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State Procurement is a Business Unit of the Department of Commerce

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

**Request for Tender: 0600453
(069 / 439)**

1/08/06 to 31/07/09

Tender Issue Date: 24/04/06

Closing Date: 23/05/06

Closing Time: 9:30 am Sydney Time

Non-Refundable Document Fee \$110.00 (includes GST) (**Note: Document Fee is only applicable for Hard Copy purchase. There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>**)

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Miscellaneous Medical and Surgical Devices

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PART A The Requirement and Tender information

1. Outline Description of the Requirement

- 1.1 This Request For Tender ("RFT") is made by the State Contracts Control Board ("the Board") for the supply to Eligible Customers of the Deliverables defined in this RFT and detailed in the Specification.
in the Specification.

- 1.2 The Board is responsible for the conduct of the tender process, assisted by State Procurement.

This tender covers the supply and delivery of Miscellaneous Medical and Surgical Devices for the period 1 August 2006 to 31 July 2009 (three years), in accordance with the Conditions and Specifications detailed herein. The Board reserves the right to extend the contract for up to two periods of up to twelve (12) months each in accordance with the conditions and specifications mentioned above.

The contractor shall fulfil all orders placed during the currency of the contract.

- 1.3 Additional items

- 1.3.1 Additional items, related to the Deliverables sought, may be tendered in the format required by cl.7.1 (Price Schedule) of Part B.

2 Summary information for tenderers

2.1 Interpretation

- 2.1.1 Definitions of terms used in Parts A-C are contained in cl.4 of Part B.

2.2 Structure of Request for Tender

- 2.2.1 This RFT is made up of four Parts as follows:

Part A: The Requirement and Tender Information;

Part B: The Tender Process;

Part C: Tender Response, to be completed by the Tenderer, and comprising of:

Part C1 Information to be supplied in response to Part B

Part C2 Statement of compliance with Specification

Part C3 Price Schedule

Part C4 Certificates of compliance to relevant Standards

Part C5 Acknowledgement and Confirmation of Tender.

Part D: Deed of Agreement

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

Part D is to be executed later by the successful Tenderer(s) and the Board to form the Standing Offer.

2.3 Contact Officer

- 2.3.1 Refer requests for information or advice regarding this RFT to:

Name: Bob Staniszewski
 Phone: (02) 9372 7652
 Fax: (02) 9372 7633
 E-mail: bob.staniszewski@commerce.nsw.gov.au

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

2.4 Nature and duration of contract

- 2.4.1 The Requirement is to be met by means of a Standing Offer agreement to be embodied in a deed of agreement between the Board and the successful tenderer(s) on the conditions contained in Part D.
- 2.4.2 The Standing Offer agreement will be for a term of three (3) years and may be extended for up to two further terms of up to twelve (12) months each at the option of the Board.

2.5 Non-exclusive Standing Offer agreement

- 2.5.1 The Board reserves the right to appoint more than one Contractor to supply the Requirement or a part of the Requirement.

2.6 Eligibility to tender

- 2.6.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Board will only enter a deed of agreement with the relevant legal entity or entities.
- 2.6.2 The Board will not contract with legal entities in their capacity as trustees.
- 2.6.3 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.
- 2.6.4 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial assets.
- 2.6.5 If the Board judges the tenderer's financial position to be marginal, the Board reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

2.7 Other Eligibility Requirements

- 2.7.1 The Board will not enter into an agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, Tenderers must be registered for GST and state their ABN in their Tender Response.
- 2.7.2 Tenders from Tenderers that do not have an ABN and/or are not registered for GST, such as Tenderers commencing business in Australia, may be

considered at the Board's discretion if the Tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement with the Board. Such Tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender Response.

3. Where to obtain this RFT

3.1 RFT copies

- 3.1.1 A tenderer may obtain either a hard copy or electronic copy of this RFT.
- 3.1.2 DEPARTMENT OF COMMERCE has adopted an electronic tendering system using the Internet, which has the capacity for viewing, downloading, or ordering of RFT and for the lodgement of Tenders.

3.2 Hard copy

- 3.2.1 A hard copy of this RFT may be obtained by:
 - (a) Ordering on-line through the NSW Department of Commerce eTendering website at <https://tenders.nsw.gov.au/commerce>. Hard copy orders placed through the website will be filled by standard postal delivery.
 - (b) By prior arrangement on (02) 9372 8900 between 8.30 am and 4:30pm, Mondays to Fridays (except public holidays) to pick up from Tenders Office, McKell Building, NSW Department of Commerce. Tenderers are met at Level 3 (ground floor) McKell Building, 2-24 Rawson Place, Sydney, NSW 2000. Though the Tenders Office is currently located at Level 8, no public access is given to this floor and all public face-to-face tender transactions occur on Level 3.
 - (c) Ordering by telephone (02) 9372 8900. An additional fee is charged for delivery by express post or by courier, as required.
 - (d) First viewing a full exhibited copy at the Tenders Office by prior arrangement on (02) 9372 8900 between 8.30 am and 4:30pm, Mondays to Fridays (except public holidays).
- 3.2.2 A copy of the Price Schedule in CD-ROM form or on a floppy disk may in some cases be provided with the hard copy.

3.3 Electronic Copy

- 3.3.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Closing Time, will be displayed on the NSW Department of Commerce e-Tendering Website. All tenderers must view, and where appropriate, download the contents of the website at <https://tenders.nsw.gov.au/commerce> before lodging their tender.
- 3.3.2 A tenderer is encouraged, although not required, to obtain the RFT and to lodge a Tender electronically through the NSW Department of Commerce eTendering website.
- 3.3.3 In order to download an electronic copy of the RFT, a tenderer must first register as a site user.
- 3.3.4 A tenderer should follow the instructions on the site to view and download the RFT.

3.4 RFT Purchase Price

- 3.4.1 The non-refundable purchase price for a hard copy of this RFT is \$110.00 inclusive of GST.
- 3.4.2 Payment may be made:
 - (a) if purchasing from the Tenders Office, McKell Building, by cheque drawn in favour of the Department of Commerce, or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted; or
 - (b) if ordering a hard copy through the DEPARTMENT OF COMMERCE eTendering website, by credit card (MasterCard, Visa and Bankcard).

3.5 Addenda to RFT

- 3.5.1 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a tender has already been submitted. They must obtain a copy of all addenda as given in clause 3.5.2 or 3.5.3 as applicable.
- 3.5.2 Where a RFT has been acquired in a hard copy form, tenderers must contact the Contact Officer named under clause 2.3 of Part A or the Tenders Office (Level 8 McKell Building 2-24 Rawson Place Sydney, contact number: 9372-8900, e-mail: Tenders@commerce.nsw.gov.au).
- 3.5.3 Where a RFT has been acquired in an electronic form, tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.
- 3.5.4 Failure to take account of addenda that affect the tender may result in the tender not being considered in part or in full. Refer to tender response 21.7 in Part C.

PART B The Tender Process

4. Definitions of terms used in Parts A-C

- 4.1** Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below. Note the defined terms below will not all necessarily appear in this RFT.

“ABN” means an Australian Business Number as provided in the GST Law.

“Addendum” means an addendum or addition to this RFT made by the Board before the Closing Date and Time under cl. 5.4.

“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* 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 State Procurement.

“Breakpoint” means the number of Order Units at which nominated discounts take effect. There may be more than one Breakpoint nominated by the tenderer in the tender.

“Bulk Purchase Discount(s)” means the discount(s) (if any) applying to the Tender Price and specified in the Tender which are based on the aggregate volume of goods comprised in any single Order placed by a particular Customer.

“Catalogue number” means the tenderer’s unique catalogue number required for the purposes of an Order.

“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, together with any other codes of practice relating to procurement, including any amendments to such codes, that may be applicable to the particular RFT. The Code can be viewed and downloaded from:

http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a Tender that:

- (a) conforms to the Requirement;
- (b) is in the prescribed form;
- (c) conforms to the terms and conditions of Part D, and
- (d) conforms to all of the other requirements of this RFT.

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

“Customer” means the Eligible Customer that places an Order with the Contractor under the Standing Offer agreement.

“Customer Contract” means the contract that is made between the Contractor and a Customer, on the terms and conditions stated in cl.2.2 of Part D, by means of the placing of an Order by the Customer with the Contractor.

“Deliverables” means the goods and services or goods or services sought under this RFT, as detailed in the Specification.

“Government Businesses” means in general, entities which: a) have some form of public sector ownership; b) are engaged in trading goods and/or services; c) have a large measure of self sufficiency; and d) are subject to Executive control. In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.

“Eligible Customer” means

- a) an entity listed in Schedule 1 to the Public Sector Employment and Management Act 2002 as amended from time to time;
- b) a public sector agency as defined by clause 18(4) of the Public Sector Management (goods and Services) Regulation 2000 being:
 - 1. a government trading enterprise (including a State owned corporation)
 - 2. a public or private hospital (including an area health service)
 - 3. a local government agency
 - 4. a charity or other community non-profit organisation
 - 5. a public or private school, college or university
 - 6. a public sector agency of this State, the Commonwealth or of any other State or Territory
 - 7. a contractor to a public sector agency (but only in respect of things done as such a contractor)
 - 8. a Nominee Purchaser provided that it satisfies the requirements of clause 4.2 of Part D (Deed of Agreement) and
 - 9. such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

“FREE-INTO-STORE (FIS)” means free into store and is the basis for purchase of goods, under which the supplier is responsible for supply, delivery, insurance and off loading of goods at the purchasers point of acceptance.

“Government Discount” means the standard discount, and, in the case of a Government Discount from list price, means the standard minimum percentage discount from the relevant list price, which in each case may be offered by the tenderer to Customers under the proposed Standing Offer agreement.

“Government Mark-Up” means the standard maximum mark-up on the Manufacturer’s Price List to be offered by the tenderer to Customers under the proposed Standing Offer agreement.

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

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

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

"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.

"Management Fee" means the Management Fee provided for in the Agreement.

"Minimum Order Quantity" means the minimum quantity of each Deliverable that must be ordered by a Customer. This should be given in Order Units (see definition below).

"Non-Conforming Tender" means a Tender that:

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

"NON FREE-INTO-STORE (NFIS)" or "Ex Factory" or "Ex Works" is the basis for purchase of goods under which the supplier is responsible only for providing the items in a suitable condition for transport. The purchaser is responsible for cramage, transport, insurance, unloading and assembly if necessary.

"OHS&R" means occupational health, safety and rehabilitation.

"Order" means a request by a Customer to the Contractor for the provision or supply of any or all of the Deliverables.

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

"Price" includes a price expressed as a lump sum or a rate per unit of quantity, calculated in accordance with cl.7.3.

"Price Schedule" means the list of Deliverables offered by the tenderer, together with the corresponding pricing information. The Price Schedule forms, or is to be attached to, Part C3 of the RFT.

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

"Product Code" means the tenderer's unique product code number that identifies each Deliverable and is required for the purposes of an Order.

"Requirement" means the requirement for the Deliverables to be met by the Tender, outlined in cl.1 of the RFT and detailed in the Specification.

"RFT" means the Request for Tender.

"Selected Price Schedule" means the list of selected Deliverables and corresponding pricing information that may form Part C4 to some RFTs.

"smartbuy®" means an electronic market place, consisting of an internet web site and associated databases and applications, maintained on behalf of the NSW Government, located at <http://smartbuy.nsw.gov.au> and associated domains.

“SME” means small to medium enterprise.

“Specification” means the detailed description of the required goods and services or goods or services contained in Annexure 1 to Part B.

“State Contracts Control Board” See definition for Board.

“Standing Offer” means an agreement made by a tenderer with the Board pursuant to the RFT under which there is a standing offer for the provision of the Deliverables on the Order of any Customer for whom the Board has arranged the contract. The Standing Offer will be embodied in a deed of agreement between the Board and the Contractor in the form of Part D to this RFT.

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

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

“Tender Price” means, in respect of each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable, except if the Price is calculated on the basis of a Government Discount from list price or Government Mark-Up on list price, when the Tender Price will be the Price nominated in the Price Schedule less the Government Discount or plus the Government Mark-Up, as applicable.

“Volume Discount(s)” means the discount(s) (if any) applying to the Tender Price and specified in the Tender which are based on the aggregate yearly volume of Deliverables purchased by a Customer in a specified period.

5 Preparation of Tender – General

5.1 Conformity of Tenders

- 5.1.1 The Board seeks Conforming Tenders.
- 5.1.2 Tenders that do not include a fully completed Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, may be excluded from the tender process without further consideration, at the Board’s discretion.
- 5.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Customer’s ability to carry out its business in a more cost-effective manner.
- 5.1.4 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.
- 5.1.5 An Alternative Tender must be clearly marked “Alternative Tender”.
- 5.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
 - (a) Any Alternative Tender or part of an Alternative Tender, where submitted with a Conforming Tender; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an

Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.

5.2 Prescribed form of Tender

- 5.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

5.3 General instructions for completion of Tenders

- 5.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 5.3.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 5.3.3 Tenderers must complete ALL of Part C of this RFT, as directed and must not amend any of the questions provided.
- 5.3.4 Tenderers should notify the Contract Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 5.3.5 Tenderers must not tender items, that are already the subject of existing Contracts (except Contract 921 Renal Haemodialysis and part Contract 904 Peritoneal Dialysis); any items tendered that are already covered by such a contract are not capable of acceptance in this contract.

5.4 Addenda to this RFT before close of Tenders

- 5.4.1 A tenderer may ask the Contract 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.
- 5.4.2 If, for any other reason, the Board requires the RFT to be amended, an Addendum will be issued.
- 5.4.3 In each case, an Addendum becomes part of the RFT.

5.5 NOT USED

EAN/HIBCC Barcoding

- 5.6.1 As part of the move towards more efficient management of information, including information in relation to product distribution, inventory control and data capture, the NSW Health Department has formally endorsed adoption of the European Article Number (EAN) Standard and the Health Industry Business Communications Council (HIBCC) Standard and has indicated that preference will be given to EAN or HIBCC Compliant organisations.
- 5.6.2 The tenderer is required to state in Part C1 the extent of its use of EAN or HIBCC Barcoding for its products.
- 5.6.3 If Tenderers have EAN or HIBCC Barcoding in place, they shall indicate in the Pricing Schedule in Part C the EAN or HIBCC Number for each of the products being offered.
- 5.6.4 Indication of compliance with this section warrants that Tenderers will provide to State Procurement details of all EAN and HIBCC Barcodes available, or which may become available for use, for any products accepted to be supplied under any resulting contract.

5.7 Tenderers to inform themselves

- 5.7.1 Before submitting its Tender, a tenderer must:
 - (a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
 - (b) Satisfy itself:
 - (i) that the Tender, including the Tender Price is correct; and
 - (ii) that it is financially and practically viable for it to enter into and perform the proposed Deed of Agreement.
 - (iii) ensure the files submitted electronically contain the information relevant to the tender submission

6. Preparation of Tender – Policy

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.9.2 and in the responses required from tenderers in Part C.
 - (a) NSW Government Procurement Policy:
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>

6.2 Code of Practice for Procurement

- 6.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement, which is available at:

http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

- 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 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 Outworkers Code - Not used

6.4 Economic Development through Government procurement

- 6.4.1 Economic development is a key policy objective in all government procurement. This objective may incorporate policies regarding:

- (a) the giving of purchasing preferences to Deliverables of Australian and New Zealand origin;
- (b) local industry participation, and;
- (c) Small to Medium Enterprise (SME) involvement, employment and workforce development.

- 6.4.2 Policies of particular relevance to this procurement are drawn to tenderers' attention in this clause 6. Further details are to be found in the NSW Government Procurement Policy and from sources identified in this clause.

- 6.4.3 Tenderers are encouraged to take up the services offered by the **Industry Capability Network (NSW) Ltd** (formerly Industrial Supplies Office) to assist in maximising the local content of tenders. The Industry Capability Network (ICN) is a business advisory service, managed by industry and funded by the NSW Government, primarily to assist business and buying organisations to source their requirements from local producers who can provide goods, equipment and services against imports. The ICN provides a free service of identifying the supply capabilities of Australian manufacturers and import replacement. The ICN also assists in the preparation of Local Industry Participation Plans. Contact details are given below.

Industry Capability Network (NSW) Ltd
Suite 313 Henry Lawson Business Centre
Birkenhead Point
Drummoyne NSW 2047

Phone: (02) 9819 7200
Fax: (02) 9181 3321
E-mail: enquiry@icnns.w.org.au

Website address: <http://www.icnns.org.au>

- 6.4.4 The Board makes no representation or promise in relation to the suitability or otherwise of any advice or assistance offered by the ICN or its compliance with the Board's requirements.

6.5 NSW Government Purchasing Preference Scheme

- 6.5.1 The NSW Government has directed its departments and declared agencies to give preference to goods (and related services) of Australian and New Zealand origin. The NSW Purchasing Preference Scheme supports Australian manufactured products and services in preference to imports. Certain eligible country based suppliers are given additional preference above all other suppliers. Preferences are only used for the purposes of tender evaluation and Contractors or Customers incur no actual costs.
- 6.5.2 The Preference Scheme is implemented by evaluating Tender Prices in the clauses below.

Preference – Australian and New Zealand Content

- 6.5.3 Preference is applied in the form of a 20% loading on the declared imported/overseas content (excluding New Zealand) of the tendered goods (and related services). For example:

Tender Price:	\$10.00
Imported Content:	80%
Preference margin	$20\% \times 80\% \times \$10.00 = \$1.60$
Price used for evaluation:	$\$10.00 + \$1.60 = \$11.60$

- 6.5.4 No preference margin is applied when assessing Tenders for the provision of services alone.
- 6.5.5 Tenderers are required to provide details of the imported (non-Australian and New Zealand) content in the Price Schedule and to make available records (as and when required) to substantiate imported or local content claims. Tenderers must also include detailed statements from their sub-contractors on the imported content of the goods and related services they are offering.
- 6.5.6 The imported content of goods and related services is the estimated duty paid value, inclusive of the value of any services, for example overseas freight and insurance, consultancy or engineering effort, or any charges of overseas origin, together with customs clearing charges.

NSW Country Industries Preference Scheme

- 6.5.7 A further preference loading of up to 5% is applied if the tenderer is based in a NSW country area in accordance with the Country Industries Preference Scheme (CIPS). The preference loading is not applied against New Zealand or other overseas Tenders or Tenders from other states or territories.
- 6.5.8 For preference to be applied to a Tender under the CIPS:
- (a) the tenderer must be registered with the Department of State and Regional Development as a country manufacturer under the Country Industry Preference Scheme (Phone 02 9338 6717) before the Closing Date and Time for Tenders;
 - (b) The tenderer must quote its Preference Registration Number allocated by the Department of State and Regional Development

and the applicable preference margin in the space provided in Part C1 of this RFT;

- (c) The goods being sought are those for which the tenderer is registered; and
- (d) The tenderer is tendering as the prime contractor.

6.5.9 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State which, in comparison with their city-based competitors, suffer definable economic disadvantages which can be directly attributed to their country location. The preference applies on the following basis to approved manufacturing industries located outside the county of Cumberland, the Cities of Newcastle, Wollongong, Penrith and Liverpool and the Municipality of Camden:

- (a) In the Cities of Maitland, Greater Cessnock and Blue Mountains, the Municipalities of Kiama and Shell Harbour and the Shires of Port Stephens, Lake Macquarie, Gosford, Wyong, Wollondilly, Wingecaribee and that part of the Shire of Hornsby which was previously part of the Shire of Colo: maximum preference of 2.5%.
- (b) Elsewhere in New South Wales: maximum preference of 5%.

6.5.10 Further details of the NSW Purchasing Preference Scheme, and an application for registration under the Country Industry Preference Scheme, can be obtained from:

Department of State and Regional Development
 Regional Development Division
 225 George Street
 Level 43
 Grosvenor Place
 SYDNEY 1200
 Telephone: (02) 9338 6717
 Facsimile: (02) 9338 6726
 Website address: [www.Department of Commerce.nsw.gov.au/policy/areas+of+expertise/procurement/nsw+government+preference+scheme.pdf](http://www.DepartmentofCommerce.nsw.gov.au/policy/areas+of+expertise/procurement/nsw+government+preference+scheme.pdf)

6.6 Sustainable long-term industry development – Not Used

6.7 Development of long-term strategic alliances – Not Used

6.8 Export potential and/or import replacement – Not Used

6.9 Value-added activity – Not Used

6.10 Small to Medium Enterprise (SME) involvement

6.10.1 It is NSW Government policy to encourage the development of local industry and to support SMEs. Tenderers are required to state in Part C1 how they will provide opportunities for SMEs and, if the Tender involves the formation of a relationship with one or more SMEs, tenderers are asked to provide specified information regarding such relationship(s). The evaluation will favour

tenderers that are prepared to contractually commit to supply chain management and using SMEs identified within their Tenders and the value of work that will flow through to SMEs

6.11 Regional development activity

- 6.11.1 It is NSW Government policy to encourage regional development. Tenderers are to provide details in Part C1 of the number and type of regionally based enterprises participating in their Tender and of the expected regional economic impact of their Tender. The evaluation will favour proposals with a commitment to participation of regional enterprises and to activities that enhance regional development.

6.12 Existing industry development activity and proposed new investment – Not Used

6.13 Innovation, research and development – Not Used

6.14 Workforce development

- 6.14.1 Sustainable growth in employment, improved productivity and improvement in the State's prosperity require a highly skilled workforce. The NSW Government is committed to encouraging investment and job creation in NSW. Tenderers are required to state in Part C1 how they will provide opportunities for disadvantaged groups, the use of new technology and developing specialised skills with related information.

6.15 Industry Impact Assessment and Local Industry Participation Plan - Not Used

6.16 Occupational Health Safety & Rehabilitation

- 6.16.1 Tenderers must comply with the following OHS&R requirements in the performance of any Standing Offer agreement awarded:
- (a) The Occupational Health and Safety Act 2000 (NSW) and any regulation made under this Act, including the OHS Regulation 2001; and
 - (b) Codes of Practice, approved and issued pursuant to the above Act and/or regulations made under the Act.
- 6.16.2 Tenderers must ensure that the Tenderer's Sub-Contractors will comply with the OHS&R requirements listed in 6.16.1 in the performance of any Standing Offer agreement awarded.
- 6.16.3 Tenderers must indicate in Part C, compliance with their OHS&R obligations, including any specific obligations in clause 6.7.2 (Occupational Health, Safety & Rehabilitation) of Part D.
- 6.16.4 The successful tenderer will be required to develop Safe Work Procedures for the Standing Offer agreement. Safe Work Procedures must include, as a minimum, the following:
- (a) procedures that are relevant to the Tenderer's operations;
 - (b) a description of the tasks and associated hazards;
 - (c) all precautions to be undertaken to protect health and safety;
 - (d) control measures and methods to minimise health and safety risks;
 - (e) reference to health and safety legislation, codes or standards applicable to the work; and

- (f) if requested, obtaining Safe Work Method Statements from Sub-Contractors 7 days before commencement of the Agreement.

6.16.5 Tenderers are required in Part C to provide evidence of their OHS&R performance record.

6.17 Environmental Management

6.17.1 The NSW Government requires agencies to promote Ecologically Sustainable Development through procurement. Tenderers are required in Part C1 to demonstrate their environmental management and performance capability and a commitment to waste management and energy conservation practices. Tenderers are also asked to detail the measures that they intend to implement to improve environmental performance and management if their Tender is accepted.

6.18 Competitive Neutrality - Not Used

6.19 Electronic Procurement (Smartbuy®)

6.19.1 Department of Commerce/Government Procurement Delivery Systems actively encourages all SCCB suppliers to register with smartbuy® to facilitate NSW government agencies to view and purchase goods and services on line. The Client Services Unit in the Government Procurement Delivery Systems branch provides support services for all suppliers in completing the supplier enrolment process thereby offering maximum exposure of suppliers' items to the government market. The steps required for getting established in the smartbuy® system are outlined below.

6.19.2 The NSW Government seeks to maximise the use of electronic procurement and progressively move significant volumes of NSW Government purchasing on to smartbuy®.

6.19.3 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® is located at <http://www.smartbuy.nsw.gov.au>.

6.19.4 smartbuy® enables eligible clients to electronically procure goods and services, generally on terms established in Government Contracts. It is intended that all goods and services provided under the Board's Standing Offer Agreements will be browsed, searched and where appropriate, purchased online via smartbuy®. Similarly, any procurement agreement between eligible clients and suppliers can be facilitated in smartbuy®.

6.19.5 All successful tenderers are required to accept Orders and other business documents and communications by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000. More information on the NSW Government's policy about electronic procurement and smartbuy® can be seen at

- a) <http://www.smartbuy.nsw.gov.au> and
- b) <http://www.dpws.nsw.gov.au/About+Us/Publications/Government+Procurement+Publications.htm>

Participating in smartbuy® and smartbuy® enrolment process:

- 6.19.6 Successful tenderers will be required to enrol with smartbuy®, which is a three step exercise conducted by the Government Procurement Delivery Systems. The first step for a successful tenderer is to register the organisation online, through the smartbuy® website, and where the smartbuy® Supplier Agreement and participation Rules are reviewed and agreed to.
- 6.19.7 The second step is for the nominated smartbuy® Supplier Administrator attends smartbuy® training. This training can be conducted online via the smartbuy® website, or at one of the regularly scheduled training sessions.
- 6.19.8 The final step is to have catalogue content prepared, submitted, reviewed, confirmed and loaded into smartbuy®.
- 6.19.9 On completion of the enrolment process, the Supplier Administrator will be issued with a log on. This will provide access to their catalogue information as held in smartbuy®, from which buyers will view and purchase against.

Additional supplier establishment Requirements

- 6.19.10 In addition to enrolling in smartbuy®, as explained above, successful tenderer organisations will be required to:
 - a) submit specified information about themselves and the Deliverables to which the Standing Offer Agreement applies, to the Government Procurement Delivery Systems, and keep this information up to date;
 - b) provide pricing/product information in the electronic format; the format will be provided to successful Tenderers at the time of notification of acceptance of their tender response; or
 - c) provide access to tendered products through an externally hosted catalogue. Tenderers are advised that where OCI protocol is used, the outbound and any inbound requests should fully comply with OCI version 2.0B and version 3.0.

Smartbuy® Operational Requirements

- 6.19.11 The smartbuy® solution is comprised of a number of procurement-related applications and services including smartbuy® CONNECT. smartbuy® CONNECT is based on an IBM MQ Series platform, and is a full service B2B hub offering a wide range of integration, document transformation and trading partner management capabilities.
- 6.19.12 smartbuy® CONNECT is tightly integrated to smartbuy® TRADE, and may be connected to Agencies and Suppliers via a number of integration mechanisms. The transmission types and document formats for the different integration options are explained in more detail below.
- 6.19.13 All electronic documents transmitted out of or into smartbuy® TRADE are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Agencies and Contractors, without passing through the smartbuy® TRADE.

- 6.19.14 The successful tenderer will be required to transmit documents in accordance with the transmission types and document formats detailed below.

smartbuy® CONNECT supports the following business documents:

- a) PO
- b) PO Change
- c) PO Acknowledgement
- d) Receipt
- e) Receipt Change
- f) Advanced Shipping Notice
- g) Invoice
- h) Technical Message Acknowledgement

Smartbuy® e-Hub Trading Channels

- 6.19.15 smartbuy® CONNECT Trading Channels

The following Transmission Types and Document Types can be received by smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel: [retain the table].

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

Smartbuy® Security

- 6.19.16 Smartbuy® is committed to a high level of security, and is working towards full AS/NZS7799 accreditation. Smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy®

- 6.19.17 Key elements of the security regime include:

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

6.20 Other relevant policies - Not Used

6.21 Compliance with relevant legislation and standards

- 6.21.1 In all cases the Deliverables tendered must comply with the relevant Act, codes and other regulations governing packaging and labelling.

Compliance with Therapeutic Goods Act 1989

- 6.21.2 Therapeutic goods (both drugs and devices) offered must be contained on the Australian Register of Therapeutic Goods (ARTG) unless exempted, in accordance with the *Therapeutic Goods Act 1989 (Cth)*. Products contained on the ARTG are required to meet standards in relation to quality, safety and efficacy (for registered goods) and quality and safety (for listed goods). Products not accepted onto the ARTG cannot be lawfully supplied in Australia, unless exempted. Tenderers **must**, in the space provided in the Price Schedule, state for each item offered the AUSTR number (for registered goods), the AUSTL number (for listed goods) or indicate whether the item offered is exempted.
- 6.21.3 Tenderers must provide copies of all relevant certification issued by the Therapeutic Goods Administration which will enable verification of any statements made in respect of the above.
- 6.21.4 Submission of a Tender will be taken as clear evidence that the tenderer will comply in all respects with "The Uniform Recall Procedure for Therapeutic Goods" as called for by the Therapeutic Goods Administration.
- 6.21.5 Labelling of products shall comply with the Therapeutic Goods Order 37, "General Requirements for Labels for Therapeutic Devices".

Certificate of compliance with relevant Standards

- 6.21.6 Tenderers are required to provide evidence or compliance with Standards requirements as laid down by State or Federal Authorities, where relevant.
- 6.21.7 In all cases where Australian Standards exist, tendered products should conform to such Standards. Tenderers are at liberty to offer products that comply with other recognised international Standards. However, where any inconsistency exists between other Standards offered and the Australian Standards specified, full details of the inconsistencies are to be stated in the tender response.
- 6.21.8 Tenderers are required in Part C to indicate whether certification from approved testing authorities, which confirm that the tendered items meet the relevant Australian, Overseas or International Standard, is attached to Part C4

6.22 Other Board Requirements

Marketing

- 6.22.1 Tenderers are required to participate at their own cost in the promotion of the Standing Offer agreement to all current and potential Customers. The Tenderer's involvement may include but not be limited to the provision of promotional material, direct marketing, product literature, brochures and other sales related activities. Tenderers are required in Part C1 to indicate their willingness to participate in the promotion of the Standing Offer agreement.

- 6.22.2 The Board will similarly promote the Standing Offer agreement in publications where possible.

Natural Rubber Latex Content

- 6.22.3 The Public Health Sector recognises the importance of minimising Latex exposure for its employees and clients. Appropriate identification and management of persons at risk of sensitisation to Latex and those with a Latex allergy is imperative. Therefore tenderers are required to indicate the presence of Natural Rubber Latex in submitted items in Part C.

7. Preparation of Tender – Price Schedule

7.1 Price Schedule

- 7.1.1 Tenderers must complete the Price Schedule that is contained in Part C3 to this RFT. The Price Schedule requires that each Deliverable be priced as a discrete item that can be separately ordered.
- 7.1.2 The information listed below is to be provided in respect of each item offered, in the spaces provided in the Price Schedule. Items required which are not offered by the tenderer should be struck through in the space containing the item description.
- 7.1.3 The Price Schedule must contain, if applicable, the information required to be responded to in respect of each Deliverable.

7.2 Selected Price Schedule - Not Used

7.3 Calculating the Tender Price

7.3.1 General

7.3.1.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the Standing Offer agreement; for the first pricing request include costs of delivery as specified in cl.7.3.2 of this Part and for the second pricing request exclude the delivery costs (as shown in the workbook referred to in Part C3 Price Schedule);
- (d) include costs of packaging as specified in clause 7.3.3 of this Part;
- (e) include the Management Fee (see clause 6.11 of Part D), which is not to be shown as a separate charge;
- (f) Not Used;
- (g) include all costs associated with the preparation and submission of the Tender;
- (h) include any Government Discount, or Government Discount from list price, which applies;
- (i) exclude all other discounts;
- (j) include any Government Mark-Up on list price which applies;

7.3.2 Delivery charges

- 7.3.2.1** Tenderers are required to provide pricing which includes the cost of delivery, **FREE-INTO-STORE (FIS)** as well as NFIS (pricing not to include delivery). FIS Pricing includes delivery throughout NSW and the ACT for Eligible Customers in such quantities as may be required during the period of any final contract. Tenderers should note that only FIS pricing will be used for evaluation purposes.
- 7.3.2.2** Delivery will be required as soon as possible within the guaranteed delivery time, after placement of orders. Tenderers shall state, **at Part C1**, the delivery time they are prepared to guarantee to complete orders for reasonable quantities of each item tendered. Contractors are required to maintain adequate stocks to be able to satisfy orders for reasonable quantities within the guaranteed delivery time. Tenderers are to note that delivery times tendered will be a factor in the evaluation of tenders. Failure to adhere to guaranteed delivery times tendered may be regarded as grounds for termination of a Contract.
- 7.3.2.3** Contractors shall notify the Customer (being any of the organisations described in **Schedule 12** which placed the order for the Goods) immediately and in any event in not more than 24 hours, of any item on an order that cannot be supplied within the guaranteed delivery time.
- 7.3.2.4** The prices tendered are to provide for goods to be suitably packed to ensure safe transport to their destination. Packs are to show details of contents and country of origin.
- 7.3.2.5 THE CONTRACTOR MUST ADVISE STATE PROCUREMENT OF ALL PROLONGED DELIVERY DELAYS DURING THE PERIOD OF THE CONTRACT.**
- 7.3.2.5** Delivery charges shall not apply when a purchase order has been received by the Contractor and contains a minimum total of 50% of any State Contracts Control Board contracted items.
- 7.3.2.7** If the Contractor is unable to provide Deliverables for any reason, the Contractor must arrange for the supply of equivalent products from an alternative supplier within the guaranteed delivery time. The Contractor is to liaise with the Customer to ensure that the alternative product is acceptable and meets the purchaser's needs.
- 7.3.2.8** In reference to 7.3.2.7 (where FIS price is chosen by the customer in the purchase of deliverables), any additional cost in arranging the alternative supply is to be borne by the Contractor.
- 7.3.2.9** The Contractor will replace Goods at no cost (including freight and handling charges) where stocks are delivered with unacceptably close use-by dates. An unacceptable use-by date is one that is **LESS THAN SIX (6) MONTHS** from the date of delivery.

7.3.3 Packaging charges

- 7.3.3.1** The Tender Price must be inclusive of costs of suitable packaging in accordance with any packaging requirements stated in the Specification.

7.4 Price Adjustment

- 7.4.1 The Tender Price is a maximum (ceiling) price that cannot be exceeded during the term (including any extension of the term) of the Standing Offer agreement unless price variation is provided for in this RFT.
- 7.4.2 However if a successful tenderer has a temporary or periodical special offer, which is lower than the Tender Price, this should be made available to all Eligible Customers promptly, and prior notification to the Board is not required. This does not apply to permanent price decreases that shall be submitted to the Board for approval in accordance with the terms and conditions of Part D.
- 7.4.3 Subsequent to providing notice to the Principal, the successful tenderer must make the special offer available to all Customers promptly.
- 7.4.4 It is **Mandatory** that the tenderer submit prices that are firm for the first twenty four (24) months of the Standing Offer agreement then subject to review at twelve (12) monthly intervals based on variations in **rates of exchange, labour and material factors and/or published price list**.

By firm in the first year of the contract (first 12 months, 1 August 2006 to 31 July 2008) means that the successful tenderer cannot apply during this time for price variation to increase in price of its contracted products but it may apply for price decreases of its products in accordance with relevant clauses in Part D.

- 7.4.5 Variation on the basis of exchange rates will be as follows:

Exchange Rates

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

- 7.4.6 Variation on the basis of labour and material will be in accordance with the following formulae.

Labour and Material Factors

$$CP = CPo \times \left(0.1 + \frac{Y(L)}{Lo} \right) + \frac{Z(M)}{Mo}$$

Where:

CP = Current Contract Price.

CPo = Contract Price at start date.

Y	=	The Labour Factor, expressed as a decimal, being the proportion of the Contract Price subject to variation by labour costs.
L	=	The Weekly Award Rate of pay, or the Effective Award Hourly Rate (EAHR) calculated in accordance with the EAHR formula detailed hereunder, for the category of labour primarily employed on the Standing Offer agreement, most recently published at the date of application for price variation.
Lo	=	The Weekly Award Rate of pay, or the EAHR calculated in accordance with the EAHR formula detailed hereunder, for the category of labour primarily employed on the Standing Offer agreement, most recently published at twenty-one days before tender closing.
Z	=	The Materials Factor, expressed as a decimal, being the proportion of the Standing Offer agreement price subject to price variation by materials costs.
M	=	Materials Cost Index most recently available at the date of application of price variation.
Mo	=	Materials Cost Index, corresponding to the index used for "M", most recently available twenty-one days before tender closing date.

EAHR Formula:

Tenderers may elect to use, instead of the weekly award rate of pay in the above formula, an "Effective Award Hourly Rate" (EAHR) which is determined by the following formula. If the award rate of pay is nominated for L and Lo, then this formula does not apply.

$$EAHR = \frac{AW}{HW} \times \frac{(52 + LL)}{(52 - LA)} \times (1 + WC + PT + S)$$

Where:

AW	=	Weekly award rate of pay for the labour primarily engaged in the Standing Offer agreement, including industry allowances and site-specific allowances approved by the appropriate State or Commonwealth Authority.
HW	=	Award hours per week.
LL	=	Award annual leave loading (expressed as a decimal) multiplied by the number of days paid recreation leave covered by the award divided by 5.
LA	=	Award leave allowance divided by 5.
WC	=	The recommended rate (expressed as a decimal) of contribution of Workers Compensation in accordance with the relevant legislation.
PT	=	Payroll tax percentage (expressed as a decimal).

S = Rate of employer's superannuation as a percentage of the employees' wages in accordance with the relevant award (expressed as a decimal).

7.4.7 Variation on the basis of Published Price List will be as follows.

Published Price List

- 7.4.7.1 Where Price variations may be based on the tenderer's published price list. Tenderers must attach a copy of the Price List to Part C3 and submit as part of their Tenders.
- 7.4.7.2 Tenderers must complete the details required in the clause 13.3.4 of Part B including the name, date and official price list number of the Price List, Source of Price List, the frequency of revision of the Price List and provide examples of variations to the Price List over a two-year period prior to the closing date of the RFT.
- 7.4.7.3 The Tender Price shall be, in the case of each Deliverable offered, the tenderer's current price specified in the Price List less a Government Discount from list price.
- 7.4.7.4 In calculating the Government Discount from list price offered, tenderers should take account of the specified method of calculating the Tender Price in clause 7.3.
- 7.4.7.5 Tenderers must state the amount of the Government Discount from list price in Part C3.

Publish Price List Formula

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

(Note: * = means multiplication)

Where:

- RP = Revised contract price.
- TP = Tendered price (or latest revised price)
- PLPo = Published list price effective on the date 7 days before tender closing (the base date), or the published list price upon which the latest revised contract price is based.
- PLP = Published list price effective at date price variation application is lodged.
- 2(b) Where the supplies are imported, and the published price list is in an overseas currency, the above formula shall be modified as follows:-

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

(Note: * = means multiplication)

Where:

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

7.5 Discounts

- 7.5.1 Tenderers must provide full details in Part C1 of any discounts that will apply to the Tender Price. (These discounts do not include any Government Discount, or Government Discount from list price which, if either apply, are incorporated in the Tender Price.)
- 7.5.2 Tenderers are at their liberty to submit special offers contingent upon specified groups of items being accepted in their entirety. Such bundled offers must be self-contained and not impact or be related in any way to items not contained within this contract.

7.6 GST Free or Input Taxed Supplies

- 7.6.1 Tenderers must identify and state the value of any GST Free or Input Taxed Supplies to be made under the Standing Offer agreement.

7.7 Minimum Tender validity period

- 7.7.1 Tenders must remain open for acceptance for a period of at least 6 months from the Closing Date and Time for Tenders. Tenderers must state in Part C1 if their Tenders will remain open for any longer period.

8. Submission of Tenders

8.1 General instructions for submission of Tenders

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

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

(a) by delivery into the Tender Box:

I. It must be marked:

Tender Box
Department of Commerce
Level 3, McKell Building
2-24 Rawson Place
Sydney. NSW 2000

II. If delivery personnel requires a signature as evidence of Delivery, the Tender must be delivered between 8:30 a.m. and 4.30 p.m, Mondays to Fridays (except public holidays).

- (b) by post, addressed to:

Tender Box
Tenders Office
Department of Commerce
Level 3, McKell Building
2-24 Rawson Place
Sydney, NSW 2000

- (c) by facsimile to (02) 9372 8974

- (d) by electronic lodgement through the NSW Department of Commerce eTendering website at

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

8.1.3 If a tenderer intends to submit electronically through the DEPARTMENT OF COMMERCE *eTendering* website or by facsimile, the following must be considered:

- (a) The facsimile machine and 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 Closing Time than at other times.
 - 2) When lodging by facsimile or through the DEPARTMENT OF COMMERCE *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
 - 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the DEPARTMENT OF COMMERCE *eTendering* website is appropriate.
- (b) The facsimile machine and the DEPARTMENT OF COMMERCE *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the 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 cl. 8.2.4(b) for instructions as to compressing electronically submitted Tenders.
- (1) In order to comply with cl. 8.1.3(b), 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 designated 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 Closing Time, and

- b) Supporting documents should be clearly designated as "Supporting Documents to RFT 069/439"

8.1.4 A tenderer is not required to provide multiple copies of a Tender.

- (a) If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:
 - (1) A "Copy." A copy must be identical to an earlier or simultaneous submission in every respect.
 - (2) A "Variation." A variation of an earlier tender will be deemed as superseding a prior submission.
 - (3) An "Alternative Tender" under cl. 5.1.
- (b) In the event that a Tenderer fails to designate whether a submission is a Copy or a Variation, the latest Tender received in the DEPARTMENT OF COMMERCE Tender Box will be deemed as the definitive submission.

8.1.5 If submitting a Hard Copy Tender, a tenderer must provide a copy of the Price Schedule on a CD-ROM or an IBM compatible 1.44MB floppy disk in a file format that can be read, formatted, displayed, manipulated and printed by Microsoft Excel 97.

8.2 Electronic Tenders to the DEPARTMENT OF COMMERCE *eTendering* website

- 8.2.1 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the DEPARTMENT OF COMMERCE *eTendering* website at <https://tenders.nsw.gov.au/commerce>. 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.
- 8.2.2 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown in the Conditions of Tendering and on the DEPARTMENT OF COMMERCE *eTendering* website.
- 8.2.3 A tenderer must follow the following directions:
 - (a) RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" button on the web pages for the RFT.
 - (b) To lodge a Tender electronically, the files containing the Tender Response must be up-loaded through the website. Access to the up-loading process is through the blue "Lodge a Response" button, then follow the steps and instructions on the DEPARTMENT OF COMMERCE *eTendering* website and any instructions, which may have been supplied with the RFT Summary and/or Responsible Copy.
- 8.2.4 A tenderer must observe the following format for submissions:

- (a) 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.
- (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
- (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
- (d) 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.

8.2.5 Signatures are not required for a Tender submitted to the DEPARTMENT OF COMMERCE *eTendering* website. A tenderer must ensure that a 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.

8.2.6 Electronically submitted Tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Note that:

- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a Tender.
- (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.

8.2.7 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. A tenderer should note:

- (a) There are usually alternative Tender lodgement methods described in the RFT. It is always the tenderer's responsibility to lodge the Tender by Closing Date and Closing Time.
- (b) If there is a defect or failure of the DEPARTMENT OF COMMERCE *eTendering* website and the Board is advised, the Tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the tender process will not be compromised by such an extension.

8.3 Custody of Tenders after receipt

8.3.1 All hard copy tenders submitted (and any accompanying CD-ROMS or floppy disks) are kept in the DEPARTMENT OF COMMERCE Tender Box, which is a locked tender box, until after Closing Date and Closing Time.

8.3.2 Tenders lodged electronically to the DEPARTMENT OF COMMERCE Tenders website 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.

- (a) On receipt of Tenders lodged electronically to the DEPARTMENT OF COMMERCE *eTendering* website, Tenders are encrypted and stored in a secure "electronic tender box."
- (b) For reasons of probity and security, DEPARTMENT OF COMMERCE is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
- (c) The e-mail receipt that is sent to the Tenderer after successfully uploading the Tender is the only evidence of Tender lodgment provided.

8.4 Late Tenders

- 8.4.1 In accordance with the requirements of the Code of Practice for Procurement, 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.
- 8.4.2 Normally, Late Tenders will not be considered for acceptance if they are:
 - (a) hand delivered, including hand delivered by courier; or
 - (b) received through Australia Post unless the envelope is clearly postmarked before the Closing Date and Time; or
 - (c) received through Australia Post with only the tenderer's own franking machine on the envelope; or
 - (d) received by electronic communication (facsimile or over the internet) and the dispatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or internet facility being engaged, faulty or otherwise inoperative.

8.5 Extension of the Closing Date and Time

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

9. Evaluation of Tenders

9.1 General

- 9.1.1 Tenders will be assessed against the selection criteria listed below, which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 9.1.2 Not Used
- 9.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 9.1.4 If any criterion or sub-criterion is stated to be mandatory, a failure by the Tender to fully comply with that criterion or sub-criterion will result in automatic exclusion of the Tender without further consideration. Mandatory criteria include those in which mandatory language such as "must" or "shall" is used.

9.2 Selection criteria

- (a) Fitness for purpose of Deliverables offered including compliance with Specification, quality, innovative aspects, product design, performance and warranties.
- (b) Value for money. Value for money does not automatically mean the lowest price. It is determined by considering all factors relevant to a particular purpose. It includes the cost of the deliverables, whole of life costs, innovation and value adding components, such as meeting the Government's economic, social development and environmental policy objectives.
- (c) Price
- (d) Range of Products offered.
- (e) Discounts offered.
- (f) Minimum order values.
- (g) Delivery considerations.
- (h) Capacity to perform this Standing Offer agreement.
- (i) Compliance with the proposed conditions of the deed of agreement, as stated in Part D.
- (j) Compliance with NSW Government procurement policy and other applicable NSW Government policies.
- (k) Compliance with relevant legislation and standards.
- (l) Compliance with other Board Requirements.
- (m) Previous contract experience and standard of contract performance.

9.3 Variation of Tenders

9.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may, subject to cl.9.3.2, vary its Tender:

- (a) by providing the Board with further information by way of explanation or clarification;
- (b) by correcting a mistake or anomaly, or
- (c) by documenting agreed changes to the Tender negotiated under cl.10.1 of this Part.

9.3.2 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 under cl.9.3.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly, or
 - (d) in the case of variation under cl.9.3.1(c), the Board has confirmed that the draft documented changes reflect what has been agreed.
- 9.3.3 If a Tender is varied in accordance with cl. 9.3.1(a) or (b), the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.
- 9.3.4 A variation of a Tender under cl. 9.3.1 will not be permitted if in the Board's view:
- (a) it would substantially alter the original Tender; or
 - (b) in the case of variation under cl.9.3.1(a) or (b), it would result in the revising or expanding of a Tender in a way that would give a tenderer an unfair advantage over other tenderers.

9.4 Samples

- 9.4.1 Samples **must** be submitted for all products offered in accordance with the following instructions:
- (a) Products offered under the following categories must be submitted by 3.30pm on the third working day after the closing date of this Request for Tender:
 - Group 2 – Blood Letting Devices (2 shelf packs)
 - Group 3 – Tourniquets (10 shelf packs)
 - Group 5 – Hair Removal - 20 razors – Items 5.1, 5.2 and 5.3 only
 - Group 8 – Thermometers – 5x with sufficient covers (if applicable)
 - Group 20 – Pregnancy Test Kits – 10 of each type offered.

The above samples are to be delivered to the Department of Commerce's rear entrance in Barlow Street (rear of Rawson Place, Sydney) for clinical trials.
 - (b) The Contract Advisory Group will decide which of the other products offered will require samples for evaluation after tenders have closed and offers examined. It is mandatory that samples be provided within the time allotted as and when requested. Tenderers will be given 7 working days from the date of request to deliver 'shipper' packs to the same address and location as listed above.

Samples may be delivered between the hours of 9:00am to 3:30 pm, Monday to Friday only.

Please note that tenders must not be included with the samples, but should be lodged as per instructions provided in this tender.

For this tender, samples shall be submitted in the following fashion:

- Tenderers shall provide a minimum shelf pack for each product code tendered.
- Minimum shelf pack shall be taken to mean the smallest complete packaged and labelled unit (ie, box or bag or pack, etc) of the product.
- In the case of tendering for a “whole range” for an item, Tenderers shall provide a minimum shelf pack that is representative of the range of sizes.

A copy of the **complete list** of all samples submitted as part of the tender, showing all the information listed above (ie. Tender number, tender item number, product code and the name of the tenderer) as above (as well as any other relevant information) must accompany the samples, and a second copy of the list must be included with the tender as an attachment to Part C1 of this tender.

The samples must be clearly identified with the **tender number, tender item number, product code and the name of the tenderer**.

Note: Failure to provide samples with clear identification as required above may result in the tender being given no further consideration, unless suitable alternative arrangements have been made prior to the tender closing date.

Please provide details together with the **list** regarding the disposal of your samples. It should be noted that samples may be destroyed or damaged during evaluation and/or may be retained for future reference.

- 9.4.4 All costs incurred in relation to the preparation, delivery and subsequent collection of samples shall be borne by the tenderer and will not be remunerated by State Procurement, regardless of the outcomes of the tender process.

9.5 Exchange of information between government agencies

- 9.5.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance for any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 9.5.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 22(1) of the *Defamation Act 1974* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.

- 9.5.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 9.5.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this cl. 9.5.
- 9.5.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.
- 9.5.6 During the course of the contract, the successful tenderer's performance will be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

9.6 Corrupt or unethical conduct

- 9.6.1 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:
- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, Customer or the NSW Government in connection with this RFT or the submitted Tender;
 - (b) committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*, or
 - (c) a record or alleged record of unethical behaviour,
- this may result in the Tender not receiving further consideration.
- 9.6.2 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.

10. Outcomes

10.1 Post Tender negotiations before determination of outcome

- 10.1.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiation with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.
- 10.1.2 The Board will generally not enter into negotiations on the standard conditions of contract contained in Part D.

10.2 Acceptance or rejection of Tenders

- 10.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with cl. 5.1, any Alternative Tender or other Non-Conforming Tender.

10.2.2 The Board is not bound to accept the lowest or any Tender.

10.2.3 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 cl. 10.6.

10.3 Discontinuance of the Tender process

10.3.1 In addition to its rights under cl. 10.2, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

10.3.2 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.

10.4 Notification of outcome

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

10.5 Entry into Standing Offer agreement

10.5.1 Acceptance of a Tender or part Tender will be subject to the execution of a formal deed of agreement in the terms of Part D. Until the Board and the successful tenderer(s) execute a formal deed or deeds there will be no legally enforceable agreement concluded between them.

10.6 Post Tender negotiations in the event all Tenders are rejected

10.6.1 If the Board rejects all Tenders on the basis that all Tenders are Non-Conforming, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with the least non-conforming tenderer with a view to achieving a Conforming Tender and entering into a Standing Offer agreement. If such negotiations are unsuccessful the Board may then enter negotiations with the next most acceptable tenderer. This process may be repeated with each of the rejected Tenders in order of potential acceptability. However, the Board is not obliged to enter into negotiations with any tenderer.

10.6.2 The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation. Negotiations will not seek to play off tenderers' prices against other tenderers' prices.

10.7 Complaints

10.7.1 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 D or the Requirement, it is invited to write to:

Chairman, State Contracts Control Board

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

10.8 Disclosure of information concerning successful and unsuccessful Tenders

- 10.8.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Board may publish the following information about a Standing Offer agreement awarded under this RFT:
- (a) Details of the Standing Offer (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the Standing Offer; the term of the Standing Offer);
 - (b) The full identity of the successful tenderer including details of cross ownership of relevant companies;
 - (c) The price payable by the agency and the basis for future changes in this price;
 - (d) The significant selection criteria used in Tender assessment and their weightings, where applicable;
 - (e) Provisions for re-negotiation (where applicable).
- 10.8.2 The Board will not disclose the following information about any Standing Offer agreement awarded under this RFT unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required:
- (a) The Contractor's financing arrangements;
 - (b) The Contractor's cost structure or profit margins;
 - (c) Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
 - (d) Any other matters where disclosure would, in the Board's view, place the Contractor at a substantial commercial disadvantage with its competitors both at the time of entering into the Standing Offer agreement and at any later date when there would be an effect on future competitive arrangements.
- 10.8.3 A tenderer may request that the Board not disclose particular information included in its Tender but must give the reasons for requesting this. The Board will advise a tenderer in contention for a Standing Offer agreement what information it agrees not to disclose (unless legally required to do so). If the Board and a tenderer cannot agree about what should be disclosed, the Board will seek the advice of the Chair of the Board. The Board's decision is however final and is at the Board's absolute discretion. Neither a decision by the Board, nor a recommendation by the Chair of the Board under this paragraph is a decision that falls within any dispute resolution procedures specified in Part D.
- 10.8.4 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.
- 10.8.5 For Standing Offer agreements valued over \$100,000, the Board will normally publish the names of tenderers when Tenders close, and the other information about the Standing Offer agreement specified in cl. 10.8.1 on the internet, within 90 days after award of the Standing Offer agreement. For other

Standing Offer agreements the Board will disclose the specified information in cl. 10.8.1 on request.

10.9 Ownership of Tenders

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

10.10 Monitoring of Contractor Performance

- 10.10.1 During the course of the Standing Offer agreement the Contractor's performance will be monitored and assessed. For details refer to the NSW Government Procurement Guidelines on Service provider performance management which is available on request from the Contact Officer, the NSW Department of Commerce or can be viewed and downloaded from: www.dpws.nsw.gov.au/NR/rdonlyres/ebwssn7k5yfsxvbbwly7mhpwmqec6elk2wb3hbuptrlypeir7otlr7ud7noad4jv6m5fdai5wy2566kasjlyfmwnoab/Service+Provider+Performance+Management.pdf
- 10.10.2 The terms and conditions of the proposed deed of agreement, set out in Part D, detail the performance criteria to be applied in the monitoring of Contractor performance.

10.11 Market Changes

- 10.11.1 During the period of the contract, should the Board become aware of any reason that would warrant a review of the contract price(s), including market place changes and / or dynamics, the Board reserves the right to contact the Contractor to discuss price changes.
- 10.11.2 Should this be unsatisfactory to the Board, the Board reserves the right to cancel the contract and re-test the market.

ANNEXURE 1 TO PART B

Specification

This tender covers the supply and delivery of Miscellaneous Medical and Surgical Devices for the period 1 August 2006 to 31 July 2009 (3 years), in accordance with the Conditions and Specifications detailed herein. The Board reserves the right to extend the contract for up to two further periods of up to twelve (12) months each in accordance with the conditions and specifications mentioned above.

The contractor shall fulfill all orders placed during the currency of the contract.

ITEM SPECIFICATIONS

Item Number	Description
Group 1	Personal ID Bands / Range of Colours
1.1	Non-Metal Clasp, Insert, Full range (Neo-Natal, Infant, Child, Adult), must fit arm and ankle
1.2	Non-Metal Clasp, Write On, Full range (Neo-Natal, Infant, Child, Adult), must fit arm and ankle
1.3	Non-Metal Clasp, Mother & Child Duo, Insert, must fit arm and ankle
1.4	Range of similar products offered by Tenderer under this Category
Group 2	Blood Letting Devices
2.1	Lancet Set, heel & finger bleeding, retractable, needle type, single use - unable to be reloaded after use, suitable for adult, paediatric and neonatal, state sizes and penetration depth
2.2	Lancet Set, heel & finger bleeding, retractable, blade type, single use - unable to be reloaded after use, suitable for adult, paediatric and neonatal, state sizes and penetration depth
Group 3	Tourniquets
3.1	Quick Release, single handed operation, latex free, for blood collection, reusable, with cleaning instructions
3.2	For Blood Collection, latex free, disposable, single patient use
Group 4	Cord Clamps & related products
4.1	Cord Clamp, umbilical, sterile, single use
4.2	Cord Clamp Cutters, umbilical, reusable, able to withstand steam sterilisation to 134 degrees Celsius
4.3	Cord Clamp Cutters, umbilical, sterile, single use
4.4	Hook Perforator for Amniotic Membrane
4.5	Speculum, Ear, single use, disposable, range of sizes
Group 5	Hair Removal
5.1	Razor, Safety, facial shaver, twin blade, disposable
5.2	Razor, Safety, facial shaver, triple blade, disposable
5.3	Razor, Surgical, patient preparation, double sided blade, disposable
5.4	Clippers, Electrical, Surgical, patient preparation, for preoperative hair removal, certified to AS3200
5.5	Chargers, Electrical, to suit Item 8.05, Clippers, certified to AS3200
5.6	Blades, Surgical, patient preparation, for preoperative hair removal, to suit clippers & chargers
Group 6	Scissors & Related Products
6.1	Scissors, Ward Use, blunt / sharp, non-sterile, reusable
6.2	Scissors, disposable, sterile, blunt / sharp or sharp / sharp
6.3	Scissors, Ward Use, sharp / sharp, non-sterile, reusable

6.4	Suture Removal Pack, sterile, single use, including scissors and forceps
6.5	Suture pack, sterile, single use, containing scissors, toothed forceps, number four needle holder
6.6	Toothed Forceps, sterile, single use, range of sizes and materials
6.7	Clamping Device, Haemostat Type with locking device, toothed, plastic, disposable, non-sterile
Group 7	Stethoscopes
7.1	General Use, dual head, adult and paediatric, reusable
Group 8	Thermometers
8.1	Digital, Clinical Human
8.2	Cover, Thermometer, suitable for 8.1
Group 9	Torch
9.1	Torch, Penlight, Professional, pocket clip, pre focus globe for medical use, disposable
Group 10	Swabs & Related Products
10.1	Swab, sterile, Isopropyl Alcohol impregnated, 70% solution, 2 ply, 1 fold, minimum 25mm x 30mm folded
10.2	Swab, sterile, Isopropyl Alcohol impregnated, 70% solution, 4 ply, 2 fold, minimum 25mm x 30mm folded
10.3	Swab, sterile, 2% Chlorhexidine, please specify range
10.4	Swab, towelette, refill pack to suit alcohol impregnated bacteriological wipe
10.5	Swab, towelette, Isopropyl Alcohol impregnated, 70% solution, bacteriological wipe
10.6	Swab, towelette, pre-moistened, fragrant free, patient care, multi pack
10.7	Cloth, Utility, non-woven for patient care, approx. 300mm x 300mm unfolded
10.8	Cloth, utility, non-woven for patient care, biodegradable, approx. 300mm x 300mm unfolded
10.9	Bed Bath, disposable moistened cloths for patient care, single use, state range of sizes and cloths per pack
10.10	Disposable Cap, shampoo for patient hair care
Group 11	Paper Sheeting
11.1	Bib, Patient, Paper, Waterproof Back, Absorbent Lint Free Front, Minimum Size 29cm x 23cm
11.2	Paper Sheeting for trolleys, stretchers, examination tables, pillows etc, state sizes available
11.3	Dispenser, wall mounted to accommodate paper sheeting, state sizes available
11.4	Bag, Emesis, disposable, state capacity
Group 12	Connector Tubing
12.1	Connector Tubing, tapered, multipurpose, sterile, full range of sizes - minimum small, medium and large
12.2	Connector Tubing, tapered, multipurpose, non-sterile, full range of sizes - minimum small, medium and large
12.3	Connector Tubing, Y Piece, multipurpose, sterile
12.4	Connector, Tubing, Y Piece, multipurpose, non-sterile
Group 13	Feeding Tubes and Gastric Sump Tubes and Valves
13.1	Tube Feeding, surgical, nasal, short term, unweighted, no introducer, radio opaque markings. Full range of sizes and lengths
13.2	Tube Feeding, surgical, nasal, long term, weighted, introducer, radio opaque markings. Full range of sizes and lengths
13.3	Tube Feeding, surgical, nasal, long term, weighted, no introducer, radio opaque markings. Full range of sizes and lengths
13.4	Tube Feeding, surgical, nasal, long term, weighted, introducer, medication and suction ports, radio opaque markings. Full range of sizes and lengths
13.5	Tube, Stomach, surgical gastric sump with x-ray detectable component with appropriate markings. Full range of sizes and lengths

13.6	Tube, Stomach, surgical gastric sump, anti-reflux with X-Ray detectable component with appropriate markings. Full range of sizes and lengths
13.7	Valve, Anti Reflux, to suit stomach tube/gastric sump, radio opaque markings
Group 14	Scales
14.1	Scale, weighing, adult floor scale, circular dial, capacity 150kg or above
14.2	Scale, weighing, adult floor scale, digital display, capacity 150kg or above
14.3	Scale, weighing, electronic column scales, digital display, capacity 200kg or above with mains/battery power supply
14.4	Scale, weighing, electronic column scales, digital display, capacity 200kg or above with mains power supply
14.5	Scale accessory, height measuring rod to suit column scales
14.6	Height measuring rod, suitable for wall mounting or stand alone
14.7	Scales - New Born
14.8	Chair Scales – state weight categories
Group 15	Kidney Dishes (See specifications)
15.1	Non sterile kidney dish
15.2	Sterile kidney dish
Group 16	Injection Trays
16.1	Injection trays. Rigid and puncture proof
Group 17	Oral Hygiene Products (See specifications)
17.1	Plain Oral Swabs
17.2	Oral Cleansing System
17.3	Oral Moistening System
17.4	Oral Cleaning System with Suction.
Group 18	Body (Mortuary) Bags & Shrouds (See specifications)
18.1	Mortuary (Body) Bag, Infant
18.2	Mortuary (Body) Bag, Adolescent with Handles
18.3	Mortuary (Body) Bag, Adolescent with Handles
18.4	Mortuary (Body) Bag, Adult
18.5	Mortuary (Body) Bag Adult, with Handles
18.6	Mortuary Shroud (Wrap), Adolescent
18.7	Mortuary Shroud (Wrap), Adult
18.8	Mortuary Pack, (bag, shroud, complying to specifications for this item category with 3 labels)
Group 19	Clinical Waste Bags (See specifications)
19.1	Clinical Waste Bag LDPE 990mm x 555mm x 38µm
19.2	Clinical Waste Bag LDPE 1000mm x 550mm x 75µm
19.3	Clinical Waste Bag HDPE 970mm x 560mm x 25µm
19.4	Clinical Waste Bag HDPE 920mm x 740mm x 25µm
19.5	Clinical Waste Bag HDPE 1000mm x 760mm x 38µm
19.6	Clinical Waste Bag HDPE 1470mm x 700mm x 430mm x 38µm
Group 20	Pregnancy Test Kits
20.1	Pregnancy Test Kit, pregnancy screening – general, see specifications
20.2	Pregnancy Test Pack - professional use only, see specifications
Group 21	Miscellaneous
21.1	Depressors, tongue, sterile, generic sizing and material, single use
21.2	Depressors, tongue, non-sterile, generic sizing and material, single use
21.3	Cup, Medication-dispensing, plastic, disposable

Group 8 -Thermometers

Digital, Clinical Human, waterproof, suitable for paediatric and adults – provide certification of accuracy and clinical use. 35 to 42 degree C, plastic case, state application (eg Oral, Axillary and/or Rectal), cleaning instructions to be provided.

Group 14 - Scales

Item 14.7 Scales, Infant, Portable (Electronic)

Tenderers please note:

If offering more than one category, brand and/or model, please photocopy pages as required, complete relevant details and insert in item order.

Item 14.7 Scales, Infant, Portable, (Electronic) - Specifications

Scales, Infant, Portable, (Electronic)	Tenderer's Response
1.1 List standard accessories provided with base unit.	
1.2 List reference sites within NSW or Australia where product has been purchased.	
1.3 Does the unit, with accessories, comply with AS3200.1 and relevant Part 2 Standards or equivalent? Documentary evidence of compliance must be enclosed.	
1.4 Describe the warranty offered. 12 months minimum is required.	
1.5 State life expectancy of product offered in years.	
1.6 Provide details of IP (ingress protection against dust and fluids) ratings.	

2.0 Physical Characteristics

2.1 State dimensions.	
2.2 State mass.	
2.3 State type and dimensions of display.	
2.4 The unit offered shall consist of a platform base with a moulded plastic tray.	

3.0 Power Requirements

3.1 Battery operation is required.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.2 State battery type, weight and size.	
3.3 Describe battery operation and capabilities. State battery lifetime for continuous use.	
3.4 State maximum battery charge time from fully depleted.	
3.5 If rechargeable batteries are utilised, a charger shall be supplied to keep the batteries fully charged when not in use	
3.6 Does unit have an internal battery charger?	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.7 State how batteries are accessed.	

4.0 Operational Features

4.1 The unit shall display in Metric units, optional Imperial conversion.	
4.2 Do the scales have a taring facility? State maximum taring weight.	[] Yes [] No
4.3 State weighing range (up to 20kg preferred).	
4.4 State resolution (5g preferred).	
4.5 State accuracy of readings.	
4.6 State method of zeroing scales.	
4.7 Do the scales have movement detection, locking the baby's weight in the absence of movement?	[] Yes [] No
4.8 Describe cleaning methods.	
4.9 Tenderers shall describe method of securing base during transport.	

Item 14.8 Scales, Chair, Adult/Child (Electronic)

Tenderers please note:

If offering more than one category, brand and/or model, please photocopy pages as required, complete relevant details and insert in item order.

Item 14.8 Scales, Chair, Adult/Child (Electronic) – Specifications

Chair Scales, Adult/Child (Electronic), for use in NSW Public Hospitals.	Tenderer's Response
1.1 List standard accessories provided with base unit. Describe construction wheels etc.	
1.2 List reference sites within NSW or Australia where product has been purchased.	
1.3 Does the unit, with accessories, comply with AS3200.1 and relevant Part 2 Standards or equivalent? Documentary evidence of compliance must be enclosed.	
1.4 Describe the warranty offered. 12 months minimum is required.	
1.5 State life expectancy of product offered in years.	
1.6 Provide details of IP (ingress protection against dust and fluids) ratings.	

2.0 Physical Characteristics

2.1 State dimensions.	
2.2 State mass.	
2.3 State type and dimensions of display.	

3.0 Power Requirements

3.1 State power supply offered. Battery operation is required.	[] Yes [] No
3.2 State battery life.	
3.3 State battery type.	

4.0 Operational Features

4.1 State weight categories (150kg or greater preferred).	
4.2 State resolution (100g or less preferred).	
4.3 State accuracy of readings.	
4.4 State method of zeroing scales.	
4.5 Do the scales have a taring facility? State maximum taring weight.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.6 Do the scales have movement detection, locking the weight in the absence of movement?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.7 Describe cleaning methods.	

Group 15 - Kidney Dishes

Non sterile kidney dish shall be: approximately 600ml capacity, lipped edge, smooth base, resistant to puncture by sharp objects, rigid and plastic. Dimensions: not less than 22cm long x 10cm wide x 5cm deep. The colour of the dish is to be yellow and green. State whether material is latex free. Cleaning methods: thermally disinfected/sanitised.

Sterile kidney dish shall be: approximately 600ml capacity, lipped edge, smooth base, resistant to puncture by sharp objects, rigid and plastic. Dimensions: not less than 22cm long x 10cm wide x 5cm deep. The colour of the dish is to be clear. State whether material is latex free. The packing must clearly indicate the item is a sterile product.

Group 17 – Oral Hygiene Products

The Plain Oral Swab/s

The plain oral swab is a dry foam oral swab/s. The oral swab is to have a soft foam head with perpendicular ridges on the sides to provide safe, effective traumatic cleansing to the oral cavity. Individually packed and for single use. State range of pack sizes.

Oral Cleansing System

The cleansing oral swab is a foam oral swab and a mouth cleaning solution. The oral swab has a soft foam head with perpendicular ridges on the sides to provide safe, effective traumatic cleansing to the oral cavity. Individually packed and for single use. State range of pack sizes.

Oral Moistening System

The mouth moistening system is a foam oral swab and a moistening mechanism. The oral swab has a soft foam head with perpendicular ridges on the sides to provide safe, effective traumatic moistening the oral cavity. The oral moistening solution is to be alcohol free and moistens the oral cavity based on evidenced based practice recommendations. Individually packed and for single use. State range of pack sizes.

Oral Cleaning System with Suction

The oral cleaning system with suction is one that may contain oral swab/s premoistened or dry. The system must contain a one-handed wide bore suction catheter to facilitate removal of excess secretions and solution during oral hygiene incorporated into the system. The oral swab has a soft foam head with perpendicular ridges on the sides to provide safe, effective traumatic cleansing to the oral cavity. If the system contains a toothbrush it must have soft bristles. The system must contain, a mouth cleaning solution and or mouth moistening solution. Individually packed and for single use. State range of pack sizes.

Group 18 - MORTUARY (BODY) BAGS

OVERVIEW

General

This specification details the technical requirements for a economical and affordable zip closure lay flat Mortuary (body) Bag, manufactured from a plain woven polypropylene fabric with an integral extrusion coating. Bags to be manufactured in three (3) categories intended to be used as a primary containment for the body of a deceased adult, adolescent or infant.

Purpose

Each Bag according to size shall be suitable for the reception of the body of a deceased adult, adolescent or infant, who has died in either a public hospital, private hospital, nursing home or any other such premises. Potential uses may include removal of deceased persons from remote and difficult terrain as experienced by the rescue services such as Police, Fire Brigade and Ambulance Service.

TECHNICAL SPECIFICATIONS

Fabric

A plain woven low density film polypropylene with an integral extrusion coating not less than 150 microns thick and shall be preferably white, grey or blue in colour. The fabric shall be made without PVC materials and without heavy metal materials.

Composition

The polypropylene tapes woven no less than 4 tapes per centimetre and shall have a unit mass no less than 130 grams per square metre.

Appearance

The fabric shall have characteristics conforming to that produced by good commercial practice. The dispersion of pigment in coloured fabric shall be generally uniform throughout, and shall be free from pinholes, cuts and tears which would result in the wrapping being unsuitable for the intended use.

BAG CHARACTERISTICS

Shape

In the lay flat position, the bag shall have a rectangular shape.

Shape

Perimeter seams shall be heat welded.

Zip Closure

The bag shall be fitted with a ring pull coil zipper with slider. The zipper shall be securely sewn into the bag.

Configuration

The bag when empty must be configured to allow a sufficient opening for the deceased to be enclosed.

Handles

The bag shall be available with and without handles as per item specifications for the adolescent and adult categories. Handles shall be attached securely to the bag in such a manner as to maintain the structural integrity of bag.

Leakage

The bag shall be leak resistant and capable of retaining body fluid of the deceased.

Capacity

The bag shall be capable of containing the weight of the deceased during transport and maintain structural integrity during handling.

Identification

The bag shall be available with a suitable identification system for details of the deceased.

Packaging

The bag shall be folded and individually sealed into poly bags for hygienic storage.

Group 19 - CLINICAL WASTE BAGS**SPECIFICATION****Plastic Film**

Low Density Polyethylene or High Density Polyethylene

Colour

Vivid Yellow (AS 2700) Organic Dyes (ie. must not contain heavy metals or in-organic pigments).

Film Thickness

As specified in the item number of the pricing schedule in Part C.

Labelling

"BIOHAZARD" symbol (biological design as prescribed in AS 1319) a minimum of 150mm high and printed above the words "CLINICAL WASTE" (a minimum of 50mm high). Both the "BIOHAZARD" symbol and the words "CLINICAL WASTE" are to be printed in black.

Group 20 – Pregnancy Tests**Pregnancy Test Kit, Pregnancy Screening – General**

- Clear and simple to use
- Test stick in urine
- 99% accuracy test
- In built control
- Results in minutes
- High sensitivity – 20mIU
- Shelf life of at least 2 years.

Pregnancy Test Pack – Professional Use Only

- For in vitro diagnostic medical device
- Contains test strip impregnated with dried chemical / biomedical reagents
- Kit to include a desiccant tablet
- 99% accuracy test
- In built control
- Results in minutes
- High sensitivity – 20mIU
- Shelf life of product must be provided.

Estimates of Product Usage

The following figures are provided as guidance only on recent historic usage. The figures are an estimate only based on information supplied by current Contractors. The figures have not been verified and should not be relied upon as estimates of future requirements or guarantees of sales. Tenderers should note the periods the data was extracted from this and a previous contract for Bags, Medical and Non Medical.

Group 1 - Personal ID Bands / Range of Colours Total sales for the period 1/7/04 to 31/6/05

1.1	Band, Personal Identification, non-metal clasp, insert, full range (neo-natal, infant, child, adult), must fit arm and ankles	1255,250
1.2	Band, Personal Identification, non-metal clasp, write on, full range (neo-natal, infant, child, adult), must fit arm and ankles	67,250
1.3	Band, Personal Identification, non-metal clasp, mother & child duo, insert, must fit arm and ankles	4,200
1.4	Range of Band, Personal Identification, non-metal clasp, mother & child duo, write on, must fit arm and ankles	various

Group 2 – Blood Letting Devices

2.1	Lancet Set, heel & finger bleeding, retractable, needle type, single use – unable to be reloaded after use, suitable for adult, paediatric and neonatal, state sizes and penetration depth	3,158,450
2.2	Lancet Set, heel & finger bleeding, retractable, blade type, single use – unable to be reloaded after use, suitable for adult, paediatric and neonatal, state sizes and penetration depth	167,150

Group 3 – Tourniquet

3.1	Quick release, single handed operation, latex free, for blood collection, reusable, with cleaning instructions	8,835
3.2	Quick release, for blood collection, latex free	56,625

Group 4 – Cord Clamps & related products

4.1	Cord Clamp, umbilical, sterile, single use	62,075
4.2	Cord Clamp, umbilical, non-sterile, able to withstand steam sterilisation to 134° Celsius	1,700
4.3	Cord Clamp cutters, umbilical, sterile, single use	2,385
4.4	Hook Perforator for Amniotic Membrane	26,350
4.5	Speculum, Ear, single use, disposable, range of sizes	117,900

Group 5 – Hair Removal

5.1	Razor, Safety, facial shaver, twin blade, disposable	79,680
5.2	Razor, Safety, facial shaver, triple blade, disposable	58,530
5.3	Razor, Surgical, patient preparation, double sided blade, disposable	49,680
5.4	Clippers, electrical, surgical, patient preparation, for preoperative hair removal, certified to AS3200	448
5.5	Chargers, electrical, to suit Item 8.05, Clippers, certified to AS3200	191
5.6	Blades, Surgical, patient preparation, for pre-operative hair removal, to suit clippers & chargers	121,690

Group 6– Scissors & related products

6.1	Scissors, ward use, blunt/sharp, non-sterile, reusable	189
6.2	Scissors, disposable, sterile, blunt/sharp or sharp/sharp	47,695
6.3	Scissors, ward use, sharp/sharp, non-sterile, reusable	6
6.4	Suture Removal Pack, sterile, single use, including scissors and forceps	16,182
6.5	Suture Pack, sterile, single use, containing scissors, toothed forceps, number four needle holder	16,182

6.6	Toothed Forceps, sterile, single use, range of sizes and materials	1570
6.7	Clamping Device, Haemostat type with locking device, toothed, plastic, disposable, non sterile	0

Group 7– Stethoscope

7.1	Stethoscope, general use, dual head, adult and paediatric, reusable	4,569
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Group 8– Thermometer

8.1	Thermometer, Digital, clinical human, 35 to 42° C, plastic case, state application (eg. oral, axillary and/or rectal), with cleaning instructions	13,772
8.2	Cover, Thermometer, suitable for Item 11.01	109,7000

Group 9– Torch

9.1	Torch, Penlight, professional, pocket clip, pre focus globe for medical use, disposable	36,748
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Group 10- Swab & related products (MSDS to be submitted with tender where applicable)

10.1	Swab, sterile, isopropyl alcohol impregnated, 70% solution, 2 ply, 1 fold, minimum 25mm x 30mm folded	25,778,800
10.2	Swab, sterile, isopropyl alcohol impregnated, 70% solution, 4 ply, 2 fold, minimum 25mm x 30mm folded	1,870,000
10.3	Swab, sterile, 2% Chlorhexidine, please specify range	New
10.4	Swab, towelette, refill pack to suit alcohol impregnated bacteriological wipe	148,500
10.5	Swab, towelette, alcohol impregnated, 70% solution, bacteriological wipe	3,977,100
10.6	Swab, towelette, pre-moistened, fragrant free, patient care, multi pack	108,320
10.7	Cloth, utility, non-woven for patient care, approximately 300mm x 300mm unfolded	31,536,800
10.8	Cloth, utility, non-woven for patient care, biodegradable, approx. 300mm x 300mm unfolded	1,161,100
10.9	Bed Bath, disposable moistened cloths for patient care, single use, state range of sizes and cloths per pack	256,080
10.10	Disposable Cap, shampoo for patient hair care	New

Group 11 - Paper Sheeting & related products

11.1	Bib, patient, paper, waterproof back, absorbent lint free front, minimum Size 29cm x 23cm	299,100
11.2	Paper sheeting, for trolleys, stretchers, examination tables, pillows etc, state sizes available	10,811,028
11.3	Dispenser, wall mounted to accommodate paper sheeting, state sizes available	93
11.4	Bag, Emesis, disposable, state capacity	624,850

Group 12 - Connector Tubing

12.1	Connector, tubing, tapered, multipurpose, sterile, full range of sizes - minimum small, medium and large	111,200
12.2	Connector, tubing, tapered, multipurpose, non-sterile, full range of sizes - minimum small, medium and large	13,400
12.3	Connector, tubing, Y piece, multipurpose, sterile	930
12.4	Connector, tubing, Y piece, multipurpose, non-sterile	310

Group 13 - Feeding Tubes & Gastric Sump Tubes and Valves

13.1	Tube, feeding, surgical, nasal, short term, unweighted, no introducer, radio opaque markings, full range of sizes and lengths	128,210
13.2	Tube, feeding, surgical, nasal, long term, weighted, introducer, radio opaque markings, full range of sizes and lengths	13,100

13.3	Tube, feeding, surgical, nasal, long term, weighted, no introducer, radio opaque markings, full range of sizes and lengths	2,295
13.4	Tube, feeding, surgical, nasal, long term, weighted, introducer, medication and suction ports, radio opaque markings, full range of sizes and lengths	2,436
13.5	Tube, stomach, surgical gastric sump with x-ray detectable component with appropriate markings, full range of sizes and lengths	52,460
13.6	Tube, stomach, surgical gastric sump, anti-reflux with x-ray detectable component with appropriate markings, full range of sizes and lengths	8,300
13.7	Valve, anti reflux, to suit stomach tube/gastric sump, radio opaque markings	13,890

Group 14 - Scales (Refer to detailed specifications in Part C2)

14.1	Scale, weighing, adult floor scale, circular dial, capacity 150kg or above	16
14.2	Scale, weighing, adult floor scale, digital display, capacity 150kg or above	2
14.3	Scale, weighing, electronic column scales, digital display, capacity 200kg or above with mains/battery power supply	0
14.4	Scale, weighing, electronic column scales, digital display, capacity 200kg or above with mains power supply	10
14.5	Scale accessory, height measuring rod to suit column scales	2
14.6	Height measuring rod, suitable for wall mounting or stand alone	New
14.7	Scales - new born	13
14.8	Chair Scales	11

Groups 15, 16 and 17 are new product ranges and usage data is not available.

Group 18 – Body (Mortuary) Bags and Shrouds (Refer to detailed specifications in Part C2)

Total sales for the period 1/8/02 to 30/9/04

18.1	Mortuary (Body) Bag, Infant	284
18.2	Mortuary (Body) Bag, Adolescent	110
18.3	Mortuary (Body) Bag, Adolescent with Handles	22,413
18.4	Mortuary (Body) Bag, Adult	9,632
18.5	Mortuary (Body) Bag Adult, with Handles	1,073
18.6	Mortuary Shroud (Wrap), Adolescent	nil
18.7	Mortuary Shroud (Wrap), Adult	nil
18.8	Mortuary Pack	New

Group 19 – Clinical Waste Bags (Refer to detailed specifications in Part C2)

Total sales for the period 1/8/02 to 30/9/04

19.1	Clinical Waste Bag LDPE 990mm x 555mm x 38µm	236,600
19.2	Clinical Waste Bag LDPE 1000mm x 550mm x 75µm	511,550
19.3	Clinical Waste Bag HDPE 970mm x 560mm x 25µm	391,500
19.4	Clinical Waste Bag HDPE 920mm x 740mm x 25µm	503,700
19.5	Clinical Waste Bag HDPE 1000mm x 760mm x 38µm	652,300
19.6	Clinical Waste Bag HDPE 1470mm x 700mm x 430mm x 38µm	25,700

Group 20 – Miscellaneous

20.1	Pregnancy Test Kit, pregnancy screening – general	New
20.2	Pregnancy Test Pack - professional use only	New

Group 21 – Miscellaneous

Total sales for the period 1/7/04 to 31/6/05

21.1	Depressors, tongue, sterile, generic sizing and material, single use	30,000
21.2	Depressors, tongue, non-sterile, generic sizing and material, single use	486,900
21.3	Cup, medication-dispensing, paper, disposable	1,789,372

FIS, NFIS, Ex Factory, Ex Work Pricing Request

Tenderers are required to tender pricing, for the base unit price only, first as a price inclusive of delivery costs and second as a price excluding delivery costs. (as shown in the workbook referred to in Part C3 Price Schedule);

Individual Agreements will be arranged for the NFIS by the Customer for the delivery and distribution of items.

If a separate agreement is put in place for the delivery of the goods in this tender it will be a requirement that the successful tenderers allow the distribution of their products by a third party.

Tenderers are to note that assessment of the RFT as to price is to be done on FIS pricing. Tenderers are also to note that in the event NFIS price is not provided in the column attributed to it (to be completed in the spreadsheet forming Part C3) then it is deemed to have offered the same price it offered in its FIS price for a particular product.

ANNEXURE 2 TO PART B

Not Used



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

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

TENDER RESPONSE

**Contract 069/439 - Miscellaneous Medical and
Surgical Devices**

Period: 1 August 2006 to 31 July 2009

RFT Number: 0600453

Your Company's Legal Name:

Your Company's Trading Name

Your Company's ABN number:

Contact Name:

Contact Phone:

If submitting an electronic Tender, please answer the following and indicate Yes or No below:

- Are you providing supporting documents in hard copy or on CD-ROM?

Yes/No

- Did you clearly mark the supporting documents as "Supporting Documents to RFT No (Guide Note: please fill in the RFT No)?"

Yes/No

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PART C The Tender Response

PART C1 Tender Response to Part B

11. Introduction

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

12. Fitness for Purpose

12.1 Quality Certification

Question 12.1.1

Indicate below whether you have attached at Part C4 any certification from approved testing authorities that confirm that the deliverables tendered meet the relevant Australian, Overseas or International Standards.

Yes/No

12.2 Quality Assurance

Question 12.2.1

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

Yes/No

<type or write your answer here>

12.3 If certification is being sought

Question 12.3.1

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

Answer 12.3.1

<type or write your answer here>

12.4 Other certification requirements

Question 12.4.1 Therapeutic Goods Australia - Numbers

Tenderers are requested to indicate at the Pricing Schedules in this Request for Tender (Part C3) the TGA registration numbers for their products tendered. TGA numbers, for products that are pending a TGA approval cannot be recommended and accepted by the Board if TGA is a requirement for their use in Australia. Copies of TGA certification documents are required and are to be attached at Part C4.

12.5 Guarantees and servicing arrangements

Question 12.5.1

Give full details of any guarantees or warranties relating to the Deliverables offered. If a specific warranty or warranties is or are stated to be a requirement or requirements in Part A or Annexure 1 to Part B, confirm that it is, or they are, offered. Where free service with respect to the Deliverables is offered during the period of guarantee or warranty, provide addresses (both Sydney and country areas) where service is available. State whether service is available at those points after the expiration of the period of guarantee or warranty and, if so, what charges are applicable.

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

Answer 12.5.1

<type or write your answer here>

12.6 Packaging

Question 12.6.1

Will you provide the Deliverables with labelling that complies with the Therapeutic Goods Order 37, "General Requirements for Labels for Therapeutic Devices"?

Yes/No

12.7 Other comments on fitness for purpose

Question 12.7.1

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

Answer 12.7.1

<type or write your answer here>

13 Pricing and related factors

13.1 Price Schedule

Question 13.1.1.

Complete the Price Schedule at Part C3 in accordance with cl.7.1 of Part B.

13.2 Selected Price Schedule Not Used

13.3 Price basis

Question 13.3.1

Prices are firm for the first twenty-four (24) months of the Standing Offer agreement then subject to review at twelve (12) monthly intervals based on one or more of the following price adjustment options.

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

- (1) based on variations in **rates of exchange**.
- (2) based on variations in **labour and material** factors.
- (3) based on variation in a **published price** list

<indicate the appropriate box below>

- 1. ☐
- 2. ☐
- 3. ☐

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

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

Name of the Foreign Currency eg. US DOLLAR	Exchange Rate eg. \$A1 = \$US 0.55

- 13.3.3 Where you have nominated variations in labour and material factors of the selected price basis above, you must nominate the following:

- (a) The Weekly Award Rate of Pay (AW) at the time of tendering for the labour primarily engaged in the Standing Offer agreement that will be used for any future price variation request.

Labour category	AW

- (b) Materials Cost Index

The relevant Australian Bureau of Statistics index or other relevant Materials Cost Index that will be used as the basis for any future price variation request. Note that variation on the basis of a material cost index other than those provided by the ABS must be appropriate, independent, consistently reported over time, published regularly and be readily available.

Material Category	ABS Statistic or Material Cost Index

- (c) The Labour and Materials Factors expressed as a decimal, being the proportion of the Tender Price subject to price variation by labour and material costs.

Item	Factor (Expressed as a decimal) Total 0.9
Labour	
Material	

- 13.3.4 If tendered prices are subject to variation under clause 7.4.4 of Part B as a result of published price lists, the tenderer must supply information for use in conjunction with calculation of price variations as detailed in clause 7.4.7 of Part B.

If variable by published price lists tenderers are to provide below the **Source of Price List, Name of Price List** and **Date of Issue of Price List** on which the tender is based in the following table:

Name of Price List	
Date of Issue of Price List	
Official Price list number	
Frequency of revision	
Source of Price List	

NOTE: Should you wish to offer any discounts below, please note that all figures must be equitable. Eg. Price on application (P.O.A) will not be acceptable.

13.4 Settlement discounts

The Tender Prices are subject to a settlement discount of:

- (a)% for payment within 7 days from the date of receipt of invoice.
- (b)% for payment within 14 days from the date of receipt of invoice.
- (c)% for payment within 30 days from the date of receipt of invoice.
- (d)% for payment within ____ days from the date of receipt of invoice.

13.5 Other discounts

13.5.1 Sole-Contractor for a Category to an Area Health Service discount

Question 13.5.1

Indicate below whether you are willing to offer a "Sole-Contractor for a Category to an Area Health Service" discount.

Yes/No

If **"Yes"**, indicate below the size of the discount and any conditions under which this discount will be given

Answer 13.5.1

<type or write your answer here>

13.5.2 Preferred Contractor to an AHS discount

Question 13.5.2

Indicate below whether you are willing to offer a "Preferred Contractor to an Area Health Service" discount. A "Preferred Contractor" will receive a minimum of 85% of business from an individual Area Health Service.

Yes/No

If **"Yes"**, indicate below the size of the discount and any conditions under which this discount will be given

Answer 13.5.2

<type or write your answer here>

13.5.3 Sole Contractor to a Hospital discount

Question 13.5.3

Indicate below whether you are willing to offer a "Sole Contractor to a Hospital" discount.

Yes/No

If **"Yes"**, indicate below the size of the discount and any conditions under which this discount will be given.

Answer 13.5.3

<type or write your answer here>

13.5.4 Percentage of Business Discounts

Question 13.5.4

Indicate below whether you are willing to offer Percentage of Business Discounts for any Order.

Answer 13.5.4

Yes/No

If **"Yes"**, indicate below the size of the discount and any conditions under which this discount will be given.

<type or write your answer here>

< Type % Discount>	<Type Percentage of Business per annum>

13.5.5 Volume of Sales Discounts

Question 13.5.5

Indicate below whether you are willing to offer Volume of Sales Discounts for any Order.

Answer 13.5.5

Yes/No

If **"Yes"**, indicate below the size of the discount and any conditions under which this discount will be given.

<type or write your answer here>

< Type % Discount>	<Type \$ Sales Volume per annum>

13.5.6 Standing Order Discounts

Question 13.5.6

Indicate below whether you are willing to offer Standing Order Discounts for any Order.

Answer 13.5.6

Yes/No

If **"Yes"**, indicate below the size of the discount and any conditions under which this discount will be given.

<type or write your answer here>

%	Per	\$	Per Order
%	Per	\$	Per Order
%	Per	\$	Per Order
%	Per	\$	Per Order
%	Per	\$	Per Order

13.6 Warranty, Service & Calibration

Tenderers are required to provide costs for warranty, service and calibration of Scales offered at Group 14

1	Hourly rate for support services	\$_____
2	Turn around time for service	\$_____
3	Exchange service cost	\$_____
4	State cost of 24 month warranty	\$_____
5	State cost of 36 month warranty	\$_____
6	State cost of ____ month warranty	\$_____

14. Delivery Considerations

14.1 Delivery times

Question 14.1.1

Delivery shall be completed not later than a maximum time of _____ days from the date of receipt of an Order but before that date if possible. Tenderers should state at 14.1.3 delivery times to various regions.

Question 14.1.2 Location of branches

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

Answer 14.1.2

<type or write your answer here>

Question 14.1.3

Tenderers are to indicate below the delivery-time for standard deliveries.
<indicate in the appropriate box below>

Sydney Metropolitan Area:

- | | |
|--------------------------------|--------------------------|
| 1. Within 6 Hours | <input type="checkbox"/> |
| 2. Within 12 Hours | <input type="checkbox"/> |
| 3. Within 24 Hours | <input type="checkbox"/> |
| 4. Within 48 Hours | <input type="checkbox"/> |
| 5. Other (including equipment) | <input type="checkbox"/> |

Regional NSW.

- | | |
|--------------------------------|--------------------------|
| 1. Within 6 Hours | <input type="checkbox"/> |
| 2. Within 12 Hours | <input type="checkbox"/> |
| 3. Within 24 Hours | <input type="checkbox"/> |
| 4. Within 48 Hours | <input type="checkbox"/> |
| 5. Other (including equipment) | <input type="checkbox"/> |

Emergency Arrangements

Question 14.1.4

Tenderers are to indicate below the delivery-time provisions offered for emergency deliveries.

<indicate in the appropriate box below>

Sydney Metropolitan Area.

- | | |
|--------------------------------|--------------------------|
| 1. Within 3 Hours | <input type="checkbox"/> |
| 2. Within 6 Hours | <input type="checkbox"/> |
| 3. Within 12 Hours | <input type="checkbox"/> |
| 4. Within 24 Hours | <input type="checkbox"/> |
| 5. Within 48 Hours | <input type="checkbox"/> |
| 6. Other (including equipment) | <input type="checkbox"/> |
-

Regional NSW.

- | | |
|--------------------------------|--------------------------|
| 1. Within 3 Hours | <input type="checkbox"/> |
| 2. Within 6 Hours | <input type="checkbox"/> |
| 3. Within 12 Hours | <input type="checkbox"/> |
| 4. Within 24 Hours | <input type="checkbox"/> |
| 5. Within 48 Hours | <input type="checkbox"/> |
| 6. Other (including equipment) | <input type="checkbox"/> |
-

Local Delivery Scheduling Arrangements

Question 14.1.5

Tenderers are to indicate below whether, if successful with all or part of their tender, they would be prepared to enter into a delivery scheduling agreement with individual Area Health Services or hospitals for the delivery of goods. Such an agreement would cover such issues as delivery times and loading dock/ drop-off/ pick-up locations.

<type or write your answer here>

Delivery Performance Monitoring

Question 14.1.6 Back Orders

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

YES/NO

If **YES** please state:

- | | | |
|-----|--|------------------|
| (a) | What do you classify as an on time delivery? | _____ |
| (b) | What is your target for deliveries completed on time | % |
| (c) | Actual on time deliveries over the past 6 months | % % % % |

15. Capacity to perform agreement

15.1a) Years in business

Question 15.1.1a)

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

Answer 15.1.1a)
<type or write your answer here>

15.1b) Australian Business History

Question 15.1.1b)

State the number of years you have been in business in Australia supplying the tendered deliverable's.

Answer 15.1.1b)
<type or write your answer here>

15.2 Technical, warehousing, inventory and distribution capability**Question 15.2.1**

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

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

Answer 15.2.1

<type or write your answer here>

Question 15.2.2

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

Answer 15.2.2

<type or write your answer here>

15.3 Human Resource Capability**Question 15.3.1**

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

Answer 15.3.1

<type or write your answer here>

15.4 Help Desk Access

Question 15.4.1

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

- (a) the geographical area covered _____
- (b) the number(s) _____
- (c) and help desk hours _____

Question 15.4.2

Specify any:

- (a) non toll-free help desk number(s) _____
- (b) corresponding toll charges _____
- (c) help desk hours _____

15.5 In-service education and training

Question 15.5.1

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

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

Answer 15.5.1

<type or write your answer here>

15.6 Financial viability

Question 15.6.1

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

Answer 15.6.1

<type or write your answer here>

Question 15.6.2

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

Answer 15.6.2

Yes/No

If **"No"**, comment below:

<type or write your answer here>

15.7 Agent Information (Sub-Contractors and others)

Question 15.7.1

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

Answer 15.7.1

Yes/No

If **"Yes"**, in respect of each nominated dealer or distributor please provide the following information, so far as applicable. If unable to provide this information in the format below, attach to your Tender the information required for each dealer or distributor.

Dealer/distributor	
1) If a company, Company Name	
2) If a partnership, Partnership Name	
3) If an individual, individual's name	
4) Trading Name	
5) Australian Business Number (ABN)	
6) Australian Company Number (ACN)	
7) Registered Office (if a company)	
8) Site Address (principal place of business)	
9) Postal Address (principal place of business)	
10) Alternative Address	
11) Contract Administration Contact Name	
12) Contract Administration Contact Telephone No.	
13) Contract Administration Contact E-mail Address	
14) Contract Administration Contact Fax No.	
15) Sales Order Contact Name	
16) Sales Order Phone No.	
17) Sales Order E-mail Address	

18) Sales Order Fax No.	
19) Chief Executive Officer's (CEO) Name	
20) Switchboard Telephone No.	
21) Company E-mail Address	
22) Website address	
23) Items able to be supplied	

Question 15.7.2

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

Answer 15.7.2

Yes/No

If **"Yes"**, in respect of each nominated sub-contractor, please provide the following information, so far as applicable:

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

15.8 Suitability of proposed dealers, distributors and sub-contractors

Question 15.8.1

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

Answer to 15.8.1

<type or write your answer here>

Question 15.8.2

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

Answer to 15.8.2

<type or write your answer here>

15.9 Marketing

Question 15.9.1

The marketing of this Standing Offer agreement may include:

- (a) the provision of promotional material,
- (b) direct marketing,
- (c) product literature, brochures and other sales related activities.

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

Answer 15.9.1

<type or write your answer here>

Question 15.9.2

Provide any other relevant information below

Answer 15.9.2

<type or write your answer here>

15.10 Other comments on capacity or ability to perform the Standing Offer agreement

Question 15.10.1

State here any other details you may wish to add. Please also address your capacity to perform the contract in the context of the current commitments of your organisation. (Note that details of previous performance of similar contracts are sought in cl.20, below, and should not be referred to here.)

Answer 15.10.1

<type or write your answer here>

16. Compliance with proposed agreement

Question 16.1

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

Answer 16.1

Yes/No

If “No”, provide a full statement of all amendments sought, giving reasons.

<type or write your answer here>

Question 16.2

Do you agree to comply with clause 6.5, Minimum Insurance Requirements, contained in Part D of this RFT?

Answer 16.2

Yes/No

If “No”, provide a full statement of all amendments sought, giving reasons.

<type or write your answer here>

Question 16.3

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

Answer 16.3

<type or write your answer here>

17. Compliance with policy

17.1 Code of Practice for Procurement

Question 17.1.1

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

Answer 17.1.1

Yes/No

Question 17.1.2

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

Answer 17.1.2

Yes/No

Question 17.1.3

Provide any other relevant information below.

Answer 17.1.3

<type or write your answer here>

17.2 Not Used**17.3 Purchasing Preference Scheme**

17.3.1 NSW Country Industries Preference Scheme

You must complete the following details if you are eligible under the Country Industries Preference Scheme and wish to make use of the CIPS margin:

Question 17.3.1

(a) Have you registered with the Country Industry Preference Scheme?

Answer 17.3.1(a)

Yes/No

If “**Yes**”, supply Preference Registration Number

<type or write your answer here>

Question 17.3.1 (b)

Supply details of the location(s) (town(s)) of your manufacturing or other facilities

Answer 17.3.1 (b)

<type or write your answer here>

Question 17.3.1 (c)

Will the Deliverables be wholly or substantially manufactured or produced at the above location(s)?

Answer 17.3.1 (c)

Yes/No

If **"No"** explain below

<type or write your answer here>

17.4 Sustainable, long-term industry development Not Used

17.5 Development of long-term, strategic alliances Not Used

17.6 Export potential and/or import replacement Not Used

17.7 Value-added activity Not Used

17.8 SME involvement

Question 17.8.1

Is your organisation classified as a SME? (A SME is defined as having up to 200 employees)

Yes/No

If **Yes**, please state number of employees.

If No,

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

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

Answer 17.8.1

<type or write your answer here>

17.9 Regional Development

Question 17.9.1

Is your organisation regionally based?

Yes/No

If **Yes**, please state the location. _____

If **No**, please advise:

- (a) The number and type of regionally based enterprises participating in your Tender.
- (b) The expected regional economic impact of your Tender in terms of:
 - training, other skills enhancement and the uptake or maintenance of existing technologies and capabilities
 - expected increases in employment and investment, and
 - the expected impact on existing and future R&D programs and innovation.

Answer 17.9.1

<type or write your answer here>

17.10 Existing industry development activity and proposed new investment Not Used**17.11 Innovation, research and development Not Used****17.12 Workforce development**

Question 17.12.1

Indicate measures you intend to implement to improve workforce diversity and provide equal employment opportunity for women, people of non-English speaking backgrounds and people with a physical disability if awarded the Standing Offer agreement.

Answer 17.12.1

<type or write your answer here>

Opportunities for ATSI people

Question 17.12.2

Indicate measures you intend to implement to improve Aboriginal employment, business skills and economic conditions of Aboriginal communities if awarded the Standing Offer agreement.

Answer 17.12.12

<type or write your answer here>

17.13 Industry Impact Assessment and Local Industry Participation Plan Not Used

17.14 Occupational Health, Safety & Rehabilitation

Question 17.14.1

Do you currently comply with your OHS&R statutory obligations?

Answer 17.14.1

<type or write your answer here>

Yes/No

Question 17.14.2

Will you continue to comply with your OHS&R obligations specified in clause 6.16 of Part B, including obligations relating to performance monitoring and Sub-Contractor performance under the Standing Offer agreement awarded?

Answer 17.14.2

<type or write your answer here>

Yes/No

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

<type or write your answer here>

17.15 Environmental Management

Question 17.15.1

Describe in what way or ways your organisation promotes the development of Ecologically Sustainable Development.

Answer 17.15.1

<type or write your answer here>

Question 17.15.2

Provide evidence below of your environmental management and performance capability and your commitment to waste management and energy conservation practices.

Answer 17.15.2

<type or write your answer here>

Question 17.15.3

Indicate measures you intend to implement to improve environmental performance and management if awarded the Standing Offer agreement

Answer 17.15.3

<type or write your answer here>

Question 17.15.4

Indicate whether your company has attained certification under ISO 14001 Environmental Management Systems

Yes/No

Question 17.15.5

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

Answer 17.15.5

<type or write your answer here>

17.16 Competitive Neutrality Not Used**17.17 Electronic Commerce (Smartbuy®)**

Question 17.17.1

If you become the successful tenderer, you are required to review and sign the smartbuy® supplier agreement and associated Participation Rules. Please confirm your ability to accept and conform to the requirements as outlined in these documents. Documents can be found at <http://www.smartbuy.nsw.gov.au/footer/agreements.htm>

Yes/No

If “No”, provide details

<type or write your answer here>

Question 17.17.2

smartbuy® is committed to facilitating electronic procurement document exchange between NSW public organisations and its suppliers.

Describe below your present capabilities and services, or future strategies in relation to E-Commerce. Please include any existing or planned B2B connections with corporate partners or Government departments and any web based procurement tools relevant to the deliverables offered. Please specify whether these capabilities are current (operational), under construction, planned or under consideration.

<type or write your answer here>

Question 17.17.3

If you become a successful tenderer, please nominate your preferred method of document transaction as specified in Part B, Section 6.19.15 – smartbuy® CONNECT Trading Channels.

<type or write your answer here>

Question 17.17.4

With reference to Part B, Section 6.19.15, please specify the type of business documents that you are able to send and receive.

<type or write your answer here>

Question 17.17.5

smartbuy® is currently investigating the application of delivering e-Billing functionality via smartbuy® CONNECT. Please provide an outline of your existing capability, or any proposed future development, in providing NSW Government agencies with e-Billing of consolidated invoicing.

<type or write your answer here>

Question 17.17.6

If you become a successful tenderer, you will be required to provide catalogue content information in the required format, as per the Catalogue Data Collection (CDC) tool.

Short listed tenderers will receive, and be required to populate the CDC tool with catalogue content that will allow purchasing to begin on the new contract from inception.

Should your organisation be short-listed for this contract, please confirm your acceptance of this catalogue content preparation requirement.

Yes/No

If “No”, provide details

<type or write your answer here>

Question 17.17.7

In helping the NSW Department of Commerce lead eProcurement adoption across NSW government through smartbuy®, please outline proposed initiatives that your organisation could implement to support and increase the volume of orders being transmitted through the smartbuy® CONNECT during the life of the contract.

<type or write your answer here>

17.18 Other Relevant Policies Not Used**18. Compliance with relevant legislation**

Question 18.1

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

Answer 18.1

Yes/No

If **"No"**, provide details

<type or write your answer here>

19. Compliance with other Board requirements

19.1 Natural Rubber Latex Content

Question 19.1.1

If you have indicated within the Pricing Schedule & Selected Price Schedule (Part C3 and C4) that the offered product contains natural rubber latex, please indicate below for each item offered the exact location of the natural rubber latex eg. within the packaging. In addition, if the natural rubber latex is to be replaced with a substitute product within the near future please indicate the approximate replacement date.

Answer 19.1.1

Item No	Location of Natural Rubber Latex	Replacement Date

19.2 Disposal of Samples

Question 19.2.1

Tenderers should note that samples of consumables may not be returned. If samples of equipment are requested for evaluation then these can be collected by the tenderer or arrangements made for return at the tenderers expense.

Answer 19.2.1

20. Previous contract experience and standard of performance

20.1 Previous contract experience

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

<type or write your answer below>

Contract /Standing Offer Agreement No.	Contract/ Standing Offer Agreement Name	Date commenced	Date finished (if applicable)

20.2 Previous experience in provision of Deliverables

Question 20.2.1

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

Answer 20.2.1

<type or write your answer here>

20.3 Not Used

20.4 Not Used

21. Other information required

21.1 Details of ownership

Question 21.1.1

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

Answer 21.1.1

<type or write your answer here>

Question 21.1.2

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

Answer 21.1.2

<type or write your answer here>

21.2 Contracting as agent/trustee

Question 21.2.1

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

Answer 21.2.1

<type or write your answer here>

Question 21.2.2

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

Answer 21.2.2

<type or write your answer here>

21.3 Current Legal Proceedings

Question 21.3.1

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

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

Yes/No

If “Yes”, please supply full details below:

Answer 21.3.1

<type or write your answer here>

21.4 Cataloguing

21.4.1 EAN/HIBCC Barcoding

Question 21.4.1

Do you have EAN/HIBCC Barcoding of your Deliverables?

Answer 21.4.1

<type or write your answer here>

Yes/No

If “No” will you implement the use of EAN/HIBCC Barcoding of Deliverables supplied by you under this Standing Offer agreement?

Yes/No

If “Yes”, provide details of likely timeframes for implementation.

<type or write your answer here>

Question 21.4.2

If awarded the Standing Offer agreement, do you undertake to provide the Board with details of all EAN/HIBCC Barcodes available, or which may become available for use from time to time, for any Deliverables supplied under any Customer Contract?

Answer 21.4.2

<type or write your answer here>

Yes/No

If “No”, give reasons below.

21.5 Material Safety Data Sheets**Question 21.5.1**

Material Safety Data sheets are required for Group 10 - Swab + related products and should be supplied with the Tender submission. Have you supplied these sheets?

Answer 21.5.1

<type or write your answer here>

Question 21.5.2

If some or all of the Deliverables tendered have corresponding material safety data sheets are you prepared to supply these to customers for the duration of the Standing Offer agreement?

Answer 21.5.2

<type or write your answer here>

Yes/No

If “No”, give reasons below.

21.6 Dangerous Goods Not Used

21.7 Addenda to this RFT after issue

Question 21.7.1

Are you aware of any Addenda issued by the Board to this RFT after the issue of this RFT? (Refer to Section B Clause 5.3.4)

Answer 21.7.1

YES/NO

Question 21.7.2

If the answer is "Yes", indicate below whether you have read and allowed for the Addenda in your Tender.

Answer 21.7.2

<type or write your answer here>

Question 21.7.3

Please specify how many Addenda have you read and allowed for in your Tender.

Answer 21.7.3

It is the responsibility of the tenderer in accordance with Part A to ensure that it is aware of all addenda issued during the tender period. Failure by the tenderer to allow the addenda in the tender may result in the tender not being considered.

21.8 Further information

Question 21.8.1

Provide below any further information you believe is relevant to your Tender, and cross-reference to any clauses of this RFT if applicable.

Answer 21.8.1

<type or write your answer here>

21.9 Tender validity period

Question 21.9.1

The Tender will remain valid for acceptance within <type or write your answer here> _____ months from the deadline for lodgement of tenders, in accordance with Part B.

N.B. The minimum validity period is as stated in cl. 7.7.

21.10 Overall Savings Achieved by Your Tender

Please state below, in the form of percentages, the value of savings that your tendered prices represent against your regular Price List pricing. For example, if the prices you have tendered are uniformly 15% less than your Price List pricing, you would state "15%". If the level of savings is not uniform across all products tendered, express the answer as a range, eg "savings range from 10% to 15% against Price List pricing". If your response requires clarification, provide additional detail with this answer.

Answer 21.10

21.11 Supply of Australian Business Number

Question 21.11.1

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

N.B. Tenderers that do not have an ABN cannot enter into an agreement with the Board.

Answer 21.11.1

22. Tenderer Identification Details

Question 22.1

Type or write your identification details as required below.

- | | |
|--|-------|
| 1 If a company, Company Name | <hr/> |
| 2 If a partnership, Partnership Name | <hr/> |
| 3 If an individual, individual's name | <hr/> |
| 4 Trading Name | <hr/> |
| 5 Australian Business Number (ABN) | <hr/> |
| 6 Australian Company Number (ACN) | <hr/> |
| 7 Registered Office (if a company) | <hr/> |
| | <hr/> |

- 8 Site Address (principal place of business) _____

- 9 Postal Address (principal place of business) _____

- 10 Alternative Address _____

- 11 Contract Administration Contact Name _____
- 12 Contract Administration Contact Telephone No. _____
- 13 Contract Administration Contact E-mail Address _____
- 14 Contract Administration Contact Fax No. _____

- 15 Sales Order Contact Name _____
- 16 Sales Order Phone No. _____
- 17 Sales Order E-mail Address _____
- 18 Sales Order Fax No. _____
- 19 Management Fee Contact Telephone No. _____

- 20 Management Fee Contact Fax No. _____
- 21 Management Fee E-mail Address _____
- 22 Chief Executive Officer's Name (CEO) _____
- 23 Switchboard Telephone No: _____
- 24 Company email address _____
- 25 Website address: _____
- 26 Tenderer's Reference No: _____

PART C2 Statement of Compliance with Specification

Question 23

Do the tendered Deliverables fully comply with Specification?

Yes/No

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

Answer 23

<type or write your answer here>

PART C3 Price Schedule

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

TENDERER'S INSTRUCTIONS FOR ELECTRONIC TENDERING

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

DON'T insert or delete any **columns** in the sheet. Inserting or deleting **columns** in any sheet will corrupt your bids for all items in that workbook.

DO insert or delete rows wherever necessary.

Tenderer Responsibilities

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

PART C4 Certificates Of Compliance To Relevant Standards

Part C5 Acknowledgement And Confirmation Of Tender

Note to tenderers: If submitting a hard copy Tender, execute cl. 24.4. If submitting an electronic Tender, only complete cl. 24.5.

24.1 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 Standing Offer agreement.

24.2 Not Used

24.3 Not Used

24.4

I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

Print Name and Title

Signature of tenderer (if an individual, as identified in clause 22)

or

Signature of authorised officer of tenderer (as identified in clause 22)

or

Signature of partner completing tender on behalf of partnership (as identified in clause 22)

Question 24.5

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 web site is sufficient to verify and affirm that this is your Tender to supply the Deliverables at the prices tendered on the conditions contained in Part D (Procure IT), except as expressly amended in your Tender and that the information contained in your Tender is correct?

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

Yes/No



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

Dated:

NSW STATE CONTRACTS CONTROL BOARD

and

DEED OF AGREEMENT FOR

069/439 Miscellaneous Medical and Surgical Devices

Part D – Deed of Agreement

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THIS DEED OF AGREEMENT is made on the ____ day of _____ 20__

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

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

BACKGROUND

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

NOW THE PARTIES AGREE:

PART D1 – Interpretation Provisions

1. Interpretation

1.1 Definitions

"Agreement" means this Deed of Agreement including the Schedules.

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

"Approved Dealer and Distributor Information" means the schedule of information supplied in respect of each approved dealer and distributor in Schedule 11.

"Approved Sub-Contractor Information" means the schedule of information supplied in respect of each approved sub-contractor in Schedule 11.

"Circumstances Beyond the Control of the Contractor" include:

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

Guide Note: The following definition of Confidential Information is the standard form definition. See the Library for an expanded definition of Confidential Information which includes specific items of Confidential Information if required.

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

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

“Contract Material” means:

- (a) any material brought into existence as part of, or for the purpose of providing the Deliverables including records, documents and Information stored by any means (“New Contract Material”);
- (b) any material which is existing at the date of this Agreement and which is incorporated with the New Contract Material (“Existing Contract Material”).

“Contract Price” means the total amount payable by the Customer to the Contractor for the Deliverables ordered under a Customer Contract and calculated in accordance with clause 18.

“Contractor” means the person or corporation referred to in item 2 of Schedule 1 who will provide the Deliverables.

“Contractor Information” means the information provided by the Contractor in Schedule 10.

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

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

“Customer” means the Eligible Customer that places an Order with the Contractor under the Standing Offer agreement.

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

“Deliverables” means the goods and/or services to be supplied by the Contractor in accordance with this Agreement and itemised in the Price Schedule as amended:

- (a) by any document forming Schedule 4 to this Agreement;
and
- (b) from time to time in accordance with this Agreement.

“Department of Commerce Customer Number” means the identification number issued by State Procurement to a Customer for the purposes of the Customer entering into the Customer Contract.

“Eligible Customer” means

- a) an entity listed in Schedule 1 to the Public Sector Employment and Management Act 2002 as amended from time to time;
- b) a public sector agency as defined by clause 18(4) of the Public Sector Management (goods and Services) Regulation 2000 being:
 - 1. a government trading enterprise (including a State owned corporation)
 - 2. a public or private hospital (including an area health service)
 - 3. a local government agency
 - 4. a charity or other community non-profit organisation
 - 5. a public or private school, college or university
 - 6. a public sector agency of this State, the Commonwealth or of any other State or Territory
 - 7. a contractor to a public sector agency (but only in respect of things done as such a contractor)
 - 8. a Nominee Purchaser provided that it satisfies the requirements of clause 4.2 of this Deed.
 - 9. such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

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

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

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

“Management Fee” means the fee payable by the Contractor to the Principal in accordance with clause 6.11.

“Nominee Purchaser” means a contractor to a public sector agency, nominated by the public sector agency to be authorised to place Orders under Standing

Offer Agreements for things done as such a contractor and registered by State Procurement.

“Order” means a written request by a Customer for the supply of any or all of the Deliverables.

“Payment Period” means each period nominated in item 8 of Schedule 1 or where this Agreement expires or is terminated before the conclusion of one such period, the period up to and including the date of expiration or termination.

“Parties”, where used in relation to the Agreement, means the Principal and the Contractor, and where used in relation to a Customer Contract, means the Customer and the Contractor.

“Price” means the price payable for a Deliverable as set out in the Price Schedule and includes a price expressed as a lump sum or a rate per unit of quantity and, if applicable, means that price less any Government Discount and/or plus any Government Mark-up specified in the Price Schedule.

“Price Schedule” means the Price Schedule attached to the Tender as Part C2 and any variations to the Price Schedule made by the documents forming Schedule 4 to this Agreement and/or variations made in accordance with this Agreement.

“Principal’s Material” means any material, document, or Information supplied by the Principal, a Customer or any department or agency of the Crown to the Contractor by whatever means.

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

“Public sector agency” means an entity as defined from time to time in clause 18(4) of the *Public Sector Management (Goods & Services) Regulation 2000* (NSW) and includes:

- (a) a government trading enterprise (including a State owned corporation);
- (b) a public or private hospital (including an area health service);
- (c) a local government agency;
- (d) a charity or other community non-profit organisation;
- (e) a public or private school, college or university;
- (f) public sector agency of:
 - (i) this State (including the Principal),
 - (ii) the Commonwealth, or
 - (iii) any other State or Territory; and
- (g) provided that it satisfies the requirements of clause 4.2, a Nominee Purchaser.

“Request for Tender” means the Request for Tender described in item 1 of Schedule 1 including any addenda to the Request for Tender issued by the Principal.

“Schedule” means a schedule to this Agreement.

“Security” means the security in the amount and form specified by the Principal in its discretion, as set out in item 11 of Schedule 1.

“Specification” means the detailed description of the Deliverables to be provided under this Agreement that is attached as Schedule 2, as amended by

any document attached as Schedule 4. In the event of any inconsistency between the Specification and any part of this Agreement, this Agreement will prevail to the extent of the inconsistency.

“Standing Offer” means an agreement under which there is a standing offer for the provision or disposal of goods or services over the period of the agreement, on the order of any Customer for whom the Principal has arranged the contract.

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

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

“State Procurement” means a business unit of the Department of Commerce, representing the Principal and authorised to arrange and administer contracts on behalf of the Principal.

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

“Substantial Breach” means:

“Substantial Breach” means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes any breach of the following clauses (which will be taken in each case to be a substantial breach of this Agreement):
 - (i) clause 3.4 (Prices for the Deliverables),
 - (ii) clause 3.5 (Price Adjustment),
 - (iii) clause 3.6 (Best Price),
 - (iv) clause 6.5 (Minimum Insurance Requirements),
 - (v) clause 6.10 (Licences and Approvals),
 - (vi) clause 6.11 (Management Fee),
 - (vii) clause 6.13 (Performance Guarantee),
 - (viii) clause 7.3 (Specified Personnel),
 - (ix) clause 8 (Confidentiality),
 - (x) clause 9 (Copyright and Intellectual Property); and
 - (xi) clause 12 (No assignment or novation)
- (b) in the case of a Customer Contract, a substantial breach of a term of the Customer Contract, and includes any breach of the following clauses (which will be taken in each case to be a substantial breach of the Customer Contract):
 - (i) clause 3.6 (Best Price);
 - (ii) clause 16 (Time for Delivery)

“Tender” means the tender submitted by the Contractor in answer to the Request for Tender, including any accepted variation to the tender, attached as Schedule 3 or, in some cases, as Schedule 4.

“Term” means the period of this Agreement, set out in item 4 of Schedule 1 and any extension of the Term in accordance with clause 2.3.2.

“Warranty Period” means, in relation to a particular Deliverable, the period of warranty of that Deliverable offered in the Tender.

1.2 Rules for interpreting this Agreement

- 1.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 1.2.3
- (a) If the Contractor consists of more than one person or corporation, this Contract binds each of them separately and any two or more of them jointly and severally.
 - (b) An obligation, representation or warranty made by the Contractor in the tender and in any contract made pursuant to an acceptance of the tender shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in the tender or any contract made pursuant to the tender
- 1.2.4 A singular word includes the plural, and vice versa.
- 1.2.5 A word which suggests one gender includes the other genders.
- 1.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.
- 1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- 1.2.8 Subject to clause 1.2.9, if there is any conflict between the terms and conditions of this Agreement and any provisions of the Schedules, the terms and conditions of this Agreement will take precedence over the Schedules.
- 1.2.9 To the extent that documents in Schedule 3 (The Tender and documents evidencing agreed variations to the Tender) or Schedule 4 (Documents notifying the Principal's acceptance) expressly modify or replace clauses of this Agreement or the Specification, those documents will take precedence, in chronological order, over the Agreement or the Specification, as applicable.

PART D2 – Provisions of the Agreement between Principal and Contractor

2. Supply under a Standing Offer for the Term

2.1 Nature of the Agreement between the Principal and the Contractor

- 2.1.1 This Agreement describes the terms and conditions of the Standing Offer between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Deliverables to Customers, as and when Orders are placed, on the terms and conditions of the Customer Contract and subject to this Agreement.
- 2.1.2 This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. No notification or alteration of any clause of this Agreement will be valid except in writing signed by both Parties.
- 2.1.3 The Parties agree that any Customer, although not a Party to this Agreement, may take the benefit of, and seek to enforce, this Agreement in its own name.

2.2 Formation of Customer Contracts

- 2.2.1 The Contractor agrees that each time a Customer places an Order a separate Customer Contract is formed on the date of receipt of the Order by the Contractor. The terms and conditions of the Customer Contract are those appearing in:
 - (a) Part D1 of this Agreement, including any Schedules referred to in Part D1;
 - (b) Part D3 of this Agreement;
 - (c) the Order (including any Additional Conditions); and
 - (d) any variations of the Customer Contract as may be made in accordance with that contract.

2.3 Term

- 2.3.1 This Agreement commences on the commencement date specified in item 4 of Schedule 1 and expires on the expiry date specified in the same item 4, unless sooner determined in accordance with this Agreement.
- 2.3.2 The Principal may in its sole discretion extend this Agreement for the period or periods specified in item 4 of Schedule 1.

2.4 REVERSE AUCTION - NOT USED

3. Deliverables and Pricing

3.1 List of Deliverables

- 3.1.1 The list of Deliverables offered by the Contractor is contained in the Price Schedule.

3.2 Variation of Deliverables offered

- 3.2.1 The Contractor must notify State Procurement in writing as soon as practicable of any variation to the description of a Deliverable offered in the Price Schedule.
- 3.2.2 A variation under clause 3.2.1 may include a variation to the description of the item number, name or Specification of the Deliverable but excludes a variation:
- (a) to the Price of the Deliverable;
 - (b) that modifies or upgrades the Deliverable; or
 - (c) that introduces a new Deliverable to the Price Schedule.
- 3.2.3 State Procurement will notify the Contractor of its acceptance or rejection of the variation to the description of a Deliverable. If the variation is accepted, it shall be taken to be incorporated in the Price Schedule.

3.3 Changed or Additional Items

- 3.3.1 At any time after the commencement of the contract, the Board may decide to accept, in lieu of any item accepted, and only from the successful contractor/s, changed or additional items provided that it can be substantiated that:
- (a) The functional specifications of the changed or additional item/s do not differ in any substantial sense from the functional requirements in the contract; and
 - (b) The cost effectiveness of the changed or additional item/s is not less than that of the accepted items.
- 3.3.2 Where a contractor proposes an additional item or change to any aspect of the Deliverable including the country of Manufacture, source of manufacture, composition, design or method of manufacture of the deliverable, packaging, labelling, or any other factor affecting the deliverable supplied under the Contract, it shall notify NSW Department of Commerce in writing, giving at least two (2) calendar months notice of the proposed change/addition. The request will consist of :
- (a) The current item number of the deliverable

- (b) The product code of the deliverable
- (c) The correct and full name (including brand name or marking) of the deliverable.
- (d) The Order Unit in line with original tendered details
- (e) The price per order unit.
- (f) TGA or other legislative requirements as relevant
- (g) Information relating to the change or reason for the addition including: sales levels, evaluation reports (if available)

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

3.3.3 Upon receipt of the request, the Principal will have the sole discretion as to one or more of the following actions to be taken:

- (a) institute trials of the product and evaluate results;
- (b) evaluate the change version;
- (c) invite all existing suppliers under the Standing Offer for the Deliverables to tender for the change version;
- (d) invite a supplementary tender for the changed version from any interested tenderers; or
- (e) decline the request for inclusion of the changed or additional items in this Agreement.
- (f) approve the request for inclusion of the changed or additional items in the agreement either adding this to the list or replacing the Deliverable listed in the Price Schedule with the improved version.

3.4 Prices for the Deliverables

3.4.1 Subject to clauses 3.5, 3.6, and 3.7.2, the price of a Deliverable to be supplied under a Customer Contract shall be the Price for that Deliverable, less any Applicable Discount.

3.4.2 Clause 3.4.1 does not prevent the Contractor from offering, or the Contractor and Customer from negotiating, to reduce the Price or increase the discount for a particular Deliverable provided that the Price or discount is consistent with clauses 3.6 and 3.7.2 of this Agreement.

3.4.3 Tenderers are at their liberty to submit special offers contingent upon specified groups of items being accepted in their entirety. Such bundled offers must be self-contained and not impact or be related in any way to items not contained within this contract.

3.5 Price Adjustment

3.5.1 Price Adjustment process for Increases in Prices

3.5.1.1 The Contractor may not vary the Price of a Deliverable except in accordance with the Price mechanism selected in Part C1 of the Tender.

3.5.1.2 The Contractor must apply in writing to the Principal to increase Prices in the Price Schedule. Sufficient documentation to justify applications for Price variation must accompany the application.

- 3.5.1.3 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.
- 3.5.1.4 Increased prices approved by the Principal shall apply to all Customer Contracts made on or after the date upon which the Principal publishes the increased Price. No Price increase shall be applied retrospectively.
- 3.5.1.5 Where the Price variation is accepted, the Price Schedule will be taken to include the varied Price. The increased Price becomes the basis from which any future applications for Price variations will be calculated.
- 3.5.1.6 The provision of Deliverables under a Customer Contract shall not be withheld or disrupted by formalities or disputes associated with the variation of a Price.
- 3.5.1.7 The Principal reserves the right to delete a Deliverable from the Price Schedule or terminate this Agreement if it considers a Price increase application to be unreasonable.
- 3.5.2 Price Adjustment process for Decreases in Prices
 - 3.5.2.1 Where the Price variation calculated in accordance with Part C1 of the Tender results in a reduced price, the Contractor must apply in writing to the Principal to decrease the Price.
 - 3.5.2.2 Notwithstanding a Firm Price basis for the Contract in terms of Part C1 of the Tender, and notwithstanding a variable price basis in terms of Part C1 of the Tender, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.
 - 3.5.2.3 The Principal will approve or reject a price variation within six (6) weeks of lodgement of the application.
 - 3.5.2.4 Decreased prices approved by the Principal shall apply to all Customer Contracts made after the "effective date" as determined by the Principal.
 - 3.5.2.5 The decreased Price, once approved, becomes the basis from which any future applications for Price variations are calculated.
 - 3.5.2.6 Applications for decreases in Price must be made by the individual contractors concerned. Applications by Trade or similar Associations will not be considered.

3.6 Best Price

- 3.6.1 The Price for a Deliverable taking into account any Applicable Discounts on the Price must be no less favourable than the price paid by any other purchaser of substantially similar goods or services ("the similar goods or services") to the Contractor.

- 3.6.2 Where the Contractor offers more favourable prices to any other purchaser of similar goods or services, it must make the more favourable price available to all Customers entitled to the benefit of this Agreement.
- 3.6.3 A failure to comply with this clause will entitle the Principal to terminate this Agreement in accordance with clause 11.1.
- 3.6.4 If a Customer has paid a Price for a Deliverable during a period when the Contractor has offered a more favourable price, then the Contractor agrees to reimburse the Customer the difference between the amount represented by the Price less any Applicable Discount that has been paid by the Customer and the more favourable price.

3.7 Negotiation for increased Bulk Purchase Discounts

- 3.7.1 If a Customer, or the Principal acting on behalf of a Customer, has negotiated an increased Bulk Purchase Discount on an Order for a higher volume of Deliverables from the Contractor, that discount must be made available to other Customers in accordance with this clause.
- 3.7.2 Following agreement as to the increased Bulk Purchase Discount to apply in respect of a particular volume of Deliverables, the Contractor must, within seven (7) days of receipt of the relevant Order from the Customer or the Principal on behalf of the Customer, notify the Principal of the details of that discount and the conditions of its application.
- 3.7.3 In accordance with clause 3.6, the Contractor must make the new Bulk Purchase Discount available, on and from the date of notification of the discount to the Principal, to all Customers who place Orders that meet the conditions for the application of this discount.
- 3.7.4 The Parties agree that notification of the new Bulk Purchase Discount under clause 3.7.3 shall be taken to be a variation of the Agreement in accordance with clause 10.

3.8 Maximum Ceiling Price

- 3.8.1 The Price for each Deliverable in the Price Schedule is a maximum ceiling Price which cannot be exceeded without the Contractor applying for a Price variation under clause 3.5 of this Agreement.
- 3.8.2 Where the Contractor offers a temporary or periodical price special that is lower than a Price specified in the Price Schedule it will make available that lower price to all Customers with prior notification to the Principal. Such prices do not apply to permanent price decreases which must be submitted to the Principal for its approval in accordance with clause 3.5 of this Agreement.

3.9 Goods and Services Tax

- 3.9.1 In this clause and Agreement:

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

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

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

- 3.9.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 3.9.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice for the Contract Price, or any instalment of the Contract Price, is received.
- 3.9.4 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor’s net dollar margin for the Supply remains the same.
- 3.9.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 3.9.3.
- 3.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal.

4. Customers

4.1 Contractor must supply to all Customers

- 4.1.1 If a Customer, other than a Nominee Purchaser, places an Order with the Contractor during the Term, the Contractor must supply the required Deliverables to the Customer on the terms and conditions of the Customer Contract and in accordance with this Agreement.

4.2 Nominee Purchasers

- 4.2.1 Subject to cl. 4.2.2, the Contractor must satisfy any Order placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser provides in its order:
 - a) its State Procurement Registration Number;
 - b) the identity of the Nominating Agency;
 - c) the contract number, name and location of the contract in respect of which the purchase is being made; and
 - d) a statement saying that the goods or services ordered are related to carrying out its obligations under a contract with a public sector agency.
- 4.2.2 If at any time during the Term of this Agreement, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Principal. The Principal may approve the request if there are genuine commercial reasons for the Contractor’s request. If approved by the Principal, the details of the restrictions will be included in Item 14, Schedule 1.

- 4.2.3 Where the Principal does not approve a request of the Contractor under clause 4.2.2 and the Contractor refuses to deal with a Nominee Purchaser, the Principal may terminate this Agreement under cl. 11.
- 4.2.4 The Contractor may at any time lift the restrictions it has placed on its dealings with a Nominee Purchaser and shall notify the Principal accordingly.
- 4.2.5 If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

5. Orders

5.1 No Assurance of Orders and Non-Exclusive supply

- 5.1.1 This Agreement does not:
 - (a) imply that the Contractor is the exclusive provider of the Deliverables to the Customer; or
 - (b) oblige the Customer to place an Order for the Deliverables with the Contractor.
- 5.1.2 The Contractor acknowledges that the Principal may appoint other suppliers under a Standing Offer agreement to supply the Deliverables and that the Contractor will make no objection to such appointment.

5.2 Supply through dealers and distributors

- 5.2.1 The Contractor may supply the Deliverables through a dealer or distributor of the Contractor approved by the Principal from time to time and identified in Schedule 1 ("Approved dealer or distributor") on the terms of this clause.
- 5.2.2 The Contractor must make the approved dealer or distributor aware of this Agreement and the standard terms and conditions of Customer Contract and of this clause.
- 5.2.3 If the Principal requires it, the Contractor must arrange for the approved dealer or distributor to execute the statutory declaration at Schedule 6.
- 5.2.4 The approved dealer or distributor must offer to supply under the terms and conditions of the Customer Contract and otherwise on terms that enable the Contractor to comply with this clause.
- 5.2.5 The Contractor guarantees the dealer or distributor's performance under the Customer Contract as if the Customer Contract had been entered into by the Contractor.
- 5.2.6 The Contractor must ensure the approved dealer or distributor has an adequate system in place to supply sales information to the Contractor so as to enable the Contractor to comply with its own

obligations under this Agreement to supply sales information to the Principal for calculation of the Management Fee.

- 5.2.7 The Contractor must ensure the approved dealer or distributor supplies the Contractor with the above sales information.
- 5.2.8 The Contractor must obtain the approved dealer or distributor's agreement to the Principal at its own cost taking such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the sales information supplied by the approved dealer or distributor to the Contractor.

5.3 Supply through Sub-contractors

- 5.3.1 The Contractor may sub-contract part or all of a Customer Contract to a sub-contractor approved by the Principal from time to time and identified in Schedule 1 ("approved sub-contractor") on the terms of this clause.
- 5.3.2 The Contractor must make the approved sub-contractor aware of the terms and conditions of the Customer Contract and this clause;
- 5.3.3 If the Principal requires it, the Contractor must arrange for the approved sub-contractor to execute the statutory declaration at Schedule 6.
- 5.3.4 The terms and conditions of the sub-contract must be consistent with the Customer Contract.
- 5.3.5 The Contractor will continue to be bound by, and responsible for performance of, the Customer Contract notwithstanding that part or all of it may have been sub-contracted.
- 5.3.6 The Principal may, without incurring liability, withdraw its approval of a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of a Customer Contract. The Principal will notify the Contractor and the Customer in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 5.3.7 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:
 - (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
 - (b) the Contractor will indemnify and release the Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 5.3.8 The indemnity given under this clause may be enforced by the Customer to the relevant Customer Contract as if it was itself a party to this Agreement.

6. Specific Obligations of the Contractor

6.1 Contractor to Fulfil all Orders

- 6.1.1 The Contractor must fulfil all Orders during the Term in accordance with this Agreement and the Customer Contract.
- 6.1.2 If quantities or values of the Deliverables are described as 'approximate' in the Specification, they are an estimate only and the Customer is not required to take or accept the estimated quantities or values.
- 6.1.3 The Customer may place an Order for any one type or item of the Deliverables either at one time or in instalments or in such quantities as may be required from time to time.

6.2 Conflict of Interest

- 6.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.
- 6.2.2 The Contractor must:
 - (a) notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
 - (b) comply with any direction given by the Principal in relation to those circumstances designed to manage that conflict of interest.
- 6.2.3 For the purposes of this clause, a "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.
- 6.2.4 The Principal may terminate the Agreement in accordance with clause 11.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

6.3 Mistakes in Information

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

6.4 Contractor's Obligation to supply Deliverables at Prices in the Price Schedule

- 6.4.1 The Contractor must supply the Deliverables on the basis of the Prices in the Price Schedule except where provided in this Agreement. The Prices, except as specifically provided, are inclusive of all the costs and expenses that the Contractor incurs in the supply of the Deliverables.

6.5 Minimum Insurance Requirements

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

- (a) a broad form liability policy of insurance which includes:
 - (i) public liability insurance for at least the amount specified in item 5(a) of Schedule 1 in respect of each claim; and
 - (ii) products liability insurance for at least the amount specified in item 5(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover.
- (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- (c) professional indemnity insurance for at least the amount specified in item 5(c) of Schedule 1. This requirement may be limited by the Principal if the Contractor is a member of an occupational association with an approved Scheme under the Professional Standards Act (NSW) 1994.

The professional indemnity insurance:

- (i) must cover the Contractor's liability to the Principal in respect of the Deliverables,
 - (ii) must be maintained by the Contractor for 6 years after the conclusion of the Agreement for at least the amount specified in item 5(c) of Schedule 1,
 - (iii) must include one automatic reinstatement provision, and
 - (iv) must include a description of the risk covered by the policy.
- (d) such other insurances as are specified in item 5 of the Agreement Details.

- 6.5.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).

- 6.5.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Principal.

- 6.5.4 All policies must, apart from workers compensation and professional indemnity insurance must:
- (a) note the interest of the Principal, the State and any subcontractor;
 - (b) not exclude liability assumed by the Contractor under this Agreement.
- 6.5.5 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 6.5.6 The Contractor must, when requested in writing by the Principal, supply proof that all insurance policies required by this Agreement are current.
- 6.5.7 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Confirmation of Insurances Obtained" form, and on-send this to the Principal within 30 days of this request. An example of this form is at Schedule 14. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.
- 6.5.8 If the Contractor fails to comply with clause 6.5, 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.
- 6.5.9 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor
- 6.5.10 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

6.6 General Indemnity

- 6.6.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement; or

- (b) any breach of this Agreement or the confidentiality deeds required by this Agreement.

6.6.2 The Contractor's liability in respect of, and indemnity given in, clause 6.6.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

6.7 Compliance with Laws and Standards

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

- (a) all applicable Statutory Requirements;
- (b) the codes, policies, guidelines and Australian standards listed in Item 6 of Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor; and
- (c) Where a particular Australian or other Standard has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.
- (d) Where Therapeutic goods (both drugs and devices) are supplied to a Customer, the Contractor must ensure that these goods are contained on the Australian Register of Therapeutic Goods (ARTG), unless exempted, in accordance with the *Therapeutic Goods Act 1989 (Cth)*. The Contractor must comply in all respects with the Uniform Recall Procedure for Therapeutic Goods as called for by the Therapeutic Goods Administration. The Contractor must also comply with the Therapeutic Goods Order 37 for the labelling of therapeutic goods.

6.7.2 Occupational Health Safety & Regulation

6.7.2.1 The Contractor must comply with the following OHS&R requirements in the performance of this Agreement:

- (a) The Occupational Health and Safety Act 2000 (NSW) and any regulation made under this Act, including the OHS Regulation 2001; and
- (b) Codes of Practice, approved and issued pursuant to the above Act and/or regulations made under the Act.

6.7.3 The Contractor must provide Material Safety Data Sheets as provided for in the Tender or when requested by the Principal from time to time.

6.8 Compliance with Outworkers Code Not Used

6.9 The Contractor's On-Costs

- 6.9.1 The Principal will not be liable for any of the Contractor's employee "on-costs", including wages, salaries, holiday pay or allowances, sick pay, Workers' Compensation, or any tax or levy voluntarily undertaken by or imposed (either by statute or otherwise) on the Contractor.

6.10 Licences and Approvals

- 6.10.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement, including any licences listed below or otherwise offered in the Tender.

6.11 Management Fee

- 6.11.1 The Contractor must pay to the Principal a Management Fee in accordance with this clause.

The Contractor shall act in good faith in respect of all its obligations under this clause 6.11 and shall use its best endeavours to ensure that the obligations imposed on it in relation to management fee are met.

- 6.11.2 The Management Fee is the GST-exclusive value of the Deliverables supplied to a Customer, multiplied by the percentage shown in Item 7 of Schedule 1 (the Management Fee Rate), plus the GST payable on this amount, where the supply of Deliverables to the Customer was or should have been made under this Agreement.

- 6.11.3 The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.

- 6.11.4 The Contractor agrees to take all reasonable steps to ensure that all Customers do purchase all Deliverables under this Agreement. The Contractor agrees that the Principal may treat all purchases of Deliverables by Customers as Orders under this Agreement, whether or not a NSW Department of Commerce Customer Number is quoted, unless the Contractor can provide evidence, to the satisfaction of the Principal, that the purchase was made under some other contract between that Customer and the Contractor.

- 6.11.5 The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with the calculation and proving payment of the Management Fee.

6.11.6 At the end of each Payment Period, the Principal shall forward to the Contractor a request for a Report ("The Sales Report") which relates to the relevant Payment Period and which requires the Contractor to report the:

- (a) total amount, exclusive of GST, all Customers are liable to pay in respect of all items invoiced by the Contractor or its approved dealers or distributors to Customers in respect of the Agreement; and
- (b) the sales information as set out in Item 9 of Schedule 1 ("the sales information"), or as the Principal requests in writing from time to time.
- (c) such other relevant information as the Contract Authority may require.

6.11.7 Upon receipt of a request for a Sales Report, the Contractor shall within 30 days complete the Sales Report for the relevant Payment Period and return the same to the Principal.

In the event that the Contractor does not complete the Report within 30 days, the Contractor shall be liable to pay to the Principal the cost to the Principal of ensuring the compliance by the Contractor with its obligations under this clause in the amount of the administrative fee in item 15 of Schedule 1 Agreement Details, calculated from the date the sales return was first due to be submitted. The statement by the Principal as to the amount of the administrative costs payable under this clause shall be final and binding and the amount shall be payable on demand as a debt due to the Principal.

AND/OR

In the event that the Contractor does not complete the Report within 30 days and thus causing a failure by the Contractor to comply with its obligations under clause 6.11.8, the Contractor shall be liable to pay the Principal a Late Payment Fee as specified in Schedule 1.

6.11.8 The Principal shall then compile a tax invoice based on the Sales Report and forward that invoice to the Contractor.

The Contractor shall then forward payment to the Principal within sixty days of the conclusion of the Payment Period.

In the event that the Contractor does not provide payment within sixty days the Contractor shall be liable to pay to the Principal the cost to the principal of ensuring the compliance by the Contractor with its obligations under this clause an amount contained in item 15 of Schedule 1 Agreement Details calculated from the date the payment was first due to be made. The statement by the Principal as to the amount of the costs payable under this clause shall be final and binding and the amount shall be payable on demand as a debt due to the Principal.

AND/OR

In the event that the Contractor does not provide payment within sixty days the Contractor shall be liable to pay to the Principal a Late Payment Fee as specified in Schedule 1.

- 6.11.9 The tax invoice will set out the Management Fee payable to the Principal and the GST payable on the Management Fee.
- 6.11.10 The Principal may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.
- 6.11.11 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should consult with the Principal and the Parties may agree on the amount of any adjustment.
- 6.11.12 Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of that Payment Period, a report stating that no Deliverables were provided by the Contractor to any Customer during the Payment Period.
- 6.11.13 The Contractor must set up and maintain a system which:
- (a) to the reasonable satisfaction of the Principal is suitable for identifying all purchasers of the Deliverables that are eligible Customers whether pursuant to Official Orders or otherwise and
 - (b) enables monitoring by the Principal of the Orders placed with and invoices issued by the Contractor or its approved dealers or distributors and for the provision of the sales information; and
 - (c) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.
 - (d) Failure to establish such a system to the reasonable satisfaction of the Principal shall constitute a breach of this Agreement and the Contract Authority may, in its discretion terminate the Agreement.
- 6.11.14 The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Principal by the Contractor and the Contractor agrees to cooperate with the Principal (including any auditor appointed by the Principal).

If the Principal appoints an auditor, the Principal will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with the auditor appointed by the Principal including providing access within 10 working days of the written notification from the Principal that an audit will take place, to information about all sales of Deliverables made to eligible Customers (whether pursuant to an Order or otherwise), copies of all contracts, orders and invoices between the Contractor and any eligible Customers. The Contractor agrees to provide the Auditor appointed by the Principal access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form set out in Schedule 15.

6.11.15 If the measures taken in clause 6.11.14 verify that the Contractor has not paid the Management Fee that is actually due to the Principal, the Contractor must:

- (a) remit the difference between the Management Fee paid to the Principal and the Management Fee actually due to the Principal within 30 days of a direction from the Principal; and
- (b) at the discretion of the Principal, reimburse the Principal's costs and expenses of the measures taken (including any auditor's fees) under clause 6.11.14 to the Principal in accordance with the sliding scale set out below:

Difference between management fee paid and payable

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

Portion of Audit costs to be borne

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

6.11.16 The Contractor shall during the Term of this Agreement and for a 12 month period after the Agreement has expired or is terminated, keep secure all relevant documents and Information for the purposes of this clause and give any auditor appointed by the Principal access to those documents and Information at all reasonable times.

6.11.17 A breach of this clause (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 6.11.14) shall be a substantial breach of this Agreement which will entitle the Principal to terminate this Agreement pursuant to clause 6.11.1 without prejudice however to the right of the Principal to recover from the Contractor any sums payable to the Principal under this agreement or otherwise, or the right of the Principal to deduct those sums from any money that may be or become payable by the Principal to the Contractor on any other account.

6.12 Keeping of Records and Access to Records

6.12.1 The Contractor must keep proper accounts, records and time sheets in accordance with the accounting principles generally applied in commercial practice.

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

6.13 Performance Guarantee – Not Used**6.14 Marketing by the Principal and the Contractor**

- 6.14.1 The Principal may carry out advertising and marketing and issue promotional material for the purposes of this Agreement. The Contractor must make every endeavour to assist the Principal with such advertising, marketing and promotional material including conducting seminars and providing the Principal with Information about the Deliverables and the Contractor's advertising material, including copies of that material.

6.15 The Principal's Material and Contract Material

- 6.15.1 The Contractor must keep secure the Principal's Material and the Contract Material.
- 6.15.2 The Contractor must, within 7 days of completion or termination of this Agreement, or such other period as agreed to in writing by the Principal, return to the Principal any of the Principal's Material and the Contract Material it has in its possession.
- 6.15.3 The Contractor agrees that it will not make any alteration to the Principal's Material or the Contract Material without the prior written consent of the Principal.
- 6.15.4 Clause 6.15.2 does not prevent the Contractor from retaining a copy of the Contract Material for its records.

6.16 Electronic Commerce

- 6.16.1 If the Principal requires it, the Contractor must implement the electronic commerce proposals, applications or services submitted in the Tender (if any) for the purposes of this Agreement.
- 6.16.2 A Customer and the Contractor may agree to do business electronically as is necessary for the performance of the Customer Contract.

6.17 Maintenance of Contractor, Approved Dealer and Distributor Information and Approved Sub-Contractor Information

- 6.17.1 The Contractor must notify the Principal of any change in the Approved Dealer and Distributor Information, the Approved Sub-Contractor Information and the Contractor Information as and when it occurs.
- 6.17.2 The Contractor must provide this information in any manner and format requested by the Principal.

6.18 Provision of Catalogue Information for E-commerce Initiatives

- 6.18.1 From time to time the Principal may request the Contractor to supply information in the nature of catalogue information, for use in e-commerce initiatives in NSW Government contracting.
- 6.18.2 The Contractor must promptly supply any such information that is reasonably requested by the Principal in the format, and using the method of delivery, specified by the Principal at the time of the request.
- 6.18.3 The Contractor consents to the use of such information, including any personal information, in any catalogue created by Department of Commerce to facilitate e-commerce in NSW Government contracting.

6.19 Child Protection

- 6.19.1 If any Customer Contract involves child-related employment, the Contractor must ensure that:
 - (a) it complies with, and ensures that its sub-contractors comply with, the Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People, attached at Schedule 13;
 - (b) it complies with its obligations, and ensures that its sub-contractors comply with their obligations, as an employer under the Child Protection (Prohibited Employment) Act 1998 ("Prohibited Employment Act") and the Commission for Children and Young People Act 1998 ("Children and Young People Act").
- 6.19.2 Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "the working with children check." The guidelines are available at www.kids.nsw.gov.au.
- 6.19.3 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:
 - (a) if any work under a Customer Contract is "child-related employment" under the Prohibited Employment Act (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor:
 - (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
 - (ii) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
 - (b) if any work under a Customer Contract is "child-related employment" under the Children and Young People Act (any employment that involves direct contact with children where the contact is not directly supervised) the Contractor must conduct, and ensure that its sub-contractors conduct, a

working with children check on any person who is to perform the work.

- 6.19.4 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a “prohibited person” under the Prohibited Employment Act (persons who have committed a serious sex offence within the meaning of that Act) to perform work under any Customer Contract that is “child-related employment” under that Act.
- 6.19.5 If the work involves access to Department of Education sites, additional requirements relating to community expectations concerning child protection may be imposed as a condition of entry to that site.
- 6.19.6 The Principal may require the immediate removal of a “prohibited person” or a person who is the subject of a child abuse allegation or investigation from performance of child-related employment under the relevant Customer Contract.
- 6.19.7 If the Contractor does not comply with any requirement under this clause the Principal may do either or both of the following:
 - (a) ensure termination of any relevant Customer Contract by giving written notice to the Customer that the Contractor has not complied with a requirement under this clause;
 - (b) terminate this Agreement for cause.

6.20 Corrupt Conduct

- 6.20.1 The Contractor shall not give or make available any Inducement or Reward to any public servant, employee, agent or contractor to the SCCB or the Government of NSW in connection with the Agreement.
- 6.20.2 The Contractor shall not engage in corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act (1988)*.
- 6.20.3 The Contractor agrees that it is a Substantial Breach of the Agreement if the Contractor, at any time during the term of the Agreement, breaches 6.20.1 and 6.20.2.

6.21 Australian Standards Specifications

- 6.21.1 In all cases where Australian Standards exist, the deliverables should conform to such Standards. Contractors may offer items that comply with the British Pharmacopoeia or other recognised International Standards as agreed between the Principal and the Contractor.
- 6.21.2 Where a Standard is revised and altered during a contract period, evidence of compliance to the new Standard will be required to be submitted to State Procurement within a reasonable period of time. Failure to submit evidence of compliance may result in termination of the Agreement.

7.1.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement (including Customer Contracts) by the Contractor on the basis of the criteria listed below or otherwise as agreed by the Parties:

- 7.1.2 The successful Contractor/s will be required to provide to State Procurement, on a quarterly basis, **electronic** returns showing the total units sold, of all items they are contracted to supply, in the following format. Nil sales should also be indicated.

7.1.4 This information is in addition to the monthly Management Fee return and should be forwarded separately (on disk or via email), addressed to the Contract Officer nominated on the front of this tender document.

							Name of Customer where sales made
Item No.	Tenderer's Name (Trading Name)	Tenderer's Description	Tenderer's Product Code	Order Unit	Price \$ per Order Unit (Incl GST)	Qty per Order Unit	Total Order Units Sold
QUARTER ENDING:							

7.2 Exchange of information between government agencies

- 7.2.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 7.2.2 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.
- 7.2.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 22 of the *Defamation Act 1974* (NSW).
- 7.2.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

7.3 The Contractor's personnel/specified personnel - Not Used

7.4 Contractor to establish necessary facilities

- 7.4.1 The Contractor must establish all facilities necessary for the proper and effective conduct and management of all its obligations under this Agreement.

7.5 Access to the Contractor's premises

- 7.5.1 The Contractor must at all reasonable times permit officers authorised by the Principal to have access to the premises of the Contractor and where necessary and where requested by the Principal arrange for access to premises of any sub contractors engaged by the Contractor

8. Confidentiality

- 8.1 Subject to clause 8.2, the Contractor must not disclose any Confidential Information in connection with this Agreement to any person other than the Principal without first obtaining the written consent of the Principal.
- 8.2 The Contractor may disclose the Confidential Information to its officers, employees and agents where the disclosure is essential to carrying out their duties for the purposes of this Agreement.
- 8.3 The Contractor must ensure that the Confidential Information is used solely in connection with, or for the purposes of, the provision of the Deliverables.
- 8.4 This clause does not affect the Contractor's obligation to disclose any Confidential Information that is required to be disclosed by law.

9. Copyright and Intellectual Property - Not Used

10. Variations

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

11. Termination

11.1 Termination for cause

- 11.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
 - (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;
 - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
 - (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
 - (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;

- (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts the Customer Contract except in accordance with this Agreement;
- (f) in the case of the Contractor's Insolvency;
- (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any Order; or
- (h) If in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of the Agreement.

11.1.2 Effect of Termination for cause

11.1.2.1 If the Principal terminates this Agreement for cause the Principal may:

- (a) contract with any other person to complete the provision of the Deliverables including but not limited to any Order remaining to be filled;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Customer under any Customer 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 Agreement or any Customer Contract) 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.

11.1.2.2 The Principal's termination under this clause will not affect any Customer Contract unless the context requires it.

11.2 Termination for the Principal's convenience

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

11.2.2 Effect of Termination for convenience

11.2.2.1 The Principal's termination under this clause will not affect any Customer Contract unless the context requires it.

11.2.2.2 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:

- (a) must be supported by written evidence of the costs claimed;

- (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.

11.2.2.3 The Principal shall not in any circumstances be liable for any consequential loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Principal.

11.2.3 The Contractor must, wherever possible, include in all sub-contracts and supply agreements an equivalent provision to this clause 11.2.

12. No Assignment or novation

- 12.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal.
- 12.2 The Contractor acknowledges that the Principal may make financial checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

13. Issue Resolution

13.1 General

13.1.1 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.13.2);
- (b) Expert Determination (cl.13.3)

13.2 Amicable Resolution

13.2.1 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 Agreement or about any matter arising under or out of the Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.

13.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Agreement, it must give the Issue Notice to the Principal.

13.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.

13.2.4 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.

- 13.2.5 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.
- 13.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 13.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 13.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 13.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 13.2.10 If a Referral Notice has not been given within 28 days of becoming entitled under clause 13.2.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

13.3 Expert Determination

- 13.3.1 If a Referral Notice is given under clause 13.2, 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.
- 13.3.2 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 Agreement or the Customer Contract as the case may be; or
 - (c) a person who the Parties have not been able to agree on.
- 13.3.3 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 5.
 - (d) any other matter which is relevant to the engagement.
- 13.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 13.3.5 The procedure for expert determination is set out in Schedule 5.
- 13.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 13.3.7 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Item 10 of Schedule 1 (calculating the amount without including interest on it, and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.

- 13.3.8 Unless a Party has a right to commence litigation under clause 13.3.7
- (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.

13.4 Performance of Agreement during Issue Resolution

- 13.4.1 The Parties agree to continue performing their obligations under this Agreement while the issue is being dealt with in accordance with this clause 13.

14. Miscellaneous

14.1 Waiver

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

14.2 Severability

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

14.3 Notices

- 14.3.1 Notices must be sent to the other Party at the address shown in item 13 of Schedule 1, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 14.3.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 14.3.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

14.4 Counterparts

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

14.5 Applicable Law

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

14.6 Rights Cumulative

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

14.7 No agency/no employment/no partnership

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.

PART D3 – Standard Provisions of Contract between a Customer and the Contractor

15. Provisions of Agreement to apply to the Customer Contract

15.1 The following provisions of Part D2 of this Agreement apply to the Customer Contract as if they were repeated in this Part:

- (a) Best Price (clause 3.6);
- (b) General Indemnity (clause 6.6);
- (c) Compliance with laws (clause 6.7);
- (d) Performance Monitoring (clause 7);
- (e) Confidentiality (clause 8); and
- (f) Miscellaneous (clause 14)

provided that in respect of the Customer Contract, “Agreement” and “Principal” wherever appearing in the clauses described above shall be read as “Customer Contract” and “Customer” respectively.

16. Time for delivery

16.1 Punctual Delivery

16.1.1 The Contractor must deliver the Deliverables within the relevant Guaranteed Delivery Time.

16.1.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Customer in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay, and whether the Contractor will be requesting a reasonable extension of time in accordance with clause 16.2.

16.1.3 If the Contractor fails to deliver by the Guaranteed Delivery Time and has not been granted an extension of time for delivery under clause 16.2, the Customer may terminate the Customer Contract under clause 24.

16.2 Extension of Time

- 16.2.1 Where there is likely to be a significant delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:
- (a) within 7 days of becoming aware of the possibility of such a significant delay, notify the Customer, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
 - (b) request a reasonable extension of time.
- 16.2.2 The Customer may consent to a request for extension of time under this clause 16.2 provided that:
- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
 - (b) where appropriate, the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.
- 16.2.3 The Customer may terminate the Customer Contract in accordance with clause 24 if the delay continues beyond the time consented to in this clause 16.
- 16.2.4 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

17. Supply of Deliverables

17.1 Specified Models/Products

- 17.1.1 Where a particular model or product is specified in the Price Schedule, the Contractor must supply only that model or product unless otherwise approved in writing by the Principal.

17.2 Packaging

- 17.2.1 The Contractor must ensure that all Deliverables are properly, safely and securely packaged and labelled for identification

17.3 Expenses of Delivery

- 17.3.1 The Contractor must pay all packaging, freight, insurance, and other charges, in connection with the delivery of Deliverables and the return of Deliverables wrongly supplied except where it is expressly provided in this Agreement.
- 17.3.2 Delivery charges shall not apply when a purchase order has been received by the contractor and contains a minimum total of 50% of any State Contracts Control Board contracted items.

17.4 Delivery and Acceptance of Deliverables

- 17.4.1 The Contractor must deliver the Deliverables to the place or places and within the Guaranteed Delivery Time and shall obtain a receipt of their delivery.
- 17.4.2 Title in the Deliverables shall pass to the Customer on satisfactory delivery of the Deliverables in accordance with the Customer Contract.
- 17.4.3 Delivery and receipt of the Deliverables shall not be taken to be an acceptance of the Deliverables by the Customer.
- 17.4.4 The Customer may reject Deliverables which are not in accordance with the Customer Contract.
- 17.4.5 Receipt of delivery, acceptance or payment shall not prejudice the right of the Customer to maintain an action for breach of condition or warranty should the Deliverables prove to be of inferior quality or contrary to the requirements of the Customer Contract.
- 17.4.6 Delivery is FREE-INTO-STORE (FIS) throughout NSW and the ACT unless otherwise specified by State Procurement, in such quantities and at such times as may be required during the period of the contract.
- 17.4.7 Delivery will be required as soon as possible within the guaranteed delivery time, after placement of orders as you have stated. Contractors are required to maintain adequate stocks to be able to satisfy orders for reasonable quantities within the guaranteed delivery time. Failure to adhere to guaranteed delivery times tendered may be regarded as grounds for termination of a Contract.
- 17.4.8 Contractors shall notify the Customer (being any of the organisations described in Schedule 12 which placed the order for the Goods) immediately and in any event in not more than 24 hours, of any item on an order that cannot be supplied within the guaranteed delivery time.
- 17.4.9 The Contracted prices are to provide for goods to be suitably packed to ensure safe transport to their destination. Packs are to show details of contents and country of origin.
- 17.4.10 THE CONTRACTOR MUST ADVISE STATE PROCUREMENT OF ALL PROLONGED DELIVERY DELAYS DURING THE PERIOD OF THE CONTRACT.
- 17.4.11 If the Contractor is unable to provide Deliverables for any reason, the Contractor must arrange for the supply of equivalent products from an alternative supplier within the guaranteed delivery time. The Contractor is to liaise with the Customer to ensure that the alternative product is acceptable and meets the purchaser's needs. Any additional cost in arranging alternative supply is to be borne by the Contractor.

- 17.4.12 The Contractor will replace Goods at no cost (including freight and handling charges) where stocks are delivered with unacceptably close use-by dates. An unacceptable use-by date is one that is LESS THAN SIX (6) MONTHS from the date of delivery.

17.5 Rejection of Deliverables

- 17.5.1 Upon rejection of any Deliverables the Customer shall notify the Contractor and may direct that the rejected Deliverables be removed and replaced or rectified at the Contractor's risk and expense within such reasonable time as the Customer may direct.
- 17.5.2 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Customer may have the rejected Deliverables re-delivered at the Contractor's risk and expense.
- 17.5.3 Where the Contractor fails to deliver the Deliverables by the Guaranteed Delivery Time, or where Deliverables are rejected and the Contractor fails to replace the rejected Deliverables or to deliver Deliverables conforming to the Agreement, the Customer:
- (a) may purchase from another supplier substitute Deliverables of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another supplier substitute Deliverables of the kind or quality ordered, purchase goods or services which in the opinion of the Customer are most suitable, even though such goods or services are of a superior kind and quality to the Deliverables.
- 17.5.4 In both cases listed in clause 17.5.3 any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Customer.
- 17.5.5 Contractors are not permitted to withdraw products from the Contract, for any reason, whilst that product is still available on the market. Tenderers should be aware of the options available to the Purchasing Authorities in the event of non-supply as detailed at Clause 17.5.3.
- 17.5.6 It is expected that an alternative generic equivalent be made available in the even of non-supply. Contractors are to source the alternative product and make arrangements for the supply of this item.

17.6 Non Free-into-Store (NFIS) Arrangements

- 17.6.1 Where the customer chooses NFIS price, the contractor must agree to hand over products to the third party for delivery, as arranged by the customer.
- 17.6.2 The contracted prices are still to provide for goods to be suitably packed to ensure safe transport to their destination. Packs are to show details of contents and country of origin.

18. Contract Price

18.1 Calculating the Contract Price

18.1.1 Subject to clause 18.1.2, the Contract Price shall be calculated as follows:

- (a) If the Price of each Deliverable ordered is expressed as a lump sum then the Contract Price shall be the sum of the Price for each Deliverable less any Applicable Discount;
- (b) If the Price of each Deliverable ordered is expressed as a rate per unit of quantity (whether that quantity is measured in time, weight, volume or by some other method) the Contract Price shall be the sum of the products of the rates and the corresponding quantities set out in the Price Schedule, less any Applicable Discount;
- (c) If the Prices of some of the Deliverables ordered are expressed as a lump sum and the Prices of others as a rate per unit of quantity, the Contract Price shall be the sum of :
 - (i) the sum of each of the lump sum Prices; and
 - (ii) the sum of the products of the rates and the corresponding quantities set out in the Price Schedule,

less any Applicable Discount;
- (d) If the Price of the Deliverable is expressed as a price range (within which the Customer and the Contractor may negotiate a Price for each Deliverable) then:
 - (i) if the range of Prices stated in the Price Schedule is given on a lump sum basis (that is, a minimum and maximum lump sum price) the Contract Price shall be the sum of each agreed Price less any Applicable Discount;
 - (ii) if the range of Prices stated in the Price Schedule is expressed as a minimum and maximum rate per unit of quantity the Contract Price shall be the sum of the products of the agreed rates and the corresponding quantities less any Applicable Discount.

18.1.2 Clause 18.1.1 shall not prevent the Contractor from offering, or the Contractor and Customer negotiating, to reduce the Price or increase the discount for a particular Deliverable in accordance with the Customer Contract.

18.2 Negotiation for increased Bulk Purchase Discounts based on higher volumes

- 18.2.1 If the Customer requires a volume of Deliverables not envisaged by the Bulk Purchase Discount offered by the Contractor or any other contractor ("other supplier") under a Standing Offer agreement with the Principal for the same or similar Deliverables it shall seek from the Contractor and all other suppliers an offer for an increased discount on the proposed Order for the particular volume of Deliverables.
- 18.2.2 The Customer may make the approach envisaged under 18.2.1 personally or through the Principal, acting on its behalf.
- 18.2.3 For the purpose of negotiations, the Customer, or the Principal as the Customer's agent, reserve the right to disclose any offer made by the Contractor or any other supplier to any or all other suppliers or the Contractor.
- 18.2.4 If the Customer, or the Principal as the Customer's agent, elect to accept the increased Bulk Purchase Discount offered by the Contractor by the placing of an Order with the Contractor, the Parties agree that the details of the discount and the conditions of its application will be notified by the Contractor to the Principal within 7 days of receipt of the Order by the Contractor, to enable the variation of the Agreement to incorporate the new discount and make it available to other Customers.

19. Payment

19.1 Payment of Contract Price

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

19.2 Invoices and Time for Payment

- 19.2.1 Subject to this clause 19.2, the Customer shall make payment within 30 days from the end of the month after receipt of a correct claim and documents necessary to evidence delivery to the Customer.
- 19.2.2 All claims made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Customer.
- 19.2.3 The making of a payment is not an acknowledgment that the Deliverables have been supplied in accordance with the Customer Contract, but shall be taken to be payment on account only.
- 19.2.4 If the Customer disputes the invoice amount the Customer shall certify the amount it believes is due for payment and shall pay that

amount and the liability for the balance of payment shall be determined in accordance with the Customer Contract.

- 19.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Deliverables.
- 19.2.6 All invoices shall include the customers purchase order numbers.

19.3 Set-Off/Money Recoverable by Customer

- 19.3.1 The Customer may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Customer in connection with the supply of the Deliverables.
- 19.3.2 Without limiting clause 19.3.1, any damages, costs and expenses recoverable by the Customer from the Contractor in consequence of the Contractor's breach of the Customer Contract may be deducted from money then due to the Contractor under the Customer Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be:
 - (a) set off against any other money due to the Contractor by the Customer under this or any other agreement between the Customer and the Contractor; or
 - (b) recovered from the Contractor by the Customer in an appropriate court.
- 19.3.3 Nothing in this clause will affect the right of any Customer to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- 19.3.4 For the purposes of this clause, the Principal may act for and on behalf of any Customer for the purpose of assessing and certifying any damages, losses, costs and expenses sustained or incurred by the Customer as a result of the breach of the Customer Contract.

19.4 Suspension of Payments

- 19.4.1 Should the Contractor refuse or neglect to carry out the instructions or requirements of the Principal in regard to any matter connected with this Agreement, a Customer may, when directed by the Principal, suspend all payments to the Contractor without penalty until such instructions or requirements have been complied with by the Contractor.

20. The Contractor's additional expenses

- 20.1** The Customer will only reimburse the Contractor any reasonable costs, expenses, or charges incurred by the Contractor and not provided for in the Customer Contract where the Contractor has first obtained the Customer's written approval.

21. Contractor's Warranties

21.1 Contractor's warranties (Goods)

21.1.1 In relation to Deliverables that are goods, the Contractor warrants that:

- (a) at the time ownership of a Deliverable passes to the Customer, the Deliverable will be free from any charge or liability;
- (b) during the Warranty Period, each Deliverable:
 - (i) shall be new and shall conform with the Specification;
 - (ii) shall conform to the description, model number and the sample (if any) provided by the Contractor; and
 - (iii) shall be free from defects.

21.2 Contractor's warranties (Services)

21.2.1 In relation to Deliverables that are services, the Contractor warrants that:

- (a) it will provide the Deliverables in accordance with the requirements of the Customer Contract and with due care and skill;
- (b) it will comply with all statements or representations as to the provision of the Deliverables contained in the Tender;
- (c) the information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its employees and subcontractors is correct; and
- (d) it will not enter into any arrangement that impedes or is likely to impede the performance of the Customer Contract in the manner and to a standard satisfactory to the Customer, without first obtaining the Customer's consent.

21.3 Contractor's warranties (General)

21.3.1 The Contractor warrants that:

- (a) the Deliverables do not infringe the Intellectual Property rights of a third party; and
- (b) the Deliverables shall conform to any legally applicable standards.
- (c) it has established and will comply with and maintain during the Customer Contract, the quality assurance arrangements set out in the Tender.
- (d) It has capacity to enter into this Customer Contract and perform the obligations imposed on the Contractor and the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of the Customer Contract by the Contractor

21.4 Warranty Period

21.4.1 The Contractor shall remedy any error or defect in a warranted Deliverable that has been notified to it by a Customer during the Warranty Period at the Contractor's own cost and expense.

21.4.2 If the Contractor fails to remedy an error or defect in a warranted Deliverable within 30 days after notification by the Customer, the Customer may arrange for performance of the necessary remedial work by a third party at the Contractor's expense.

21.4.3 The rights and remedies provided in this clause 21 are in addition to, and do not limit, any other rights of the Customer under the Customer Contract or otherwise at law.

21.5 Third party warranties

21.5.1 Where the Contractor supplies Deliverables that have been procured from third parties, the Contractor assigns to the Customer, to the extent permitted by law, the benefits of any warranties given by the third parties.

21.5.2 Assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Customer Contract and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

22. No assignment or sub-contracting of Customer Contract

- 22.1 The Contractor must not assign a Customer Contract without first obtaining the written consent of the Customer and the Principal, which may be given subject to conditions.
- 22.2 The Contractor must not sub-contract a Customer Contract, except to a sub-contractor approved by the Principal from time to time and identified in Schedule 1 ("approved sub-contractor"):
- (a) without the prior written consent of the Principal and the Customer, which may be given subject to conditions, and
 - (b) on the terms and conditions of this clause.
- 22.3 A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Customer Contract.
- 22.4 Regardless of any consent given, the Contractor will be responsible for ensuring the suitability of any sub-contractor and that the sub-contractor meets the requirements of a Customer Contract.
- 22.5 The Parties agree that the Principal, without incurring any liability, may withdraw its consent to a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of the Customer Contract. The Principal will notify the Contractor in writing that its consent is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 22.6 To the extent that loss is not attributable to withdrawal of the Principal's consent to the sub-contract:
- (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
 - (b) The Contractor will indemnify and release the Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 22.7 The Parties agree that the Principal may also enforce, on behalf of the Customer, the indemnity given to the Customer under this clause.
- 22.8 This clause will not merge on the completion or earlier termination of the Customer Contract.
- 22.9 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Customer Contract and that the sub-contract is consistent with those terms and conditions.
- 22.10 This clause does not apply in the event that the Principal requests a particular sub-contractor to provide the Deliverables.

23. Variation of the Customer Contract

- 23.1 The standard provisions of the Customer Contract shall not be varied except by agreement in writing signed by the Parties and having first obtained the consent in writing of the Principal.

24. Termination by Customer

- 24.1 Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Contractor ("Notice of Termination"):

- (a) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
- (b) where the Contractor commits a Substantial Breach of the Customer Contract that is not capable of remedy;
- (c) where the Contractor commits a Substantial Breach of the Customer Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
- (d) where the Contractor assigns its rights and/or obligations, or subcontracts the Customer Contract otherwise than in accordance with the Customer Contract; or
- (e) in the case of the Contractor's Insolvency.

- 24.2** In the event of termination, the Customer:

- (a) may procure from any other source a reasonably similar alternative to the Deliverable suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
- (b) may, by notice in writing to the Contractor, require the Contractor at its expense to remove the specified Deliverable not accepted by the Customer and to dismantle or remove specified work from the Customer's premises by a date specified in the notice;
- (c) shall be liable under the Customer Contract to pay only for the Deliverables delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
- (d) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.

This clause will survive the termination of the Customer Contract.

- 24.3** If the Customer terminates this Customer Contract the Customer may:
- (a) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Contractor and/or from the Security (if any); and
 - (b) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Customer.
- 24.4** The Customer's termination under this clause will not affect the Agreement, unless the context requires it.
- 24.5** Any termination by the Customer is without prejudice to any accrued rights or remedies of the Customer under the Customer Contract.

25. Issue Resolution

25.1 General

25.1.1 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 (clause 25.2);
- (b) Expert Determination (clause 25.3)

25.2 Amicable Resolution

- 25.2.1 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 Customer Contract or about any matter arising under or out of the Customer Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 25.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Customer Contract, it must give the Issue Notice to the Customer and to the State Contracts Control Board.
- 25.2.3 If the Party giving the Issue Notice is the Customer, it must give the Issue Notice to the Contractor and to the State Contracts Control Board.
- 25.2.4 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.
- 25.2.5 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.
- 25.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.

- 25.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice") within 28 days of becoming entitled to under clause 25.2.6.
- 25.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Customer and the State Contracts Control Board.
- 25.2.9 If the Party giving the Referral Notice is the Customer, it must give the Referral Notice to the Contractor and the State Contracts Control Board.
- 25.2.10 If a Referral Notice has not been given to the person or persons specified within the time limited by clause 25.2.7 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).
- 25.2.11 For the avoidance of doubt, failure to give an Issue Notice or a Referral Notice in accordance with the requirements of clause 25 and clause 26 will result in an invalid notice for the purposes of this clause.

25.3 Expert Determination

- 25.3.1 Clause 13.3 (Expert Determination) of Part D2 of the Agreement applies to the Customer Contract as if it was repeated in this Part D3. Reference to "the Principal" in clause 13.3.3 shall be read as a reference to the State Contracts Control Board.
- 25.3.2 The Parties agree that the State Contracts Control Board will represent the Customer in the expert determination process.

26. Notices (Customer and Contractor)

- 26.1 A notice which may be given to or served on a Party (including the Board) under a Customer Contract must be in writing addressed to the other Party and:-
 - (a) in the case of the Contractor, at the registered office or principal place of business of the Contractor or the address set out in the Order or such other address as is notified in writing to the Customer from time to time;
 - (b) in the case of the Customer, at the address set out in the Order or such other address as is notified in writing to the Contractor from time to time;
 - (c) in the case of the Board, at the registered office of the Board.
- 26.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 26.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

27. Additional conditions

- 27.1 Subject to clause 23, the Customer and the Contractor may agree in writing to such other terms and conditions (in the Customer Contract called the “Additional Conditions”) as they think fit, which terms and conditions are to be set out in the Order. The Parties agree that the Additional Conditions shall not, without the consent of the Principal, either expressly or by implication, derogate from the terms and conditions set out in this Agreement and to the extent that those Additional Conditions do derogate from those terms and conditions, the Parties agree that those Additional Conditions shall be void and have no effect.

Schedule 1 Agreement Details

Item 1	Request for Tender No 600453.date submitted.....(clause 1.1)
Item 2	Contractor's Name (clause 1.1)
Item 3	Specified Personnel (if any)(clause 7.3):
Item 4	<p>Term: (clause 2.3.1) Commencement Date: 1 August 2006 Expiry Date: 31 July 2009</p> <p>1st Period of extended term (if any): (clause 2.3.2) Commencement Date: 1 August 2009 Expiry Date: 31 July 2010</p> <p>2nd Period of extended term (if any): (clause 2.3.2) Commencement Date: 1 August 2010 Expiry Date: 31 July 2011</p>
Item 5	<p>Broad Form Liability Insurance Policy Amount (clause 6.5)</p> <p>Minimum of:</p> <p>(a) Public Liability Insurance Limit of Indemnity: AUS \$10Million</p> <p>(b) Product Liability Insurance Limit of Indemnity: AUS\$10 Million</p>
Item 6	<p>Codes (clause 6.7.1(b))</p> <ol style="list-style-type: none"> 1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement.
Item 7	Management Fee Rate 1.0% (clause 6.11)
Item 8	Payment Period of Management Fee Monthly (clause 6.11)
Item 9	<p>Sales Information (clause 6.11.6 and 7.1.2)</p> <ol style="list-style-type: none"> 1. The names of the ten largest Customers listed by dollar value invoiced by the Contractor in the relevant Payment Period (6.11.6). 2. Electronic returns showing total units sold, of all items contracted to supply (7.1.2)
Item 10	<p>Expert Determination Amount (clause 13.3.7):</p> <p>\$A: not applicable</p>
Item 11	<p>Security (clause 6.13):</p> <p>Amount: not applicable</p> <p>Form:</p>

Item 12	<p>A. List of approved dealers and distributors (Clause 5.2)</p> <p>B. List of approved sub-contractors (Clause 5.3)</p>
Item 13	<p>Notices to: (clause 14.3)</p> <p>The Contractor's contact name and address:</p> <p>Name:</p> <p>Address:</p> <p>Position:</p> <p>Telephone:</p> <p>Facsimile:</p> <p>The Principal's contact name and address:</p> <p>Name: Chairman, SCCB</p> <p>Address: McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000</p> <p>Telephone: 9372 8818</p> <p>Facsimile: 9372 8803</p>
Item 14	Restrictions on Nominee Purchasers (clause 4.2)
Item 15	<p>Administration Fee (clause 6.11.7 and clause 6.11.8)</p> <p>Hourly rate by number of hours for staff of the Principal involved in administering these clauses.</p> <p>Hourly rate in accordance with applicable award rates.</p> <p>Number of Hours as assessed by the Principal.</p> <p>OR</p> <p>Late Payment of Management Fee (clause 6.11.7 and 6.11.8)</p> <p>Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Principal in accordance with the period specified in clause 6.11.8. Interest of 5% per annum will also be payable on any accrued Late Payment Fees. The Late Payment Fee will be calculated monthly on the minimum monthly balance of Management Fee arrears and accrued Late Payment Fees.</p>

Schedule 2 Specification

Schedule 3 The Tender and documents evidencing agreed variations to the Tender

Schedule 4 Documents notifying the Principal's Acceptance

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Schedule 5 Expert Determination Procedure

1. Questions to be determined by the Expert

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

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

under the Agreement

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

1.1.2 If so:

what is the event, act or omission?

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

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

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

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

2. Submissions

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

2.2 The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 13.3.2 of the Agreement.

2.3 The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.

2.4 The Party referred to in clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.

2.5 The other party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.

- 2.6 The expert must ignore any submission, response, reply, or comment not made within the time given in clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

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

4. Role of Expert

- 4.1 The Expert:
 - 4.1.1 acts as an expert and not as an arbitrator
 - 4.1.2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the Expert's own expertise; and
 - 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 13.3.3 of the Agreement.
 - 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Schedule 6 Statutory Declaration for Sub-Contractors

Schedule 7 Deed of Confidentiality – Not Used

Schedule 8 Undertaking – Not Used

Schedule 9 Outworkers Code Declaration – Not Used

Schedule 10 Contractor Information

Schedule 11 Approved Dealer, Distributor or Sub-Contractor Information

Schedule 12 Schedule of Customers

- (a) In addition to supplying goods/services comprised in a Standing Offer to the Principle and/or Departments or Authorities specifically nominated in the Standing Offer, the suppliers shall also supply, to the organisations and/or persons listed at (b) hereunder, at the Standing Offer rates and upon the terms and conditions contained in the Standing Offer, any or all of the goods/services comprised in the Standing Offer that may be ordered by such organisations and/or persons. The organisations and/or persons listed at (b) hereunder, are to be regarded as Authorities to be supplied, subject to the provisions contained herein.
- (b)
- (i) Any Department, Agency or Office of the Commonwealth including any Statutory Authority constituted under Commonwealth legislation.
 - (ii) Any Department, Agency or Office of any State or Territory of the Commonwealth, including any Statutory Authority constituted under State/Territory legislation.
 - (iii) Any Council of a city, municipality or shire constituted by a State or Territory.
 - (iv) Any other organisation constituted by or subject to an Act of Parliament either Commonwealth or State or by a Regulation thereunder.
 - (v) Any body or association, other than a trading, commercial or industrial firm or corporation, which conducts a service, not being a trade, business or industry followed or carried on for profit, at the request of the Government, in respect of such service.
 - (vi) Any person or company (hereinafter called "the nominee") nominated for the purpose of a particular contract by the Principle or any of the Authorities and/or persons listed in this sub-clause, but only in respect of things done as such a contractor.
 - (vii) Any Authority, person, body, corporation, association or organisation, whether incorporated or not, to which permission has been given by the Minister, or an official delegate of the Minister, to issue orders for goods/services comprised in Standing Offers arranged by the Principle.
- (c)
- (i) For the purposes of sub-clause (b) (iv) and (v) of this clause examples of typical organisations include, but are not limited to:-
 - . Government Schools and Private Schools;
 - . TAFE Colleges and Universities;
 - . Public Hospitals and Area Health Services;
 - . Trustees of Public Parks and Crown Land Reserves;
 - . Boards;
 - . Tribunals;
 - . Commissions;
 - . Registries; and
 - . Government trading enterprises.
 - (ii) For the purposes of sub-clause (b) (vii) Authorities to which permission has been given generally have:-
 - . Charitable or benevolent status.

- . Not-for-profit objective.
- . Level of government subsidy/support.

Examples are:-

- . Pre-Schools/Kindergartens.
- . Child Care Centres (excluding privately owned).
- . Family Day Care Administrations.
- . Nursing Homes (excluding privately owned).
- . Other community based service providers.
- . Student support groups which are established under the auspice of the relevant school or education institution.
- . Arts based groups sponsored by the Ministry for the Arts.

- (d) In all matters relating to the supply of goods ordered by any Authority or nominee referred to in sub-clause (b) of this clause,
- (i) the Supplier shall deal directly with the Authority or nominee placing the order as if such Authority or nominee were the Government and the party to the Standing Offer; and
 - (ii) that Authority or nominee shall alone be responsible to the Supplier for payment for the goods supplied by the Supplier to such Authority or nominee.
- (e) Nothing in this clause shall affect the rights, remedies, powers and authorities of the Government and of the Principle under the Standing Offer.

Schedule 13 Child Protection Code of Behaviour for the Protection of Children and Vulnerable People

Schedule 14

Guide Note: You must review this form for consistency with the Minimum Insurance Requirements we have asked for in clause 6.5. Contract Officers are to replace the reference to "Principal" below with the name of the party named as principal on the contract.

Confirmation of Insurances

Insurance Body:

Insured:

Re: Agreement for the provision of Miscellaneous Medical and Surgical Devices between the Insured and the State Contracts Control Board, NSW

It is confirmed that:

1. The Insured has obtained the following policies (the Insurance Policies)

- (a) Broad Form Liability Expiry __/__/20__
- (b) The public liability component of the Broad Form Liability policy is to the value of \$AUD____(the Limit of Indemnity) in respect of each claim; and
- (c) The products liability component of the Broad Form Liability policy is to the value of \$AUD____for the total aggregate liability for all claims arising out of the Insured's products for the period of cover.
- (d) Professional Indemnity Insurance to the value of \$AUD_____, Expiry __/__/20__
- (e) Other insurances, if required:

Type of insurance

Value

2. The respective rights and interests of the Principal and any sub-contractors of the insured are noted on the Insurance Policy(ies) 1(a), 1(b) and 1(c).

3. The Insurer will accept a notice of claim given by the Insured, the Principal, or any sub-contractor as being a claim given by all of the insured under insurance policies 1(a), 1(b) and 1(c).

Schedule 15

Management Fee Audit Confidential Disclosure Agreement

Effective Date:

Auditor (Company):

This Confidential Disclosure Agreement is entered into by and between the Contractor ("Contractor") ABN _____ and the "Auditor", which has been engaged by the State Contracts Control Board ("Board") to carry out a review of the Contractor's records and systems in connection with the contract referred to in clause 1 below as notified to the Contractor by the Board on [] date] ("the Audit").

The Contractor and the Auditor agree in relation to the confidential information disclosed to the Auditor by the Contractor as follows:

1. **Disclosure of Information.** The Audit relates to the following contract between the Board and the Contractor "**Contract**", and is to be governed by the terms and conditions contained therein:

Name of contract

In accordance with the clause ## of the Contract the Contractor will disclose to the Auditor all information that the Auditor may reasonably require in connection with the following purposes:

"The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Principal by the Contractor and the Contractor agrees to cooperate with the Principal (including any auditor appointed by the Principal) including providing access to information about all sales made to any entity that is eligible to buy Deliverables under this Agreement, copies of all contracts, orders and invoices between the Contractor and any such entity."

2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:

On behalf of the Contractor:

Name:

Title:

The Contractor's address:

Other officer:

On behalf of Auditor:

Name: -----and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.

Title:

Work Address of Auditor's representative above:

3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.
4. **Disclosure Period and Term.** This Agreement controls only Confidential Information which is disclosed between the Effective Date and 3 months thereafter ("Disclosure Period"). The Auditor's duty to protect Confidential Information disclosed under this Agreement expires three (3) years after the end of the Disclosure Period ("the Term").

5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.
6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the information was disclosed and where such persons have a need to know. The Auditor shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorised use, dissemination or publication of the Confidential Information as the Auditor uses to protect its own confidential information of a like nature. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.
7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:
- (a) is or becomes a matter of public knowledge through no fault of the Recipient;
 - (b) is required to be disclosed under operation of law; or
 - (c) is disclosed by the Recipient or the Participant with the Discloser's prior written approval;
 - or
 - (d) is disclosed to a party's legal adviser in connection with the Review or this agreement.
8. **Proprietary Rights.** Neither party to this Agreement acquires any intellectual property rights or any other rights under this Agreement except the limited right to use set out in paragraph 5 above.
9. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements concerning such Confidential Information, whether written or oral. All additions or modifications to this Agreement must be made in writing and must be signed by both parties.
This Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

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

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED by _____)
 _____ For _____)
 and on behalf of the **NEW SOUTH WALES**)
STATE CONTRACTS CONTROL BOARD for)
 and on behalf of the Crown in right of the State
 of New South Wales but not so as to incur any
 personal liability in the presence of:

 Witness

 Signatory

 Print Name

 Print Name

Option 1. Company

Contract officers are no longer required to obtain the Company common seal when dealing with a company. However, you are required to obtain the signatures of one of two combinations:

- 1) the Corporate Secretary and a Director, or
- 2) two Directors

SIGNED by <insert name of company>, ACN _____)
<insert ACN number> in accordance with section _____)
 127 of the Corporations Act and in the presence _____)
 of:

<Director/Secretary>

 Director

 Print Name

 Print Name