secondary Contractor must meet the timetable determined for the task.
- 5.1.4.2 A Representative Timetable for Delivery of Services can be found at Attachment A hereto.

## **5.2 Actuarial Services Requirements**

The following actuarial services are to be provided by the Secondary Contractor.

### **5.2.1 Workers Compensation System Valuations**

Workers Compensation System Valuations are undertaken either twice yearly for the periods ending 31 December and 30 June each year or annually for the period ending 30 June only. They provide statements of the financial status of the Workers Compensation System for inclusion in WorkCover NSW's accounts in the Annual Report and other published financial statements.



### **5.2.1.1 Uninsured Liability and Indemnity Scheme (ULIS) Valuation and Review as at 30 June**

5.2.1.1.1 Complete an annual valuation of scheme liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS).

5.2.1.1.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of WorkCover NSW and its various funds.

5.2.1.1.3 The Secondary Contractor is required to:

- i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
- ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;
- iii. progressively provide information to the Primary Contractor throughout the completion of this work and to meet with and respond to queries from the Primary Contractor, to enable the Primary Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Primary Contractor with a draft report of its findings, results and conclusions; and
- v. consult with WorkCover NSW and the Primary Contractor and is to consider all feedback from WorkCover NSW and Primary Contractor prior to submitting its final report to WorkCover NSW.

5.2.1.1.4 The valuation must include, as a minimum:

#### **5.2.1.1.4.1 ULIS Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to WorkCover NSW and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

#### **5.2.1.1.4.2 ULIS Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the scheme up to and including the current year;
- iii. Opinion on the adequacy of provisions for outstanding claims and other liabilities of ULIS; and
- iv. Recommendations on enhancements to the scheme, the scheme valuation report and/or the scheme valuation process.

### **5.2.1.2 Bush Fire Fighters Compensation Fund Valuation and Review as at 30 June**

5.2.1.2.1 Complete an annual valuation of fund liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS).

5.2.1.2.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of WorkCover NSW and its various funds.

5.2.1.2.3 The Secondary Contractor is required to:

- i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
- ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;
- iii. progressively provide information to the Primary Contractor throughout the completion of this work and to meet with and respond to queries from the Primary Contractor, to enable the Primary Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Primary Contractor with a draft report of its findings, results and conclusions; and
- v. consult with WorkCover NSW and the Primary Contractor and is to consider all feedback from WorkCover NSW and Primary Contractor prior to submitting its final report to WorkCover NSW.

5.2.1.2.4 The valuation must include, as a minimum:

#### **5.2.1.2.4.1 Bush Fire Fighters Compensation Fund Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to WorkCover NSW and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

#### **5.2.1.2.4.2 Bush Fire Fighters Compensation Fund Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Fund up to and including the current year;
- iii. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Bush Fire Fighters Compensation Fund; and
- iv. Recommendations on enhancements to the fund, the fund valuation Report and/or the fund valuation process.

### **5.2.1.3 Emergency and Rescue Workers Compensation Fund Valuation and Review as at 30 June:**

5.2.1.3.1 Complete an annual valuation of fund liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS).

5.2.1.3.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of WorkCover NSW and its various funds.

5.2.1.3.3 The Secondary Contractor is required to:

- i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
- ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;
- iii. progressively provide information to the Primary Contractor throughout the completion of this work and to meet with and respond to queries from the Primary Contractor, to enable the Primary Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Primary Contractor with a draft report of its findings, results and conclusions; and
- v. consult with WorkCover NSW and the Primary Contractor and is to consider all feedback from WorkCover NSW and Primary Contractor prior to submitting its final report to WorkCover NSW.

5.2.1.3.4 The valuation must include, as a minimum:

#### **5.2.1.3.4.1 Emergency and Rescue Workers Compensation Fund Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to WorkCover NSW and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

#### **5.2.1.3.4.2 Emergency and Rescue Workers Compensation Fund Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Fund up to and including the current year;
- iii. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Emergency and Rescue Workers Compensation Fund; and

- iv. Recommendations on enhancements to the fund, the fund valuation report and/or the fund valuation process.

#### **5.2.1.4 Insurers Guarantee Fund Valuation and Review as at 30 June**

5.2.1.4.1 Complete an annual valuation of fund liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS).

5.2.1.4.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of WorkCover NSW and its various funds.

5.2.1.4.3 The Secondary Contractor is required to:

- i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
- ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;
- iii. progressively provide information to the Primary Contractor throughout the completion of this work and to meet with and respond to queries from the Primary Contractor, to enable the Primary Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Primary Contractor with a draft report of its findings, results and conclusions; and
- v. consult with WorkCover NSW and the Primary Contractor and is to consider all feedback from WorkCover NSW and Primary Contractor prior to submitting its final report to WorkCover NSW.

5.2.1.4.4 The valuation must include at a minimum:

##### **5.2.1.4.4.1 Insurers Guarantee Fund Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to WorkCover NSW and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

#### **5.2.1.4.4.2 Insurers Guarantee Fund Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Fund up to and including the current year;
- iii. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Insurers Guarantee Fund; and
- iv. Recommendations on enhancements to the fund, the fund valuation report and/or the fund valuation process.

#### **5.2.1.5 NSW Sporting Injuries Insurance Scheme Valuation and Review as at 30 June**

5.2.1.5.1 Complete an annual valuation of scheme liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS).

5.2.1.5.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of WorkCover NSW and its various funds.

5.2.1.5.3 The Secondary Contractor is required to:

- i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
- ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;
- iii. progressively provide information to the Primary Contractor throughout the completion of this work and to meet with and respond to queries from the Primary Contractor, to enable the Primary Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Primary Contractor with a draft report of its findings, results and conclusions; and

- v. consult with WorkCover NSW and the Primary Contractor and is to consider all feedback from WorkCover NSW and Primary Contractor prior to submitting its final report to WorkCover NSW.

5.2.1.5.4 The valuation must include, as a minimum:

**5.2.1.5.4.1 NSW Sporting Injuries Insurance Scheme Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to the NSW Sporting Injuries Commission and WorkCover NSW and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

**5.2.1.5.4.2 NSW Sporting Injuries Insurance Scheme Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Fund up to and including the current year;
- iii. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the NSW Sporting Injuries Insurance Scheme; and
- iv. Recommendations on enhancements to the scheme, the scheme valuation report and/or the scheme valuation process.

**5.2.1.6 Presentation of Result**

5.2.1.6.1 The Secondary Contractor may be required to attend and present its valuation results to WorkCover NSW Executive and Staff, the WorkCover NSW Board, the Minister, Treasury, the Sporting Injuries Committee, and other stakeholders as directed from time to time by WorkCover NSW.

5.2.1.6.2 The Secondary Contractor must present its reports and presentations in plain English.

**5.2.2 Premium Functions**

**5.2.2.1 Premium Rates Recommendation Report as at 31 December**

5.2.2.1.1 Provide a report outlining recommendations on various factors to be included in the ensuing policy renewal year's (PRY) Insurance Premium Order (IPO). The report should include, but is not limited to, recommendations on:

- i. Tariff rates to apply for the ensuing PRY;

- ii. Initial Industry Claims Cost rates (ICCRs) to apply for the ensuing PRY;
- iii. Hindsight ICCRs to apply for the current PRY;
- iv. Comparative initial and hindsight F-Factors where required;
- v. Discount rate for policies paid in full in advance;
- vi. Minimum premium for the ensuing PRY;
- vii. Late payment penalty rate for the ensuing PRY;
- viii. Mine Safety Levy rate for the ensuing PRY;
- ix. Dust Diseases Levy rate for the ensuing PRY; and
- x. Other components of the premium formula as determined by WorkCover NSW from time to time.

5.2.2.1.2 The Secondary Contractor is required to:

- i. seek input from WorkCover NSW, the Primary Contractor and other stakeholders as determined by WorkCover NSW in order to fully understand recent trends to recommend the equitable premium rates;
- ii. provide draft and final reports to WorkCover NSW in accordance with the agreed timetable
- iii. consult with WorkCover NSW in respect of each draft report and to address any issues raised by WorkCover NSW; and
- iv. incorporate any feedback and to address any issues raised in respect of the draft premium reports in the final report.

5.2.2.1.3 The Premiums recommended by the Secondary Contractor are subject to approval by WorkCover NSW. The Dust Diseases Levy recommended by the Secondary Contractor is subject to approval by the Dust Diseases Board.

5.2.2.1.4 The Secondary Contractor is to progressively provide information to the Primary Contractor throughout the completion of this work and to meet with and respond to queries from the Primary Contractor, to enable the Primary Contractor to complete its peer review.

**5.2.2.2 Presentation of Result**

- 5.2.2.2.1 The Secondary Contractor may be required to attend and present its valuation results to WorkCover NSW Executive and Staff, the WorkCover NSW Board, the Minister, Treasury, and other stakeholders as directed from time to time by WorkCover NSW.
- 5.2.2.2.2 The Secondary Contractor must present its reports and presentations in plain English.

**5.2.3 Monitoring and Reporting**

The Secondary Contractor is to use the WorkCover NSW CDR as a source for monitoring, benchmarking and reporting on the performance of each of the schemes or funds. These reports are to incorporate analysis and interpretation of trends and their implications, as well as such other information that WorkCover NSW may request from time to time.

**5.2.3.1 Ad-hoc Reports**

- 5.2.3.1.1 Provide ad-hoc reports as and when requested by WorkCover NSW from time to time. WorkCover NSW will identify when these reports are being provided to WorkCover NSW acting on behalf of the Nominal Insurer.

**5.2.3.2 Presentation of Results**

- 5.2.3.2.1 The Secondary Contractor may be required to attend and present its reports to WorkCover NSW Executive and Staff, the WorkCover NSW Board, the Minister, Treasury, and other stakeholders as directed from time to time by WorkCover NSW.
- 5.2.3.2.2 The Secondary Contractor must present its reports and presentations in plain English.

**5.3 Financial Management Services Requirements**

The types of financial management, insurance or other related consultancy services which the Secondary Contractor may be requested to provide includes, but is not limited to:

**5.3.1 Strategic Reviews and Advice****5.3.1.1 Reform Options**

- 5.3.1.1.1 Provide analysis and advice on options for financial management, insurance and/or other related reforms including assessments of the estimated cost, premium impacts, and other relevant impacts (for example this may include advice on impacts to WorkCover NSW operations).



### **5.3.1.2 Cost Impact of Reforms**

- 5.3.1.2.1 Evaluate the cost impact of financial management, insurance and/or other related reforms (or other changes within the Workers Compensation System) and provide reports and analysis on the implementation of those reforms.

### **5.3.1.3 Reviews**

- 5.3.1.3.1 Undertake comprehensive strategic reviews of the Workers Compensation System, other aspects of workers compensation arrangements, financial management or insurance arrangements generally as requested by WorkCover NSW. These reviews may include, but are not limited to:

- Premium structure.

- 5.3.1.3.1 Such reviews may be used to contribute to WorkCover NSW or NSW Government decision-making, or during discussions with stakeholders, as well as provide the basis for public debate.

### **5.3.1.4 Industry Advice**

- 5.3.1.4.1 Provide advice either proactively to or on request by WorkCover NSW on developments and trends both in Australia and internationally which may affect the Workers Compensation System. This may include, but is not limited to, information on best practice initiatives in financial management, insurance, claims management and other systems, and comparison against other jurisdictions.

## **5.4 Information Services Requirements**

The types of information services which the Secondary Contractor may be requested to provide includes, but is not limited to:

### **5.4.1 WorkCover NSW Corporate Data Repository (CDR)**

#### **5.4.1.1 Specification of Requirements**

- 5.4.1.1.1 Assisting WorkCover NSW with the definition and documentation of new, additional and/or ongoing business requirements for WorkCover NSW's Corporate Data Repository to meet actuarial and reporting requirements including data definitions, consistency checks, data quality checks, standard reports (including standard Scheme Agent reports, benchmarking and performance reports), conversion of existing data and any anticipated future requirements.

#### **5.4.1.2 Acceptance Testing**

- 5.4.1.2.1 Participating in acceptance testing of changes and enhancements to WorkCover NSW's Corporate Data Repository to ensure it meets the specified requirements.

**5.4.1.3 Implementation**

- 5.4.1.3.1 Assisting in the implementation of enhancements to the WorkCover NSW Corporate Data Repository including the reconciliation of any historical converted data and training of WorkCover NSW staff as required. The Secondary Contractor will be required to certify to WorkCover NSW that all relevant historical data used for actuarial analysis has been successfully converted following implementation of the enhancements.

**5.4.1.4 Notify Data Quality and Consistency Issues**

- 5.4.1.4.1 Advise WorkCover NSW of any data quality and/or consistency issues identified through any analysis, checking or reporting undertaken by the Secondary Contractor. Assist WorkCover NSW in the resolution of those issues including if necessary, specification and testing of changes to WorkCover NSW's Corporate Data Repository.

**5.4.1.5 Assistance in Resolution of Data Issues**

- 5.4.1.5.1 Assist WorkCover NSW in resolving data or reporting related issues as requested from time to time by WorkCover NSW, including but not limited to data definition and consistency issues, problems with standard or other reports and including if necessary, specification and testing of changes to WorkCover NSW's Corporate Data Repository.

**5.4.1.6 Ad-hoc Reports**

- 5.4.1.6.1 Produce ad-hoc reports for WorkCover NSW and (subject to WorkCover NSW approval) for other stakeholders and/or assist with the specification and testing of any new standard reports as required.

**5.4.1.7 Changes to Workers Compensation System Structure**

- 5.4.1.7.1 Assist in monitoring, assessing and/or implementing any pilots or changes to Workers Compensation System structure and to specifying and implementing any consequential changes to WorkCover NSW's Corporate Data Repository to give effect to such change ensuring the correct allocation of claims history for premium and benchmarking purposes.

**5.4.2 Training and Development****5.4.2.1 Training and Development of WorkCover Staff**

- 5.4.2.1.1 Provide as requested by WorkCover NSW training and development of WorkCover NSW staff to build staff knowledge and capacity on insurance related matters and to improve WorkCover NSW's capacity to manage the Workers Compensation System. This training is to be both formal and informal. It is to cover all aspects of workers compensation management including but not limited to:

- Understanding Premium calculations;

- Using Secondary Contractor developed evaluation and modelling tools;
- Using WorkCover NSW's Corporate Data Repository (and/or other reporting or analysis tools);
- Actuarial analysis and modelling techniques; and
- Understanding valuations.

#### **5.4.2.2 Training and Development of other Stakeholders:**

5.4.2.2.1 Provide as requested by WorkCover NSW training and development of other stakeholders to build knowledge on insurance related matters. This training is to be on a formal basis. It is to cover various aspects of workers compensation management including but not limited to:

- Understanding Premium calculations; and
- Actuarial analysis and modelling techniques.

### **5.5 Peer Review Requirements**

The following peer review services are to be provided by the Secondary Contractor.

#### **5.5.1 Peer Review of Scheme Valuations**

- 5.5.1.1 Undertake a review of the December and June valuations undertaken by the Primary Contractor, including a review of the methodology and assumptions and to provide a report to WorkCover NSW on the results of their review. Prior to the commencement of the review the Secondary Contractor and WorkCover NSW are to agree on the scope and priorities for the review.
- 5.5.1.2 The Secondary Contractor is to work concurrently with the Primary Contractor as they undertake the Valuations and is to progressively provide feedback to the Primary Contractor during the valuation process (both prior to and after the delivery of the draft reports), with the objective of ensuring all issues raised are addressed by the Primary Contractor and the Secondary Contractor in their respective final reports and the reports are delivered to timetable.
- 5.5.1.3 The Secondary Contractor, the Primary Contractor and WorkCover NSW are to meet within 5 business days of the Secondary Contractor providing its draft report to WorkCover NSW, to discuss the relevant draft valuation reports of the Primary Contractor and the related draft peer review report. The parties are to agree on what action is to be taken to resolve any issues identified prior to the finalisation of the valuation reports and peer review report. The Secondary Contractor is to acknowledge in their final report any steps taken by the Primary Contractor to address issues raised by them.

## **5.5.2 Peer Review of Other Work**

- 5.5.2.1 On request by WorkCover NSW, to undertake a review of other work undertaken by the Primary Contractor and to provide a report on the results of their review. Prior to the commencement of the review the Secondary Contractor and WorkCover NSW are to agree the timetable, scope and priorities for the review.
- 5.5.2.2 The Secondary Contractor is to work concurrently with the Primary Contractor as they undertake the work and is to progressively provide feedback to the Primary Contractor during the process (both prior to and after the delivery of the draft reports), with the objective of ensuring all issues raised are addressed by the Primary Contractor and the Secondary Contractor in their respective final reports and the reports are delivered to timetable.
- 5.5.2.3 The Secondary Contractor, the Primary Contractor and WorkCover NSW are to meet within 5 business days of the Secondary Contractor providing its draft report to WorkCover NSW, to discuss the relevant draft reports of the Primary Contractor and the related draft peer review report. The parties are to agree on what action is to be taken to resolve any issues identified prior to the finalisation of the reports and peer review report. The Secondary Contractor is to acknowledge in their final report any steps taken by the Primary Contractor to address issues raised by them.

## **6. ACTUARIAL SERVICES REQUIREMENTS TO BE ASSIGNED**

The following actuarial services are to be assigned to either the Primary Contractor or the Secondary Contractor at the absolute discretion of the Dust Disease Board upon execution of the Contract Agreements.

### **6.1 Workers Compensation Dust Diseases Scheme Valuation and Review as at 30 June**

- 6.1.1 Complete an annual valuation of scheme liabilities as at 30 June and review actuarial assumptions based on data to 30 June. (Because of the tight deadline for this task, initial work may need to be done on April or May data and updated to June to ensure the deadline is met). The valuation must be consistent with the requirements of the International Financial Reporting Standards (IFRS).
- 6.1.2 Results are to be used for incorporation into WorkCover NSW audited financial statements and to assist in the management of WorkCover NSW and its various funds.
- 6.1.3 The Assigned Contractor is required to:
  - i. assist WorkCover NSW as required from time to time with responding to any issues or questions raised by the NSW Audit Office;
  - ii. provide a signed actuarial certificate for inclusion with WorkCover NSW Financial Statements;

- iii. progressively provide information to the Alternate Contractor throughout the completion of this work and to meet with and respond to queries from the Alternate Contractor, to enable the Alternate Contractor to complete its peer review;
- iv. provide WorkCover NSW and the Alternate Contractor with a draft report of its findings, results and conclusions; and
- v. consult with WorkCover NSW and the Alternate Contractor and is to consider all feedback from WorkCover NSW and Alternate Contractor prior to submitting its final report to WorkCover NSW.

6.1.4 The valuation must include, as a minimum:

**6.1.4.1 Workers Compensation Dust Diseases Scheme Valuation Executive Summary Report**

Summary report incorporating the key results and recommendations from the valuation report. This report is to be provided to the Dust Diseases Board and WorkCover NSW and may be further provided to the WorkCover NSW Board, the Minister, and other key stakeholders as determined by WorkCover NSW from time to time.

**6.1.4.2 Workers Compensation Dust Diseases Scheme Valuation Report**

This report must include:

- i. Estimated outstanding claims liability as at 30 June each year;
- ii. Estimated total claims costs (including expenses and levies) for each policy year from inception of the Fund up to and including the current year;
- iii. Opinion on the adequacy of provisions for outstanding claims and other liabilities of the Workers Compensation Dust Diseases Scheme; and
- iv. Recommendations on enhancements to the scheme, the scheme Valuation Report and/or the scheme Valuation process.

**6.2 Presentation of Result**

- 6.2.1 The Assigned Contractor may be required to attend and present its valuation results to WorkCover NSW Executive and Staff, the WorkCover NSW Board, the Minister, Treasury, the Dust Diseases Board, and other stakeholders as directed from time to time by WorkCover NSW.

- 6.2.2 The Assigned Contractor must present its reports and presentations in plain English.

### **6.3 Peer Review Requirements**

The following peer review services are to be provided by the Alternate Contractor.

#### **6.3.1 Peer Review of System Valuations**

- 6.3.1.1 Undertake a review of the June valuations undertaken by the Assigned Contractor, including a review of the methodology and assumptions and to provide a report to WorkCover NSW and the Dust Diseases Board on the results of their review. Prior to the commencement of the review the Primary Contractor and WorkCover NSW are to agree on the scope and priorities for the review.
- 6.3.1.2 The Alternate Contractor is to work concurrently with the Assigned Contractor as they undertake the valuation and is to progressively provide feedback to the Assigned Contractor during the valuation process (both prior to and after the delivery of the draft reports), with the objective of ensuring all issues raised are addressed by the Assigned Contractor and the Alternate Contractor in their respective final reports and the reports are delivered to timetable.
- 6.3.1.3 The Alternate Contractor, the Assigned Contractor, WorkCover NSW and/or the Dust Diseases Board are to meet within 5 business days of the Alternate Contractor providing its draft report to WorkCover NSW and the Dust Diseases Board, to discuss the relevant draft valuation report of the Assigned Contractor and the related draft peer review report. The parties are to agree on what action is to be taken to resolve any issues identified prior to the finalisation of the valuation reports and peer review report. The Alternate Contractor is to acknowledge in their final report any steps taken by the Assigned Contractor to address issues raised by them.

## **7. OTHER REQUIREMENTS**

These requirements apply to both the Primary Contractor and the Secondary Contractor.

### **7.1 Transition Out Arrangements**

- 7.1.1 The Primary Contractor and the Secondary Contractor are required, as part of the Contract Agreement, to provide for appropriate transition out arrangements at the expiry of the Contract Agreement term or if the Contract Agreement is terminated earlier in accordance with the requirements set out in the Contract Agreement.
- 7.1.2 Without limiting the terms of the Contract Agreement, on termination or expiration of the Contract Agreement, the Primary Contractor and/or the Secondary Contractor will be required to:
- i. Provide all files and other records relating to the operation of WorkCover NSW's Corporate Data Repository to WorkCover NSW or its delegate;

- ii. Provide copies of all models, programs or other material including all supporting documentation and provide relevant training to WorkCover NSW or its delegate;
  - iii. Transfer to WorkCover NSW or its delegate all other WorkCover NSW Data held by them;
  - iv. Provide all reasonable assistance to ensure a smooth transition; and
  - v. Provide briefings to any incoming contracted actuarial consultant in relation to the above material.
- 7.1.3 If further extensions are not applied, the Primary Contractor and/or the Secondary Contractor may be required to complete the 31 December 2009 Scheme Valuation as part of the services under the Contract Agreement, including consequential work flowing from the 31 December 2009 valuation such as:
- Production of any 31 December 2009 monitoring and performance reports;
  - Assessment of any Scheme Agent remuneration based on 31 December 2009 data and responding to any Scheme Agent remuneration queries arising from the assessment/s;
  - Finalisation of 2010/11 Deposit Premiums including relevant briefings.
- 7.1.4 The Primary Contractor and/or the Secondary Contractor may be required to complete a peer review of the 31 December 2009 Scheme Valuation report, and any other report consequential on the 31 December 2009 Scheme Valuation completed by the Primary Contractor and/or the Secondary Contractor as requested by WorkCover NSW.
- 7.1.5 In relation to any other work which may, or is likely to, extend beyond the Contract Agreement expiry date at its absolute discretion WorkCover NSW may allocate it to the Primary Contractor and the Secondary Contractor, any other contracted actuarial consultant or put it out to the market by way of a competitive process.
- 7.1.6 If further extensions are applied, the Primary Contractor and/or the Secondary Contractor will be required to complete services as specified in the Variation made under the Contract Agreement.

## **ATTACHMENT A TO PART C2**

### **REPRESENTATIVE TIMETABLE FOR DELIVERY OF SERVICES**

<b>Clause</b>	<b>Service</b>	<b>Due Date</b>	<b>Responsibility</b>
4.2.1.1	NSW WorkCover Scheme Valuation and Review as at 31 December	31 March (Final Report)	Primary Contractor
4.2.1.2	NSW WorkCover Scheme Valuation and Review as at 30 June	30 September (Final Report)	Primary Contractor
4.2.2.1	NSW WorkCover Scheme Quarterly Performance Report	2 weeks after receipt of data	Primary Contractor
4.2.2.2	NSW WorkCover Scheme Monthly Monitoring Tool Report	2 weeks after receipt of data	Primary Contractor
4.2.3	Scheme Agent Remuneration	As defined in Attachment B (Workers Compensation Claims and Policy Services – Schedule 3 Remuneration)	Primary Contractor
4.2.3.3	Remuneration Queries and/or Disputes	Within 20 business days of appointment by Nominal Insurer or as otherwise agreed between Scheme Agent and Nominal Insurer	Primary Contractor
4.2.3.4	Scheme Agent Meetings	Within 25 business days of Nominal Insurer's receipt of draft Annual Services Plan due prior to 1 November	Primary Contractor
4.5.1.1	Review of System Valuations	1 month after final reports	Primary Contractor
4.5.2.1	Review of Premium Rates Recommendation Report as at 31 December	15 April	Primary Contractor
5.2.1.1	Uninsured Liability and Indemnity Scheme (ULIS) Valuation and Review as at 30 June	30 September (Final Report)	Secondary Contractor
5.2.1.2	Bushfire Fighters Compensation Fund Valuation and Review as at 30 June	30 September (Final Report)	Secondary Contractor
5.2.1.3	Emergency and Rescue Workers Compensation Fund Valuation and Review as at 30 June	30 September (Final Report)	Secondary Contractor
5.2.1.4	Insurers Guarantee Fund Valuation and Review as at 30 June	30 September (Final Report)	Secondary Contractor
5.2.1.5	NSW Sporting Injuries Insurance Scheme Valuation and Review as at 30 June	30 September (Final Report)	Secondary Contractor
5.2.2.1	Premium Rates Recommendation Report as at 31 December	15 April (Final Report)	Secondary Contractor
5.5.1.1	Review of Scheme Valuations	1 month after final report	Secondary Contractor
6.1	Workers Compensation Dust Diseases Scheme Valuation and Review as at 30 June	30 September (Final Report)	Assigned Contractor
6.3	Review of System Valuations	1 month after final report	Alternate Contractor



## **PART C3 TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER**

### **1. TENDERER IDENTIFICATION DETAILS**

#### **1.1 Name of Tenderer:**

**Individual:** *[Print name]*

Trading Name (if applicable):

or

**Company:** *[Full name]*

Trading Name (if applicable):

Name and official position of authorised officer  
completing tender:

or

**Partnership:** *[Trading Name of  
partnership]*

Name of partner completing tender:

**Date and place of incorporation**

#### **1.2 ABN:**

**ACN:**

#### **1.3 Address of Tenderer:**

*[in the case of a company, state registered office and, if  
different, principal place of business]*

#### **1.4 Business Postal Address:**

STD Area Code:

Telephone No.:

( )

Facsimile No:

( )

Email:

Website:

Contact Name for general enquiries:

Telephone No.:

Tenderer's reference number

## 2. ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

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

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

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Signature of tenderer (if an individual, as identified in cl. 1 Part C3)

OR

\_\_\_\_\_  
Signature of authorised officer of tenderer (as identified in cl. 1 Part C3)

OR

\_\_\_\_\_  
Signature of partner completing tender on behalf of partnership (as identified in cl. 1 Part C3)

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

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

**Yes/No**

\_\_\_\_\_  
Print Name and Title