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

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

**Request for Tender No. 0601745
Provision of Non-SES Salary Packaging
Administration Services**

**1 January 2007 to 31 December 2009 (with options
to extend for a further two (2) periods of twelve
(12) months)**

Tender Issue Date: Monday 25 September 2006

Closing Date: Wednesday 25 October 2006

Closing Time: 9:30 am Sydney Time

Non-Refundable Hard Copy Document Fee \$110 (includes GST). Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>.

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

Other matters should be directed to:

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

Non-SES Salary Packaging Administration Services

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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.
- 1.2** The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

The NSW Government is seeking offers from an appropriately skilled, experienced and qualified organisation(s) to provide administration of salary packaging services for eligible non-Senior Executive Service Officers on a whole-of-Government basis. These services, referred to as a Salary Packaging Scheme (SPS), are to be provided in accordance with requirements of the Australian Taxation Office and the Government of the State of NSW.

The SPS will afford participants a flexible remuneration system and provide access to benefits through salary sacrificing in accordance with NSW Premier's Department's Policy. The objectives of outsourcing administration of the SPS are to:

- ensure the delivery of a high quality and competitive service for Participants;
- establish a service that is cost effective for Participants, and
- minimise the involvement of agency officers, particularly in respect to the day-to-day administration of the scheme and management of issues that may arise.

The services include, but are not necessarily limited to:

- providing administrative functions for non-cash benefit items which the Government has agreed to provide to its eligible employees under remuneration packaging arrangements detailed within the specification; and
- providing comprehensive information and support in the form of telephone helpdesk facilities; online computer support services; hardcopy information; and face to face sessions on salary packaging issues to employees.

The Government may choose to provide these services through one organisation or a panel arrangement. Successful tenderer(s) must be prepared to provide SPS services to all agencies defined within the specification and across all zones of the State of New South Wales.

Utilisation of salary packaging services is subject to the convenience and discretion of each agency and on a voluntary "if and when required" basis by eligible participants. Agencies may therefore choose not to avail themselves of such services or undertake them in-house.

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 supplied in response to Part B
 Part C2 Statement of compliance with Specification
 Part C3 Price Schedule
 Part C4 Selected Price Schedule (if clause 7.2, Selected Price Schedule is included in this RFT).
 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:

For Contractual Enquiries

Name: Brian Campbell
 Title: Procurement Consultant
 Phone: 0422 448 546
 Fax: (02) 9372 7633
 E-mail: brcconsulting@optusnet.com.au

For Policy

Name: Robyn Parnell
 Title: Senior Policy Officer
 Phone: (02) 9228 4152
 Fax: (02) 9228 3622
 E-mail: robyn.parnell@premiers.nsw.gov.au

Name: Paul Petersen
 Title: Senior Policy Officer
 Phone: (02) 9228 3929
 Fax: (02) 92283622
 E-mail: paul.petersen@premiers.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 Not Used.
- 2.4.3 The Standing Offer agreement will be for a term of three (3) years and may be extended for up to two (2) further term(s), each of twelve (12) months 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, at any time and from time to time.
- 2.5.2 The Board reserves the right to issue a further RFT during the term of the Standing Offer agreement for the additional intake of suppliers for the remaining term of the agreement for the supply of the Deliverables covered by this RFT.

Tenderers will have to meet the same terms and conditions and will be subject to the same evaluation criteria as for this RFT except for the tender issue and closing dates and the agreement period.

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 Not Used.
- 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.
- 2.6.6 Tenderers must read, understand and comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below. Tenderers must disclose any potential conflict of interests (including any relevant relationships) in the Tender Response.

The Board will consider any disclosure and will only enter a deed of agreement with tenderers that do not have improper conflict of interests. If the Board becomes aware of improper conflict of interests by a successful tenderer at the time a deed of agreement has already been executed then the Board reserves the right to terminate the agreement.

<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm#commerce>

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.
- 2.7.3 Other requirements:
 - 2.7.3.1 Tenderers must be prepared to provide the deliverables as a whole of government solution to all eligible employees for all Agencies and not part thereof.
 - 2.7.3.2 Sub-contracting of part of the Requirement is permitted, only where the part to be sub-contracted is deemed appropriate and approved by the Board.
 - 2.7.3.3 Tenderers must be prepared to offer security to the Board in the sum of \$ as a guarantee of due performance of all duties under the Agreement by the Contractor and is required to be lodged within 14 days of entering into an agreement.

The security shall be in the form of cash, Government Bonds or an unconditional undertaking or certificate given by a bank. If in the form of the latter it is to be executed in the form as set out in Schedule 8 to Part D. The Board will not accept security in the form of retention moneys

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 NSW Department of Commerce has adopted an electronic tendering system using the internet, which has the capacity for viewing, downloading, or ordering of the 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 4:30 pm, Mondays to Fridays (except public holidays) to pick up from the 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 4:30 pm, 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 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 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 NSW 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 It is mandatory for tender response 23.7 in Part C to be completed. Failure to complete tender response 23.7 in Part C will result in your tender not being considered.

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 NSW Procurement – Contracting Services.

“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.2.2.1 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.

“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)
- and
- 8) such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

“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.

“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.

“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-SES Employees” means any person other than a person holding a position determined to be a senior executive position.

“NSW Premier’s Department Policy” means the salary packaging policy applying to Non-SES employees in agencies listed in Part 1 Schedule 1 of the Public Sector Employment and Management Act 2002 NSW & any other agencies with employees covered by the Crown Employees (Public sector Salaries 2004) Award and its successors and the Crown Employees Wages Staff (Rates of Pay) Award 2005 and its successors.

“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.

“Participant” means a Non-SES Employee as defined above who elects to participate in the Scheme.

“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 Board. See definition for **Board**.

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

“Public Sector Service” means:

- (a) the Government Service, or
- (b) the Education Teaching Service, or
- (c) the NSW Police, or
- (d) the NSW Health Service, or
- (e) the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly, or
- (f) any other service of the Crown, or

- (g) the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed, or that is of a class prescribed, for the purposes of this definition.

“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.

“SCCB” means State Contracts Control Board. See definition for **Board**.

“Scheme” means Non-SES Salary Packaging Scheme (SPS).

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

“Services” means the services sought under this RFT, as detailed in the Specification at Part B.

“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.

“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 Contracts Control Board” means the Board. See definition for **Board**.

“State Owned Corporation” means a Corporation listed in Schedule 1 or Schedule 5 of the State Owned Corporation Act 1989.

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

“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 Non-Conforming Tenders that do not include a fully completed Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or, in the case of electronic tenders, which cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.
- 5.1.3 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.

5.4 Addenda to this RFT before close of Tenders

- 5.4.1 A tenderer may ask the Contact Officer for clarification of anything in the RFT before the Closing Date and Time. The Board may issue any instruction resulting from such request in writing to all tenderers in the form of an Addendum.
- 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 Tender briefing

- 5.5.1 A tender briefing will be held at 11AM at the Department of Commerce, 2-24 Rawson Place, Sydney, on Tuesday 3 October 2006.

5.6 Not Used**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.

6. Preparation of Tender – Policy**6.1 Procurement Policy – introduction**

- 6.1.1 Tenderers should read the main policy document 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 Not Used.

6.4 Not Used.

6.5 Not Used.

6.6 Not Used.

6.7 Development of long-term, strategic alliances

6.7.1 It is NSW Government policy to promote long-term strategic alliances between local Contractors and Contractors that operate internationally, for the purpose of developing internationally competitive local industry activities. Tenderers are required in Part C1 to provide information regarding any strategic alliance with international companies. The evaluation will favour strategic alliances, and alliances that are underpinned contractually.

6.8 Not Used.

6.9 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

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 and proposed new investment activities

- 6.12.1 Investment and new investment, in improved industrial and commercial plant and equipment, where cost justified, has a positive influence on the State's capacity to improve its standard of living. Some industry sectors have a strategic significance for the growth and development of NSW. If industry development will result from the Standing Offer agreement, tenderers are asked in Part C1 to provide certain details regarding proposed investment, flow on benefits and impact of the industry sector. The evaluation will favour tenderers that are committed to industry development activities and investment.

6.13 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. The evaluation will favour Tenders that demonstrate a commitment to the development of the workforce.

6.15 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.

6.17 Environmental Management

- 6.17.1 The NSW Government seeks to promote ecologically sustainable development through procurement. The Tenderer is required in Part C1 to highlight how the provision of the Deliverables would promote this object if its Tender is accepted.

6.18 Competitive Neutrality

- 6.18.1 The objective of NSW Government Policy on the application of competitive neutrality is to ensure that Government Businesses, whether they are Commonwealth, State or Local, do not have any net advantage over their competitors as a result of their public sector ownership. It requires that comparisons between public and private sector bids be made on a similar basis. It means, amongst other things, that in-house bids should reflect adjustments that offset the effects of taxation exemptions, where it is feasible to do so, and be accurately costed.
- 6.18.2 A tenderer who is either a Government agency (including an organisational unit of such an agency) or a Government Trading Enterprise will be required to adhere to the NSW Government Policy Statement on the Application of Competitive Neutrality, January 2002, where applicable.
- 6.18.3 You may access this policy statement at www.cabinet.nsw.gov.au/publics.html. Hard copies are available from the Cabinet Office at Level 37, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000.
- 6.18.4 The principal or other appropriate senior officer of a tenderer who constitutes either a Government agency or a Government Trading Enterprise is required to affirm, in Part C1, that the tenderer does or does not comply with this policy.

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 has placed a heavy focus on the use of electronic procurement to move significant volumes of NSW Government purchasing through 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®.
- 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. The tenderer is required to review and sign the smartbuy® Supplier Agreement and participation Rules. A copy of these documents can be requested by contacting the smartbuy® Helpdesk on 1800 003 985 or smartbuy-infocentre@commerce.nsw.gov.au
- 6.19.7 The second step is for the nominated smartbuy® Supplier Administrator to attend 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 the 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 be able to view and purchase.

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 specified electronic format; the format will be provided to successful Tenderers at the time of notification of acceptance of their tender response; or
 - c) if applicable, 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 the 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 the 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 through smartbuy® 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® CONNECT Trading Channels

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

Transmission Type	Document Type	Trading Channel
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
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

- 6.20.1 In all cases the Deliverables tendered must comply with the relevant policies, including NSW Premier's Department Salary Packaging Policy (located at schedule 1 (a) to the specification), circulars, memoranda, guidelines and other instructions governing operation of such services required. Visit the following site for information:- <http://www.premiers.nsw.gov.au>.

6.21 Compliance with relevant legislation and standards

- 6.21.1 Tenderers must comply with relevant taxation legislation including Fringe Benefits Tax Assessment Act 1986 as amended & the Goods and Services Tax Act 1999 as amended. Visit the following site for information:- <http://www.ato.gov.au>.
- 6.21.2 Tenderers must comply with the Commonwealth's Privacy Act and ensure, so far as practicable for the Tenderer, that the Principal and any Customer comply with the Privacy and Personal Information Protection Act 1998 (NSW).
- 6.21.3 In all cases the Deliverables tendered must comply with the relevant Act, codes and other regulations governing operation of such services required.

6.22 Other Board Requirements

6.22.1 Marketing

- 6.22.1.1 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.
- 6.22.1.2 The Board will similarly promote the Standing Offer agreement in publications where possible.

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 the following information in respect of each Deliverable:

- (a) Deliverable's name/description
- (b) Tender Price exclusive of GST
- (c) Tender Price inclusive of GST
- (d) GST component (to be expressed as a percentage)
- (e) Total Price (GST inclusive)

7.2 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;
- (c) include costs of delivery as specified in cl.7.3.2 of this Part;
- (d) ~~include costs of packaging as specified in clause 7.3.3 of this Part;~~
- (e) take account of the Management Fee (see clause 6.11 of Part D), which is not to be shown as a separate charge;
- (f) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- (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 The Tender Price must be inclusive of costs of delivery in accordance with any requirements stated in the Specification.

7.3.3 Not Used.

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 The Tender Price shall remain Firm for the **entire duration** of any resultant agreement.
- 7.4.4 In the event that options to extend the agreement are exercised by the Principal, the Tender Prices shall, unless the parties otherwise agree in writing, be subject to adjustment by reference to the proportion of any increase in the Consumer Price Index (All Groups) Sydney, last published at the date of extension as compared to the corresponding figure last published prior to the date of the Agreement.
- 7.4.5 Not used.

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 applies, are incorporated in the Tender Price.)

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 six (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:
 - (1) It must be marked:
Tender Box
NSW Department of Commerce
Level 3, McKell Building
2-24 Rawson Place
Sydney NSW 2000

- (2) 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
NSW 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 NSW Department of Commerce *eTendering* website or by facsimile, the following must be considered:

- (a) The facsimile machine and NSW Department of Commerce *eTendering* website are at peak use on the morning when Tenders close.
- 1) Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
 - 2) When lodging by facsimile or through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
 - 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce *eTendering* website is appropriate.
- (b) The facsimile machine and the NSW Department of Commerce *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to 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 0710/6036."

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 NSW Department of Commerce Tender Box will be deemed as the definitive submission.

8.1.5 If required, 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 NSW Department of Commerce *eTendering* website

- 8.2.1 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the NSW 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 NSW 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 NSW 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.

8.2.5 Signatures are not required for a Tender submitted to the NSW 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 NSW 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 NSW 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 NSW 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 NSW 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 NSW Department of Commerce *eTendering* website, Tenders are encrypted and stored in a secure "electronic tender box."

- (b) For reasons of probity and security, NSW 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 lodgement provided.

8.4 Late Tenders

- 8.4.1 In accordance with the requirements of the [NSW Government 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 The selection criteria for this RFT that do not relate to price will account for (65)% of the total evaluation score. The selection criteria for this RFT that relate to price will account for (35)% of the total evaluation score.
- 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) Demonstrated experience and successful track record in delivering the performance of similar services in Government and/or Industry.
- (b) Pricing
- (c) Tenderer's service delivery proposal, capacity to satisfy customer service requirements, including insurance arrangements in place to protect against loss resulting from actions of Provider, and maintain sound working relationships with financiers and other associated parties.

- (d) Availability, capacity, qualifications, skills and experience of the Tenderer's Specified Personnel and any proposed sub-contractors.
- (e) Tenderers' Infrastructure Support and Management Information Systems that will support the requirements of this RFT.
- (f) Tenderer's compliance with mandatory requirements of the specification, including, but not limited to:
 - essential requirements for customer service, taxation, banking, accounting and reporting,
 - business rules including compliance with performance indicators
 - applicable legislation and policies
 - ability to commence operations on 1 January 2007
- (g) Financial capacity to perform the Agreement.
- (h) Tenderer's standard of performance determined by referees' reports (this may include consideration of tenderer's presentations and site visits where required)

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 Not Used.

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 on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 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 Agreement, 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,
 - (d) not complied with the requirements of Commerce Business Ethics Statement.

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 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;
 - (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

<http://www.ogp.commerce.nsw.gov.au/NR/rdonlyres/eucuz2722gdb54776cyhkw7ntoj4cpiw5iga5ztwvtvjethi2xujwd4zrgsfte4cye7lgoqtlf4wxywdioutedaph/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.

ANNEXURE 1 TO PART B SPECIFICATION



0601745-Specification.Ink

Please see separate document 0601745 Specification doc.



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

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

TENDER RESPONSE

**Contract 0601745 - Provision of Non-SES
Salary Packaging Administration Services**

**1 January 2007 to 31 December 2009 (with
options to extend for a further two (2) periods
of twelve (12) months)**

Your Company's Legal Name: <Insert Company name>

Your Company's Trading Name: <Insert Trading name>

Your Company's ABN number: <Insert ABN number>

Contact Name: <Insert name of Contract Administration Officer>

Contact Phone: <insert telephone no>

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

Non-SES Salary Packaging Administration Services

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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. Demonstrated experience and successful track record in delivering similar services in Government and/or Industry.

12.1 Previous contract experience

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

<type or write your answer below>

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

12.2 Previous experience in provision of Deliverables

Question 12.2.1

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) is desirable. State the number of years in business providing these goods and/or services.

Answer 12.2.1

<type or write your answer here>

12.3 Previous experience servicing large organisations

Question 12.3.1

Do you have previous experience in the provision of salary packaging services to large and complex organisations? If so, provide details, including the number of large and complex organisations you are currently servicing, with full details of a senior management contact.

Answer 12.3.1

<type or write your answer here>

Yes/No

12.4 Years providing full range of salary packaging services

Question 12.4.1

What salary packaging services do you provide and for how long have you provided these?

Answer 12.4.1

<type or write your answer here>

Yes/No

12.5 Number of salary packaging participants

Question 12.5.1

Provide details of the number of participants in any of your existing or recent salary packaging arrangements, advise the name of the employers and indicate those which the evaluation team cannot contact with respect to your services.

Answer 12.5.1

<type or write your answer here>

12.6 Previous performance of Standing Offer agreements

Question 12.6.1

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

Answer 12.6.1

<type or write your answer here>

12.7 Years in business

Question 12.7.1

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

Answer 12.7.1

<type or write your answer here>

12.8 Record of ethical behaviour in service delivery

Question 12.8.1

Describe how ethical behaviour in service delivery has been maintained in your past and current operations and how you intend to ensure its continuation in future service provision, if awarded an agreement.

Answer 12.8.1

<type or write your answer here>

13 Pricing and related factors**13.1 Price Schedule**

Question 13.1.1.

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

13.2 Not used

13.3 Price basis

In accordance with cl.7.4 of Part B, the Tender Price shall remain Firm for the entire duration of any resultant agreement. In the event that options to extend the agreement are exercised by the Principal, the Tender Prices shall, unless the parties otherwise agree in writing, be subject to adjustment by reference to the proportion of any increase in the Consumer Price Index (All Groups) Sydney, last published at the date of extension as compared to the corresponding figure last published prior to the date of the Agreement.

Question 13.3.1

Do you comply with this requirement?

Answer 13.3.1 Yes/No

If "No", give reasons.

13.4 Settlement discounts (if applicable)

The Tender Prices are subject to a settlement discount of:-

- 13.4(a) for payment within 14 days from the date of receipt of invoice.
- 13.4(b) for payment made during the month following that in which the invoice has been rendered.
- 13.4(c) for payment within days from the date of receipt of invoice.

13.5 Other discounts**13.5.1 Sole-Contractor discount****Question 13.5.1**

While the objective of the tender is to appoint a panel of providers, if ultimately a single provider is selected, indicate below whether you are willing to offer a sole-Contractor discount if awarded the entire agreement.

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 Volume Discounts

Question 13.5.2

Indicate below whether you are willing to offer Volume Discounts for any particular volume of customer trade. This might be based on, for example, number of participants or dollar value of business over a threshold value or nominated time period.

Answer 13.5.2

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 or use an alternative matrix as appropriate>

<Type%>	per	<Type Breakpoint>	Per Order
<Type %>	per	<Type Breakpoint>	Per Order

<type or write your answer here, if applicable>

14. Tenderer’s service delivery proposal, capacity to satisfy customer service requirements, including insurance arrangements in place to protect against loss resulting from actions of Provider, and maintain sound working relationships with financiers and other associated parties

14.1 Service Delivery Proposal

Question 14.1.1

Give a detailed account of how you intend to provide the deliverables to all eligible participants and agencies across the state of New South Wales if awarded an agreement.

Answer 14.1.1

<type or write your answer here>

Question 14.1.2

What measures do you intend to take to give the Board assurance that all agencies and geographical areas of the state will be properly serviced in accordance with the specification?

Answer 14.1.2

<type or write your answer here>

14.2 Customer Service

Question 14.2.1

Does your organisation have a customer/client commitment policy, charter or set of principles?

Answer 14.2.1 Yes/No

< If yes, give details or attach a copy >

Question 14.2.2

Describe the systems and support available to your front line customer service staff.

Answer 14.2.2

<type or write your answer here>

Question 14.2.3

How will the Tenderer meet cyclical demands and provide non-business hours customer service? In answering this question, you should outline the arrangements your organisation has for recruiting additional short-term, experienced resources to meet peak work needs.

Answer 14.2.3

<type or write your answer here>

Question 14.2.4

What client service ethics and on-going training and development of staff in customer service does the Tenderer have in place?

Answer 14.2.4

<type or write your answer here>

Question 14.2.5

Does your organisation undertake client satisfaction surveys, either corporately or at a project level, to ascertain the degree of client satisfaction with your services?

Answer 14.2.5 Yes/No

If yes, give details.

Question 14.2.6

If client satisfaction surveys are undertaken, please indicate what actions are taken in response to any negative feedback from clients.

Answer 14.2.6
<type or write your answer here>

Question 14.2.7

Will your organisation appoint a dedicated Customer/Client Service Manager to the NSW Government business, if awarded an Agreement?

Answer 14.2.7 Yes/No

If yes, provide name, title, location and contact details.

Name: _____

Title: _____

Reports to: _____

Location: _____

Phone: _____ Mobile: _____

Fax: _____

e-mail: _____

Question 14.2.8

What specific customer/client service activities, initiatives or programs do you propose to undertake if awarded an Agreement?

Answer 14.2.8

<type or write your answer here>

Question 14.2.9

Provide details of your capacity to provide the full range of services and benefits to the existing number of Participants (approximately 2000) and potential for future growth in the number of Participants.

Answer 14.2.9

<type or write your answer here>

14.3 Participants' Insurance Coverage

Question 14.3.1

Explain what protection and compensation arrangements are in place through insurance or service commitments that would be available to participants in the case of administrative or systemic error. Include details of any limits and exclusions which may apply under any insurance policy.

Answer 14.3.1

<type or write your answer here>

14.4 Arrangements with business partners

Question 14.4.1

What arrangements do you have in place to manage the performance of your business partners?

Answer 14.4.1

<type or write your answer here>

15. Availability, capacity, qualifications, skills and experience of the Tenderer's Specified Personnel and any proposed sub-contractors

15.1 Tenderer's Personnel

Question 15.1.1

Provide a dissection of your current personnel into either a full time or part time basis according to the most appropriate employment category as shown in the following *Employee Distribution* table.

Answer 15.1.1

<type or write your answer here>

Employee Distribution

	Management	Professional	Clerical	Data Entry	Call Centre	Total
Full-time						
Part-time						

Question 15.1.2

What proportion of the above personnel will provide direct and dedicated services to customers if awarded an agreement?

Answer 15.1.2

<type or write your answer here>

Question 15.1.3

Provide details in the *Proposed Contract Personnel & Experience* table below of qualifications, skills and experience of key personnel to be involved in the operation of the proposed Standing Offer agreement.

Answer 15.1.3

<type or write your answer here>

Proposed Contract Personnel & Experience

Name	Position in Organisation	Experience (Years)	Qualifications/Skills	Proposed Role/Designated Position	Availability	Comment

15.2 Tenderer's Proposed Sub-Contractors

Question 15.2.1

Is any part of the Deliverables to be offered through a sub-contractor?

Answer 15.2.1

Yes/No

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

Sub-contractor	
If a company, Company Name	
If a partnership, Partnership Name	
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	

15.3 Suitability of Proposed Sub-Contractors

Question 15.3.1

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

Answer to 15.3.1

<type or write your answer here>

Question 15.3.2

Sub-contractors are required to provide a letter of commitment to the Board that:

- (a) they are aware of the content of cl. 5.2 (Supply through dealers or distributors and sub-contractors) of the Agreement and the standard terms and conditions of the Customer Contract, and
- (b) they will offer to sub-contract on terms that are consistent with the Customer Contract and that otherwise enable Contractors to comply with clause 5.2 of the Agreement.

Do you agree to attach to the completed Part C (or, if tendering electronically, to submit as a pre-condition of acceptance of your Tender) a letter of commitment from sub-contractors, and provide a letter of commitment from any sub-contractor approved during the term of the Agreement?

Answer 15.3.2

<type or write your answer here>

16. Tenderer's Infrastructure Support and Management Information Systems that will support the requirements of this RFT

16.1 General

Question 16.1.1

Provide details here of your available systems, including electronic and Internet web based systems in place for the marketing, communication, accounting, financial, reporting, security, quality assurance and business continuity plans.

Answer 16.1.1

<type or write your answer here>

Question 16.1.2

Provide details about the stability of your information systems, including the amount of downtime experienced in the last 12 months. Provide reasons for any downtime you experienced, including the impact of external exigencies.

Answer 16.1.2

<type or write your answer here>

Question 16.1.3

Demonstrate here, or by way of attachment, how your existing IT and operational support systems can support the requirements of the specification.

Answer 16.1.3

<type or write your answer here>

Question 16.1.4

Explain how the management information reporting system will cater for the large and diverse structure of the NSW Government so that management information reports can be presented with varying levels of hierarchy and detail.

Answer 16.1.4

<type or write your answer here>

Question 16.1.5

Describe how you will provide archived data to the Principal at the end of the agreement term.

Answer 16.1.5

<type or write your answer here>

16.2 Help Desk Access

Question 16.2.1

If you have a toll-free help desk number specify the geographical area covered, the number(s) and help desk hours

Answer 16.2.1

<type or write your answer here>

Question 16.2.2

Specify any non toll-free help desk number(s), corresponding toll charges, and help desk hours

Answer 16.2.2

<type or write your answer here>

Question 16.2.3

Describe the on-line help that is available, the lodgement process and response times following the lodgement of a request for assistance/help. Answers should relate to the service guarantee or service charter with respect to action, enquiries and assistance, and to the complaints process outlined in Schedule 5 to the specifications.

Answer 16.2.3

<type or write your answer here>

16.3 Security Arrangements

Question 16.3.1

Provide details of your security arrangements for your operations site, screening of your personnel, access to information systems, back-up and recovery of databases, business continuity plans, including disaster recovery plans and the methods you employ to secure your website and information systems that will contain personal information of participants.

Answer 16.3.1

<type or write your answer here>

Question 16.3.2

Will you guarantee and continue to guarantee the security of Participants funds if awarded an agreement?

Answer 16.3.2 Yes/No

If Yes, detail here the nature of any such guarantee and the form it will take.

<type or write your answer here>

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

Question 16.4.1

State here any other details you may wish to add. Please also address your capacity to perform the Standing Offer Agreement in the context of the current commitments of your organisation. (Note that details of previous performance of similar agreements are sought in cl.12 and should not be referred to here.)

Answer 16.4.1

<type or write your answer here>

17. Tenderer's compliance with policy.

17.1 NSW Government Code of Practice for Procurement

Question 17.1.1

Have you have read the [NSW Government Code of Practice 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 Development of long-term, strategic alliances

Question 17.2.1

Give details below of any strategic alliance with international companies. Information should include:

- (a) Trading and legal entity. Details of proposed partner organisation.
- (b) Management of partnerships and alliances. Details of proposed term, nature and structure of the alliances.

Answer 17.2.1

<type or write your answer here>

17.3 SME involvement

Question 17.3.1

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 17.3.1

<type or write your answer here>

17.4 Regional Development

Question 17.4.1

Provide information below on:

- (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
 - investment, and
 - the expected impact on existing and future R&D programs and innovation.

Answer 17.4.1

<type or write your answer here>

17.5 Existing industry development activity and proposed new investment

Question 17.5.1

If industry development will result from the Standing Offer agreement, indicate below:

- (a) the level and range of activities that will be affecting the industry sector
- (b) any indirect benefits which may flow to other industries, and
- (c) the nature and scale of any proposed new investments that may arise as a result of a Standing Offer agreement being awarded.

Answer 17.5.1

<type or write your answer here>

17.6 Workforce Development

Question 17.6.1

State below how you will provide opportunities for:

- (a) Disadvantaged groups in the economy, particularly regionally based groups
- (b) The use of new technology
- (c) Developing specialised skills

Provide details also of:

- (a) The quantum, remuneration and skill levels associated with any direct increase in employment arising from the Tender;
- (b) Your commitment to the training and development of staff, including apprentices and trainees, and
- (c) Your ability to develop jobs and investment in NSW.

Answer 17.6.1

<type or write your answer here>

17.7 Occupational Health, Safety & Rehabilitation

Question 17.7.1

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

Answer 17.7.1

<type or write your answer here>

Yes/No

Question 17.7.2

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 17.7.2

<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>

17.8 Environmental Management

Question 17.8.1

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

at: <http://www.dpws.nsw.gov.au/NR/rdonlyres/e7ff4llc5oil5l3lby2awxyfmwxonkmwd7imp6lenbg6hjwszcan3kf5cw2rs3ihuo26p4h5eae6fov5eivxo2b/Environmental+management.pdf>

Answer 17.8.1

<type or write your answer here>

17.9 Competitive Neutrality

Question 17.9.1

As a public sector tenderer, do you comply with the policy that Government agencies should not have a net advantage over their competitors as a result of their public ownership?

Yes/No

If **"No"**, provide details

Answer 17.9.1

<type or write your answer here>

17.10 Electronic Commerce (Smartbuy®)

Question 17.10.1

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 requested by contacting the smartbuy® Helpdesk on 1800 003 985 or smartbuy-infocentre@commerce.nsw.gov.au

<type or write your answer here>

Question 17.10.2

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 17.10.3

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 17.10.4

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 17.10.5

smartbuy® can facilitate consolidated electronic invoice (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 functionality.

<type or write your answer here>

Question 17.10.6

If you become a successful tenderer, you will be required to provide catalogue content information in 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 ability to meet this catalogue content preparation requirement.

<type or write your answer here>

Question 17.10.7

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>

17.11 Other relevant policies

Question 17.11.1

In providing the Deliverables, will you maintain ongoing compliance with all relevant policies, including NSW Premier's Department Salary Packaging Policy, circulars, memoranda, guidelines and other instructions (as amended from time to time) governing operation of such services.

Yes/No

If **"No"**, provide details of all non-compliances.

Answer 17.11.1

<type or write your answer here>

18. Financial Capacity to perform the Agreement

Question 18.1

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

Answer 18.1

<type or write your answer here>

Question 18.2

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 18.2

Yes/No

If “No”, comment below:

<type or write your answer here>

19. Tenderer’s standard of performance determined by referees’ reports

Question 19.1.1

Tenderers are to provide details required below for persons willing to act as referees.

Answer 19.1.1

<type or write your answer here>

Referee No 1

Name: _____

Position: _____

Company: _____

No. of Years tenderer has provided service to Referee: _____ years

Telephone No: _____

Fax No: _____

Email Address: _____

Referee No 2

Name: _____

Position: _____

Company: _____

No. of Years tenderer has provided service to Referee: _____ years

Telephone No: _____

Fax No: _____

Email Address: _____

Referee No 3

Name: _____

Position: _____

Company: _____

No. of Years tenderer has provided service to Referee: _____ years

Telephone No: _____

Fax No: _____

Email Address: _____

NOTE: The Board reserves the right to contact without notification any referee nominated by the tenderer in order to ascertain the quality of performance and standard of service of the tenderer. The Board also reserves the right to consult with any of the Tenderer's State Government customers.

20. Compliance with proposed agreement

Question 20.1

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

Answer 20.1

Yes/No

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

<type or write your answer here>

Question 20.2

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

Answer 20.2

Yes/No

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

<type or write your answer here>

Question 20.3

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

Answer 20.3

<type or write your answer here>

20.4 Performance Indicators

Question 20.4.1

Describe your organisation’s capacity to meet the performance standards documented in the specification.

Answer 20.4.1

<type or write your answer here>

Question 20.4.2

Describe how you would manage the reporting of achievement of actual service levels against performance standards for individual NSW Government customers as well as for the Agreement as a whole.

Answer 20.4.2

<type or write your answer here>

Question 20.4.3

Detail how you would propose to conduct periodical review meetings to monitor key performance indicators.

Answer 20.4.3

<type or write your answer here>

Question 20.4.4

Explain how unsatisfactory performance will be pro-actively identified, addressed and monitored by the Tenderer.

Answer 20.4.4

<type or write your answer here>

20.5 Ability to commence operations by 1 January 2007**Question 20.5.1**

Is the Tenderer able to commence providing salary packaging services in accordance with the specification by 1 January 2007, if awarded an Agreement?

Answer 20.5.1 **Yes/No**

<If **No**, provide reasons here and indicate the earliest possible commencement date>

Question 20.5.2

Provide details of your current client commitments and your capacity to absorb this account and meet the service delivery requirements detailed in the Specification.

Answer 20.5.2 Yes/No

<If No, provide reasons here and indicate the earliest possible commencement date>

Question 20.5.3

Are you able to identify a dedicated implementation project manager if awarded the agreement? If so, outline their experience and qualifications in the implementation of similar accounts.

Answer 20.5.3 Yes/No

<type or write your answer here>

Question 20.5.4

Are you able to provide an organisation chart showing the implementation manager and other key personnel that would interact with the NSW Government on an initial and ongoing basis?

Answer 20.5.4 Yes/No

<type or write your answer here>

Question 20.5.5

Provide details below, or as a separate attachment, of your organisation's proposed contract implementation plan in the event that you are awarded an agreement. The contract implementation plan should include, amongst other things, the resources (both human and physical), actions and other arrangements (such as risk identification & mitigation, accounts, invoicing, reporting, customer relationship management, timeframes etc) required to establish all things necessary for the Contractor's proper operation and conduct of the agreement including the provision of the Deliverables.

Answer 20.5.5

<type or write your answer here>

21. Compliance with relevant legislation and standards

Question 21.1

In providing the Deliverables, will you maintain ongoing compliance with relevant taxation legislation including Fringe Benefits Tax Assessment Act 1986 & the Goods and Services Tax Act 1999 as amended from time to time.

Yes/No

If "**No**", provide details of all non-compliances.

Answer 21.1

<type or write your answer here>

Question 21.2

In providing the Deliverables, will you maintain ongoing compliance with the Privacy and Personal Information Protection Act 1998 (NSW) as amended from time to time.

Yes/No

If **"No"**, provide details of all non-compliances.

Answer 21.2

<type or write your answer here>

Question 21.3

In providing the Deliverables, will you in all cases maintain ongoing compliance with the relevant Act, codes and other regulations governing operation of such services required.

Yes/No

If **"No"**, provide details of all non-compliances.

Answer 21.3

<type or write your answer here>

22. Compliance with other Board requirements

22.1 Marketing

Question 22.1.1

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 22.1.1

<type or write your answer here>

Question 22.1.2

Provide any other relevant information below

Answer 22.1.2

<type or write your answer here>

23. Other information required

23.1 Details of ownership

Question 23.1.1

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 23.1.1

<type or write your answer here>

Question 23.1.2

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

Answer 23.1.2

<type or write your answer here>

23.2 Contracting as agent/trustee

Question 23.2.1

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 23.2.1

<type or write your answer here>

Question 23.2.2

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 23.2.2

<type or write your answer here>

23.3 Current Legal Proceedings

Question 23.3.1

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 23.3.1

<type or write your answer here>

23.4 Not Used

23.5 Not Used

23.6 Not Used

23.7 Addenda to this RFT after issue

Question 23.7.1

Are you aware of any Addenda issued by the Board to this RFT after the issue of this RFT?

Answer 23.7.1

Yes/No

Question 23.7.2

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

Answer 23.7.2

<type or write your answer here>

Question 23.7.3

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

Answer 23.7.3

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.

23.8 Further information

Question 23.8.1

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

Answer 23.8.1

<type or write your answer here>

23.9 Tender validity period

Question 23.9.1

Indicate below the period for which your Tender will remain valid for acceptance from the deadline for lodgement of tenders.

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

Answer 23.9.1

23.10 Not Used**23.11 Supply of Australian Business Number**

Question 23.11.1

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 23.11.1

23.12 Conflict of Interests

Question 23.12.1

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

Answer 23.12.1

Yes/No

Question 23.12.2

If the answer is “Yes, disclose conflict of interest

24. Tenderer Identification Details

Question 24.1

Type or write your identification details as required below.

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

PART C2 Statement of Compliance with Specification

Question 25

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 25

<type or write your answer here>

PART C3 Price Schedule

Price Schedule 1

Tenderers shall insert the monthly administrative fee that will be charged for the following range of salary packaging services listed in schedule below.

Item No.	Description	Price Tendered GST Exclusive	GST Component	Total Price Tendered GST inclusive
1.	One benefit only that does not attract FBT excluding motor vehicles	\$ _____ per participant per month	\$ _____ per participant per month	\$ _____ per participant per month
2.	Two or more benefits only that do not attract FBT excluding motor vehicles leasing	\$ _____ per participant per month	\$ _____ per participant per month	\$ _____ per participant per month
3.	A motor vehicle lease only	\$ _____ per participant per month	\$ _____ per participant per month	\$ _____ per participant per month
4.	A motor vehicle lease and any other benefit	\$ _____ per participant per month	\$ _____ per participant per month	\$ _____ per participant per month
5.	One or more benefits that attract FBT and any other benefits that do not incur FBT	\$ _____ per participant per month	\$ _____ per participant per month	\$ _____ per participant per month
6.	One or more benefits that attract FBT	\$ _____ per participant per month	\$ _____ per participant per month	\$ _____ per participant per month
7.	Package Amendment Fee	\$ _____ per occurrence	\$ _____ per occurrence	\$ _____ per occurrence
8.	Re-establishment Fee	\$ _____ per occurrence	\$ _____ per occurrence	\$ _____ per occurrence

The Tenderer hereby confirms that the prices set out in the above schedule represent the full tender price for its monthly administrative fee and covers all services required under the proposed contract.

Yes/No

If “No” provide reasons.

Price Schedule 2

The Board also requires tenderers to provide quotations for the monthly cost of providing a fully maintained motor vehicle (novated) lease for the range of new vehicles detailed in the following schedule.

Quotations should include cost of comprehensive insurance, registration or compulsory third party insurance, the cost of FBT and the administrative fee, fuel purchases (by multi-branded cards), repairs, maintenance and servicing by card, purchase of replacement tyres and roadside assistance.

For comparison purposes the vehicles are considered to have standard equipment, automatic transmission and metallic paint and be plated June 2006.

Quotations effective September 2006 should be provided on the basis that the vehicles are:

- Leased for 36 months
- Have a residual value of 46.88%, and
- Travel 15,000 kilometres per annum.

Vehicle Description	Monthly costs
Holden Commodore Omega Sedan	
Fords Falcon XT Sedan	
Holden Astra CD 5 Door Sedan	
Subaru Forester 2.5 X	
Toyota Camry Altise 4 cyl.	
Toyota Corolla Ascent	

PART C4 Not Used

Part C5 Acknowledgment And Confirmation Of Tender

Note to tenderers: If submitting a hard copy Tender, execute cl. 26.4. If submitting an electronic Tender, only complete cl. 26.5.

26.1 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.

26.2 Not used.

26.3 Not used.

26.4

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 24)

or

Signature of authorised officer of tenderer (as identified in clause 24)

or

Signature of partner completing tender on behalf of partnership (as identified in clause 24)

Question 26.5

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, 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

Print Name and Title



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

Dated: <Insert Date>

NSW STATE CONTRACTS CONTROL BOARD

and

<Insert Contractor name>

DEED OF AGREEMENT FOR

Non-SES Salary Packaging Administration Services

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 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

“Confidential Information” means, Information including any documents or correspondence provided by the Principal or any Customer to the Contractor that:

- (a) is by its nature confidential;
- (b) is designated by the Principal as confidential; or

- (c) the Contractor knows or ought to know is confidential;
and includes:
- (d) the Contract Material;
- (e) The Principal's Material including but not in any way limited to the financial information, the corporate information and the commercial information of the Principal or any Customer;
- (f) any material which relates to the affairs of a third party;

"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.

“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)
 and
 - 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.

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

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

“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).

“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 in the form specified by the Principal in its discretion, as set out in item 11 of Schedule 1. For example, the security may take the form of the undertaking in Schedule 8.

“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 NSW Procurement – Contracting Services.

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

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

“Substantial Breach” means:

- (a) in the case of this Agreement, 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 7.3 (Specified Personnel),
 - (viii) clause 8 (Confidentiality),
 - (ix) clause 9 (Copyright and Intellectual Property); and
 - (x) 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 under this Agreement or alteration of any clause of this Agreement will be valid unless in writing and signed by both Parties.
- 2.1.3 The Parties agree that the Principal has made this Agreement for the benefit of Customers and 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.

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 NSW Procurement – Contracting Services 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 NSW Procurement – Contracting Services 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 Not Used.

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.

3.5 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 Contract 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 Not Used.

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 without 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 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.

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 Not used

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.

5.4 Electronic Orders

- 5.4.1 The contractor must accept Orders placed by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000.

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 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 to the value of at least the amount specified in item 5(a) of Schedule 1 in respect of each claim,
- (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- (c) crime liability insurance to the value of at least \$5M, and
- (d) professional indemnity insurance to the value of the amount specified in item 5(b) 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 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.
- (e) 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.

6.7.2 Occupational Health Safety & Rehabilitation

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.

6.7.2.3 6.7.2.2 Not used

6.7.3 Not used.

6.8 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 (a) The Contractor must pay to the Principal a Management Fee in accordance with this clause.
- (b) 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 Eligible Customers do purchase all Deliverables under this Agreement. The Contractor agrees that the Principal may treat all purchases of Deliverables by Eligible 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 Eligible 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 (a) 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.
- (b) In the event that the Contractor does not complete the Report within 30 days:
- (i) 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 (which would likely include the number of hours multiplied by the hourly rate for Staff of the Principal), and
 - (ii) Will be liable for interest in accordance with item 15 of Schedule 1 Agreement Details, on the amount which (had this clause been complied with) would have been invoiced to the Contractor under clause 6.11.8, calculated from 60 days after the expiry of the relevant Payment Period.
- 6.11.8 (a) The Principal shall then compile a tax invoice based on the Sales Report and forward that invoice to the Contractor.

- (b) The Contractor shall then forward payment to the Principal within sixty days of the conclusion of the Payment Period.
 - (c) In the event that the Contractor does not provide payment within sixty days:
 - (i) 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 (which would likely include the number of hours multiplied by the hourly rate for Staff of the Principal; and
 - (ii) Will be liable for interest in accordance with item 15 of Schedule 1 Agreement Details, on the invoiced amount, calculated from 60 days after the expiry of the relevant Payment Period.
- 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 (a) 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).

- (b) 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) will be liable for interest in accordance with item 15 of Schedule 1 Agreement Details, on the additional amount calculated from 60 days after the expiry of the relevant Payment Period, and
- (c) 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 (Smartbuy® TM)

- 6.16.1 To participate in smartbuy® the Contractor must, within 28 days after the commencement of this Agreement:
 - a) enter into the smartbuy® Supplier's Agreement appearing on smartbuy®;
 - b) submit a Participant Profile as defined in smartbuy®.

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 NSW 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 NSW 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.

7. Performance Monitoring and Exchange of Information

7.1 Monitoring of Performance

- 7.1.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement (including Customer Contracts) by the Contractor on the basis of the criteria listed in “*Schedule 4 Performance Indicators*” of the Specification located at Schedule 2 of this Agreement, or otherwise as agreed by the Parties:
- 7.1.2 In addition to the performance monitoring process stated above, NSW Procurement – Contracting Services will review the Agreement after the initial twelve months. NSW Procurement – Contracting Services will consider the performance of the Contractor under the Agreement and of other contractors under other Standing Offer agreements for the Deliverables for the purpose of ensuring the suitability of the Standing Offer for Customers. NSW Procurement – Contracting Services may consider, among other things, the Contractor’s sales, performance (with reference to the matters in clause 7.1.1), product suitability, market and Customer industry trends, products or new technology.
- 7.1.3 NSW Procurement – Contracting Services will make available to the Contractor copies of any performance reports prepared with regard to the Contractor, and will give the Contractor the opportunity to seek a review of each such report by a senior officer of NSW Procurement – Contracting Services if required.
- 7.1.4 Having regard to any performance report prepared for the purposes of clause 7.1.2, the Principal may terminate this Agreement in accordance with clause 11.11 if the Contractor is not performing the Agreement to the reasonable satisfaction of the Principal including where the:

- (a) sales of the Contractor are minimal, or
- (b) total sales returns of the Contractor are relatively minimal under the Agreement, or
- (c) the Contractor consistently has nil returns over the Term.

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 30 of the *Defamation Act 2005* (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

- 7.3.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced.
- 7.3.2 The Contractor must employ only such persons:
 - (a) as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables;
 - (b) (where applicable) who hold all necessary licences, permits and authorities; and
 - (c) whose standards of workmanship are entirely suitable for the supply of the Deliverables and the requirement of this Agreement.
- 7.3.3 The Contractor must at all times ensure that the Specified Personnel are engaged in the supply of the Deliverables.
- 7.3.4 The Contractor must ensure that the Specified Personnel undertake work in respect of the Deliverables in accordance with the terms of this Agreement and will not be hindered or prevented in any way in the performance of their duties including by being removed from undertaking work to supply the Deliverables or being requested to perform services which in any way interfere with the due supply of the Deliverables by the Specified Personnel.

- 7.3.5 Where Specified Personnel are unable to undertake work in respect of a Deliverable, due to illness or other incapacity or resignation from employment with the Contractor, the Contractor will notify the Principal immediately and the Contractor will, if requested by the Principal, provide replacement personnel approved in writing by the Principal at no additional charge to the Principal and at the earliest opportunity.
- 7.3.6 Where the Principal is of the opinion that the Specified Personnel are unable to provide a Deliverable in accordance with this Agreement due to illness or other incapacity, the Principal may request in writing that the Contractor provide replacement personnel at no additional charge. Specified Personnel may, with the prior approval of the Principal, on such conditions, if any, as the Principal thinks fit, be absent from the provision of the Deliverables.
- 7.3.7 The Contractor warrants that it will not, in the absence of criminal misconduct, terminate any Specified Personnel without first providing the Principal 14 days prior written notice of such termination.
- 7.3.8 In the event of termination or resignation of a member of the Specified Personnel, the Principal may terminate this Agreement in accordance with in clause 11.1.1 of this Agreement.
- 7.3.9 In this clause and Agreement, "Specified Personnel" means the key personnel specified in item 3 of Schedule 1 required to supply the Deliverables or part of the work constituting the Deliverables or such other personnel as the Principal agrees, in writing, to supply the Deliverables.

7.4 Contractor to establish necessary facilities

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

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 this clause, the Contractor must not, without the prior written consent of the Principal, disclose any Confidential Information or any other Information in connection with this Agreement to any person other than the Principal.
- 8.2 The Contractor must use the Confidential Information solely in connection or for the purposes of the provision of the Deliverables.
- 8.3 The Contractor may disclose Confidential Information to its officers, employees and sub-contractors ("permitted recipient") where such disclosure is essential to carrying out their duties or in accordance with this Agreement.

- 8.4 Before disclosing the Confidential Information to a permitted recipient, the Contractor must ensure that the permitted recipient is aware of the confidentiality requirements of this Agreement and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the Confidential Information other than as permitted by this Agreement.
- 8.5 The Principal may terminate this Agreement if the Contractor or any permitted recipient of Confidential Information discloses the Confidential Information other than as permitted under this Agreement or by law.
- 8.6 The Confidential Information must not be copied or reproduced by the Contractor or the permitted recipient without the express prior written permission of the Principal, except for such copies as may be reasonably required for the purposes of this Agreement.
- 8.7 The Principal may at its sole discretion and at any time require the Contractor to promptly execute and arrange for its employees, dealers, distributors or sub-contractors engaged in the performance of this Agreement, to execute a Statutory Declaration and/or a Deed of Confidentiality substantially in the form appearing in Schedule 6 and Schedule 7.
- 8.8 On termination of this Agreement the Contractor must return to the Principal all documents containing the Confidential Information.
- 8.9 This clause will survive the termination of this Agreement.
- 8.10 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

9.1 Ownership

- 9.1.1 The Contractor agrees that ownership of Intellectual Property rights in or in relation to New Contract Material vests upon its creation in the Principal. The Contractor, upon request by the Principal, agrees, at its own cost, to do all things necessary and execute all documents to permit the vesting of ownership and title of Intellectual Property in the Principal.
- 9.1.2 The Contractor acknowledges and agrees that the Principal or, where applicable, particular third parties, are the sole owners of the Intellectual Property rights in or in relation to the Existing Contract Material.
- 9.1.3 If ownership of or title in Intellectual Property in relation to Contract Material is not capable of being vested in the Principal under clause 9.1.1 because the Contractor itself does not own, and is unable at a reasonable cost to obtain ownership of, that Intellectual Property, the Contractor must at its own cost ensure that the Principal and the Customers are suitably and irrevocably licensed to use that Contract Material or that Intellectual Property.
- 9.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Deliverables.
- 9.1.5 At the completion of the Agreement, or at such other time as the Agreement or the Principal may require, the Contractor must fully and promptly disclose to the Principal all New Contract Material created or developed under or in connection with this Agreement.

- 9.1.6 Where directed by the Principal, the Contractor must ensure that an appropriate notice is incorporated on all Contract Material that the Intellectual Property rights in that material are owned by the Crown in right of the State of New South Wales.

9.2 Delivery of Contract Material

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

9.3 Indemnity

- 9.3.1 The Contractor must not at any time breach or infringe any Intellectual Property rights of the Principal or of any other person whether in the course of providing the Deliverables or otherwise.
- 9.3.2 The Contractor agrees to indemnify and keep indemnified the Principal (which term includes in this clause, any Customer, and their officers, employees and agents) from and against any actions, claims, proceedings, demands, costs, expenses, losses and damages, arising from or in connection with any infringement or alleged infringement of any Intellectual Property rights.
- 9.3.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of clause 9.3.1 despite the provisions of clause 13.
- 9.3.4 The Contractor acknowledges that, in the event of a breach of clause 9.3.1, the Principal may terminate this Agreement in accordance with clause 11.1 without prejudice to any accrued rights or remedies of the Principal.
- 9.3.5 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may direct Customers to suspend payment of any money due to the Contractor under the Agreement until such claim has been satisfied, settled, or withdrawn.

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.
- 16.2.5 Not used.

17. Supply of Deliverables

17.1 Not used.

17.2 Not used.

17.3 Expenses of Delivery

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.

17.4 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.

17.5 Not used.

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.

19.3 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

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 including, in the case of a sub-contract, the completion of the statutory declaration in Schedule 6.
- 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

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

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 0710/6036 date submitted.....(clause 1.1)
Item 2	Contractor's Name (clause 1.1)
Item 3	Specified Personnel (if any)(clause 7.3):
Item 4	Term: (clause 2.3.1) Commencement Date: 1 January 2007 Expiry Date: 31 December 2009 Period of extended term (if any): (clause 2.3.2) Commencement Date: 1 January 2010 Expiry Date: 31 December 2010
Item 5	Broad Form Liability Insurance Policy Amount (clause 6.5) (a) Public Liability Insurance Limit of Indemnity: \$AUS 20M (b) Product Liability Insurance Limit of Indemnity: \$AUS 20M Professional Indemnity Insurance Limit of Indemnity: \$AUS 20M Crime Liability Insurance minimum Indemnity: \$AUS 5M
Item 6	Codes (clause 6.7.1(b)) 1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement. 3. Fringe Benefits Tax Assessment Act 1986 as amended 4. Goods and Services Tax Act 1999 as amended 5. Privacy and Personal Information Protection Act 1998 (NSW). 6. NSW Premier's Department Salary Packaging Policy
Item 7	Management Fee Rate (clause 6.11) 2.5%
Item 8	Payment Period of Management Fee (clause 6.11) Monthly
Item 9	Sales Information (clause 6.11.6) 1. The names of the ten largest Customers listed by dollar value invoiced by the Contractor in the relevant Payment Period.

Item 10	Expert Determination Amount (clause 13.3.7): \$A: 100,000
Item 11	Security - Not used Amount: N/A Form: N/A
Item 12	A. List of approved dealers and distributors (Clause 5.2) B. List of approved sub-contractors (Clause 5.3)
Item 13	Notices to: (clause 14.3) The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile: The Principal's contact name and address: Name: Chairman, SCCB Address: McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000 Telephone: 9372 8818 Facsimile: 9372 8803
Item 14	Restrictions on Nominee Purchasers (clause 4.2)
Item 15	Interest for Late Payment of Management Fee (clause 6.11.7, 6.11.8 and 6.11.15) Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Principal in accordance with the clause 6.11.7, 6.11.8 and 6.11.15.

Schedule 2 Specification



0601745-Specification.Ink

Please see separate document 0601745 Specification doc.

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

Schedule 4 Documents notifying the Principal's acceptance

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 by Dealer, Distributor or Sub-Contractor (clause 5.2, 5.3 and 8.7)

Oaths Act 1900 (NSW), Ninth Schedule

I

(1) _____

do solemnly and sincerely declare that to the best of my knowledge and belief:

1. *[insert full dealer/distributor/sub-contractor company name and its ACN]* ("the Declarant") has been selected as a dealer/distributor of, or sub-contractor to, *[insert name of the Contractor]* ("the Contractor") under a standing offer agreement between the **NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD** for and on behalf of the Crown in right of the State of New South Wales ("Principal") and the Contractor for the supply of the Deliverables to certain customers ("the Agreement").
2. The Declarant is aware of:
 - (a) where relevant, the responsibilities imposed on Contractors under clause 5.2 of the Agreement in relation to use of approved dealers and distributors including obligations to ensure that these persons supply relevant sales information to the Contractor and permit independent audit of that information by the Principal, and
 - (b) the standard terms and conditions of customer contracts as set out in the Agreement.
3. The Declarant, if an approved dealer or distributor of the Contractor, offers to supply:
 - (a) under the standard terms and conditions of customer contract;
 - (b) on terms that enable compliance by the Contractor with clause 5.2 of the Agreement.
4. The Declarant, if a sub-contractor, will offer to sub-contract on terms that will:
 - (a) be consistent with the standard terms and conditions of customer contract and,
 - (b) in the case of a Board approved sub-contractor under the Agreement, enable compliance by the Contractor with clause 5.3 of the Agreement.
5. There are no reasons of which I am aware that would prevent a customer contract or sub-contract (as relevant) from being signed and performed in a manner that would allow the satisfactory and timely performance of:
 - (a) the customer contract, and
 - (b) any relevant Contractor responsibilities under clause 5.3 of the Agreement.

And I make this solemn declaration, as to the matter aforesaid according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.

.

(2) _____

Declared at _____

the _____ day of _____ 200_____

Before me, (3) _____

(4) _____

- (1) Here insert name, address and occupation of person making the declaration and his or her position in the company.
 - (2) Signature of person making declaration
 - (3) Signature of person before whom the declaration is made *
 - (4) Here insert title of person before whom the declaration is made.
-

* the jurisdiction within which this declaration is made will depend on who may witness the declaration.

Note: State and Territories to use equivalent, appropriate legislation and modify this form accordingly

Schedule 7 Deed of Confidentiality

BY THIS DEED DATED THE _____ day of _____ 200__

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 [Name and address of Confidant] ("the Confidant ")

RECITALS:

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

OPERATIVE PROVISIONS:

1. Recitals

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

2. Interpretation

2.1 Definitions

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

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

"Confidential Information" means information that:

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

and includes but is in no way limited to:

- (d) the Contract Material;

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

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

"Contract Material" means:

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

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

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

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

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

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

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

2.2 General

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

2.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;

- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.2.3 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 2.2.4 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.2.5 If this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.2.6 A singular word includes the plural, and vice versa.
- 2.2.5 A word which suggests one gender includes the other genders.
- 2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non disclosure

- 3.1.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the State.
- 3.1.2 The State may grant or withhold its consent in its discretion.
- 3.1.3 If the State grants its consent, it may impose conditions on that consent, including a condition that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 3.1.4 If the State grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.1.5 Despite cl.3.1, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Confidant or in accordance with this Deed.

- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the State, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.1.8 The State may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.1.9 If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.
- 3.1.10 The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

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

5. Survival

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

6. Rights of the Principal

6.1 Production of Documents

6.1.1 The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Confidant containing the Confidential Information.

6.1.2 The Confidant must immediately comply with a demand under this Clause 6.

6.1.3 If the Principal makes a demand under this clause 6, and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose the Principal or control they lie.

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

6.2 Legal Proceedings

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

7. Indemnity and release

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

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

8. No exclusion of law or equity

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

9. Waiver

9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.

9.2 None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Principal unless by its express consent in writing.

10. Remedies Cumulative

10.1 Cumulative

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

10.2 Other Instruments

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

11. Variations and amendments

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

12. Applicable law

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

13. Notices

13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Confidant, at the Confidant's registered office.

13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.

13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

Executed as a Deed

SIGNED, SEALED AND DELIVERED)
)
 by [*name and position of person signing*]) _____
 for and on behalf of the **STATE**) (signature of the Principal)
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:)

 [insert name of Witness]) (signature of Witness)

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

Schedule 8 Undertaking

THIS DEED is made the day of20...

BETWEEN [Name, ACN and address of financial institution])(“**Provider**”)

AND [STATE CONTRACTS CONTROL BOARD for and on behalf of the Crown in the right of the State of New South Wales] (“**Beneficiary**”)

IT IS AGREED

At the request of Insert name of the Contractor's Company Name, trading as “Insert Contractor's Trading Name,” ACN Number Insert ACN Number (“**Customer**”) and in consideration of, among other things, the Beneficiary accepting this undertaking in connection with *[describe contract]*, the Provider unconditionally undertakes to pay to the Beneficiary on demand in writing any sum or sums from time to time up to a maximum aggregate sum of *[amount in words]* (\$[]) (“**Sum**”). The Provider unconditionally and irrevocably agrees to pay such moneys to the Beneficiary immediately without reference to the Customer and regardless of any notice given by the Customer to the Provider not to pay.

This undertaking is to continue until a notification has been received from the Beneficiary that the Sum is no longer required by the Beneficiary or until this undertaking is returned to the Provider or until payment to the Beneficiary by the Provider of the whole of the Sum or such part as the Beneficiary may require.

The Provider may at any time without being required to do so pay to the Beneficiary the Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required by the Beneficiary and thereupon the Provider shall cease to be liable.

This deed is governed by and must be construed in accordance with the laws of New South Wales.

EXECUTED AS A DEED

SIGNED, SEALED AND DELIVERED by <insert name and position of person signing>)
 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

SIGNED by <insert name of company>, ACN)
<insert ACN number>, a prudentially supervised)
 institution by the Australian Prudential)
 Regulation Authority (APRA), and in accordance
 with section 127 of the Corporations Act and in
 the presence of:

<Director/Secretary>

Director

Print Name

Print Name

Schedule 9 Not used

Schedule 10 Contractor Information

Schedule 11 Approved Dealer, Distributor or Sub-Contractor Information

Schedule 12 Not used

Schedule 13 Code of Behaviour - Protection of Children and other Vulnerable People

The Contractor must ensure that all persons working on the site or sites under the Contract, including but not limited to the Contractor's employees and managers, consultants, subcontractors and suppliers (Contractor Employees) understand and comply with the requirements shown below.

- All Contractor Employees must gain permission to enter the school or facility before commencing work and they may only enter approved areas. The Contractor's representative or where a subcontractor is working without the supervision of the Contractor, the subcontractor's representative must report their presence to the person in charge of the school or facility on arrival each day and record, in the Site Visit Log, the details of all Contractor's or subcontractor's employees working at the site or sites that day.
- Contractor Employees should avoid talking with, touching or interacting with any children or residents or other users of the school or facility except where the work requires it or in an emergency or safety situation.
- Contractor Employees must only use approved toilets and other facilities, unless the person in charge of the school or facility gives written authority to use alternative arrangements.
- The work area must not be able to be used or accessed by children, or residents or other users of the school or facility while work is in progress. Clear signs and barricades (where appropriate) must be used to prevent any inadvertent or unauthorised access.
- Appropriate privacy must be maintained when working on toilets and similar facilities. Contractor Employees must ensure that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform work, and that work does not continue when use of the facilities is required. Where practicable male employees should perform work on male facilities and female employees on female facilities.
- Contractor Employees must wear clothing that is tidy and in good condition, including a shirt, shorts or trousers or skirts at all times.
- Contractor Employees should report any concerns about children's behaviour or child abuse to the person in charge of the school or facility.
- Contractor Employees must wear or carry an identity card at all times when on the site or sites.

Schedule 14 Confirmation of Insurances

Insurance Body:

Insured:

Re: Agreement for the provision of Non-SES Salary Packaging Administration Services 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).
- 4. The insurance policies conform to the requirements of clause 6.5 of the Agreement between the Principal and the Insured.

Attach a Certificate of Currency for the policy/ies above.

Specify below any exclusions beyond the standard exclusions for the Insurance Policies.

Authorised Representative of Insurer
Position:
Dated:

Signed:

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 <insert name and position of person signing>)
 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

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

Specifications of the Requirement

1. BACKGROUND

1.1 General

1.1.1 The following specifications cover the provision of Non-SES Salary Packaging Services (“Services”) to Public Sector Agencies in the form of a Non-SES Salary Packaging Scheme (Scheme).

1.1.2 For the purposes of this Tender,

Days means calendar days

ECM refers to post-tax contributions made under the Employee Contribution Method when salary packaging a motor vehicle

FBT means Fringe Benefits Tax

NSW Premier’s Department Policy means the salary packaging policy applying to Non SES employees in agencies listed in Part 1 Schedule 1 of the Public Sector Employment and Management Act 2002 NSW & any other agencies with employees covered by the Crown Employees (Public Sector - Salaries 2004) Award and its successors and the Crown Employees Wages Staff (Rates of Pay) Award 2005 and its successors.

Non-SES Employees means any person other than a person holding a position determined to be a senior executive position.

Participant means a Non-SES Employee who elects to participate in the Scheme.

Principal means the State Contracts Control Board.

PSEMA means the Public Sector Employment and Management Act (NSW) 2002

Public Sector Service means:

- (a) the Government Service, or
- (b) the Education Teaching Service, or
- (c) the NSW Police, or
- (d) the NSW Health Service, or
- (e) the service of either House of Parliament, or the President or Speaker, or the President and the Speaker jointly, or
- (f) any other service of the Crown, or

- (g) the service of any other person or body constituted by or under an Act or exercising public functions (such as a State owned corporation), being a person or body that is prescribed, or that is of a class prescribed, for the purposes of this definition.

Public Sector Agency (hereafter referred to as Agency) means the any entity as defined from time to time in clause 18 (4) of the Public Sector Management (Goods and Services) Regulation 2000(NSW) and includes:

- (a) a government trading enterprise
- (b) a State Owned Corporation;
- (c) a local government agency;
- (d) a public or private hospital (including an area health service)
- (e) a charity or other community non-profit organisation;
- (f) a public or private school, college or university;
- (g) a public sector agency of this State, Commonwealth or of any State or Territory.

RFT means this Request for Tender

Scheme means Non-SES Salary Packaging Scheme

Service Provider means an organisation providing services sought under this RFT.

Services means the services sought under this RFT, as detailed in the Specification at Part B

State Owned Corporation means a Corporation listed in Schedule 1 or Schedule 5 of the State Owned Corporation Act 1989.

1.2 Scope

- 1.2.1 Service Provider/s shall provide the Services in accordance to the Terms and Conditions contained in this RFT.
- 1.2.2 This is a whole of Government contract for the provision of services to Non-SES employees in the Public Sector Service or a Public Sector Agency. Premier's Memorandum 2006-11 requires all NSW Customers, other than State owned Corporations, to use a whole of Government salary packaging contract for the provision of packaging services if they wish to outsource these Services.

- 1.2.3 Provision of the Scheme is, subject to the convenience of each Customer, and subject to any restrictions in relation to the range of benefit items which may be packaged under the NSW Premier's Department policy on salary packaging for Non SES employees if applicable, or for all other Customers as decided by each Customer from time to time.

2. SYSTEM FOR THE SALARY PACKAGING SCHEME (SCHEME)

The Scheme will consist of an integrated system for:

- receiving deductions from the salary of Participants
- making and or directing benefit payments to third parties on behalf of Participants in the Scheme
- the maintenance of bank (trust) accounts
- the collection and storage of all required agreements and taxation declarations
- receiving and accounting for both pre-tax and post-tax Participant contributions
- the provision of reconciliations
- obtaining compliance data from Scheme participants
- reporting on all aspects of the Scheme to ensure that all accounting, audit and probity standards are met
- the provision of a dedicated, toll-free helpdesk facility and advisory services to Scheme participants
- satisfying all legislative and policy requirements.

3. OUTLINE OF THE SCHEME REQUIREMENTS

- 3.1 Service Provider/s will be required to:
- 3.1.1 provide salary packaging services for all eligible Participants;
 - 3.1.2 provide salary packaging services to Customer employees;
 - 3.1.3 maintain strategic software applications for all accounting and reporting aspects of the Scheme;
 - 3.1.4 provide electronic exchanges with relevant sections of Customers and web-based communications facilities for participants in the Scheme ;

- 3.1.5 keep up to date with changes to legislation, accounting practices, and new opportunities in salary packaging, and ensure there are timely mechanisms in place to introduce, and advise of consequent changes to the Scheme;
- 3.1.6 meet all requirements of salary packaging schemes under Commonwealth Taxation legislation and provide all reporting as required in Schedules 2, 3 and 4 to this Part B - Specification, to enable Customers to meet their obligations under relevant law arising from the Scheme;
- 3.1.7 provide services including security over participants' information and funds, in accordance with the requirements indicated in the Schedules to these specifications.

3.2 REQUIRED SPECIFICATION

3.2.1 GENERAL

- 3.2.1.1 This Standing Offer Agreement covers the provision of a Scheme in accordance with requirements of the Australian Taxation Office and the Government of the State of NSW, which will give Participants a flexible remuneration system, provides access to benefits through salary sacrificing in accordance with NSW Premier's Department's Policy where applicable and meet its objectives in outsourcing the service being to:

- ensure the delivery of a high quality and competitive service for Participants,
- establish a service that is cost effective for Participants; and
- minimise the involvement of Customer officers, particularly in respect to the day-to-day administration of the scheme and management of issues that may arise.

- 3.2.2 **ESSENTIAL REQUIREMENTS UNDER THE AGREEMENT** (to be read in conjunction with Schedules 1-5 relating to Policy Issues, Business Rules, Report Format Requirements, Performance Indicators and Fees and Charges)

3.2.2.1 Scope of the Standing Offer Agreement

The Agreement shall include the following features:

- a) NSW-wide coverage for Participants seeking the following services:
 - additional contributions to First State Super
 - additional contributions to other complying superannuation funds
 - motor vehicles (100% private novated leases only)
 - *Option 1* Participant selects own financier and arrange own maintenance (self Managed lease);
 - *Option 2* Participant selects own financier and enter into maintenance agreement with service provider,

- *Option 3* Participant enters into agreement with Service Provider/s to arrange all aspects of finance and a management budget
- *Option 4* Participant enters into agreement with Service Provider/s to arrange finance and arrange own maintenance.

Service Provider/s must indicate capacity to meet monitoring and reporting requirements for novated leases outlined in the Schedules forming part of this Specification and use the Deed of Novation approved by the Crown Solicitor (refer to Schedule 1).

- housing (remote areas only)
 - child-care (in-house only)
 - priority of access fee for child care
 - professional subscriptions
 - taxi expenses
 - mobile phones
 - education (self and professional)
 - laptops, e-organisers and brief cases
- b) an online system by which a participating employee can securely access details of his/her packaged items, including:
- employee post-tax contributions / payments where applicable (actuals against budget).
 - FBT position and estimated liability.
 - odometer readings (actuals against estimates) where a novated lease motor vehicle is packaged
 - motor vehicle lease and running cost accounts where a novated lease motor vehicle is packaged (actuals against budgets for lease payments, fuel usage and other motor vehicle running and standing costs)
- c) provision of a dedicated call service for all Participants with a well publicised toll-free telephone number to handle all telephone enquiries. The service is to operate as a minimum from 8.30 am to 5.30 pm (EST), Monday to Friday during NSW business days.
- d) Service Provider/s will ensure that a Memorandum of Understanding is signed between any finance company/s selected to be a Financier for the scheme, and Service Provider/s. See details at Schedule 2 Clause 1.5 “Customer Service Accounting Issues”
- e) Service Provider/s will publish a comprehensive user guide outlining all aspects of the scheme on their website for the benefit of intending participants. The guidelines will be developed in consultation with the

NSW Premier's Department which will provide final approval for its scope and contents.

- f) Service Provider/s are required to submit copies of lease documents used by their nominated finance companies, as well as copies of the agreements, including all terms and conditions, they require participants to sign, for review, with their tenders. Any subsequent amendments to those documents must first be reviewed and approved by the Principal.

3.2.2.2 Customer Service

Service Provider/s shall:

- a) provide a secure, dedicated website for Participants which allows individuals to assess the impact of packaging items (listed in 3.2.2.1a) above. A calculator or spreadsheet will be an integral part of the website to enable employees to input financial details relative to their own situations to calculate the resultant tax impacts of salary packaging, particularly in relation to motor vehicles packaged under a novated lease.
- b) construct the calculator or spreadsheet so as to take account of features particular to Customers, such as the treatment of Input Tax Credits and use of lower gross up rate for calculation of FBT liability where these may apply
- c) establish a documented complaints handling system that enables resolution of issues raised to be achieved within 10 working days of receipt of a complaint. The Dispute Resolution Procedure in Schedule 6 and the Service Provider's complaints handling procedure must be included in the User Guide and prominently located on the Service Provider/s web site and be easily accessed by Participants.
- d) maintain an effective recording system for the administration of all written and verbal communication between Participants and the Service Provider/s which ensures that all outstanding communications and issues are followed up and resolved within ten working days of notification
- e) appoint a dedicated Account Manager to deal with all enquiries which require the involvement of Customers for example, in relation to policy matters.
- f) be capable of providing consistent high quality service across NSW in both metropolitan and regional areas at no cost directly or indirectly to Government and as well as meeting the customer service requirements prescribed in Schedules 1-5
- g) ensure that participants sign an agreement and acknowledgement relating to the operation of the Scheme in a form agreed to by the NSW Premier's Department

3.2.2.3 Taxation

Service Provider/s must be able to meet taxation requirements detailed in Schedules 1-5

3.2.2.4 Accounting

Service Provider/s will provide accounting requirements prescribed in Schedules 1-5

3.2.2.5 Reporting

Service Provider/s will provide reports in accordance with requirements prescribed in Schedules 1-5

3.2.2.6 Implementation

Service Provider/s will prepare a Transition and Implementation Plan that clearly demonstrates how it would implement all aspects of the proposed Scheme, including the proposed timeframes.

4. ENHANCEMENTS

4.1 The Principal is receptive to the incorporation of new or additional features in the Scheme under this Contract, such as:

- service level agreements
- establishment of agreed business rules
- enhanced and transparent fee structures
- cash flow management and reporting
- innovative reporting formats and streamlined transaction arrangements

4.2 The Principal invites additional recommendations by the Service Provider/s to enhance the services provided under the Scheme.

5. PROVISION OF PROFESSIONAL SERVICES**5.1 Marketing**

Service provider/s will:

- 5.1.1 Develop and implement a comprehensive marketing plan that highlights the benefits of the Scheme and provides for growth of the Scheme during the currency of the contract. The plan should be implemented on a NSW-wide basis.
- 5.1.2 Liaise with the Principal on a regular and ad-hoc basis to arrange information sessions for employees, requested by Customers.

5.2 Interface with Customers

As agents for all Customers Service Provider/s will:

- 5.2.1 Interface and liaise with Human Resources Units of Customers at regular intervals and for ad hoc requirements, and meet deadlines.
- 5.2.2 Liaise with the NSW Premier's Department for policy aspects of the Scheme, including attendance at regular and ad-hoc meetings at the reasonable request of Senior Human Resources staff.
- 5.2.3 Provide electronic exchanges with payroll administrators for providing package details, receiving authorised deductions, and refunding amounts to participants in the defined formats contained in Schedule 3 to these specifications.
- 5.2.4 Report to the Taxation Units of Customers in electronic media for GST data, detailed FBT compliance data, and package documentation, in the defined formats contained in Schedule 3 to these specifications.
- 5.2.5 Nominate a dedicated Account Manager to liaise with Human Resources and Finance Units for resolution of issues and supply of data.
- 5.2.6 Nominate a contact officer to interface with Managers for Human Resources Programs, Payroll Services, and Taxation, to liaise on general matters during business hours, with same day response to phone or e-mail messages.

6. ADMINISTRATION FEES

- 6.1 Service Provider/s must make available statements to Participants that itemise each discrete cost incurred, including the components of payments for packaged cars and the fees charged by the Service Provider for any services.
- 6.2 The administration fee, the full annual amount of which is payable by each Participant who commences salary packaging through the Scheme, shall be collected by Customers on a pro-rata fortnightly basis. Customers shall make regular payments to the Service Provider/s within fourteen (14) days of receipt of a valid Tax Invoice, subject to satisfactory performance of the contract. Payment of an account shall not be considered nor given effect to as a waiver of the rights of Customers or of participants in respect of a breach or non-performance by the Service provider.
- 6.3 The transmission of the administration fee shall be withheld for:
- a “substantial breach” of the Contract, including:
 - (a) failure to maintain
 - (i) bank account for participants’ funds
 - (ii) banking of all participants’ funds for benefit items
 - (iii) accounting systems to enable reconciliation of salary packaging transactions
 - (b) a breach of the Contract requirements which prevents Customers as employers from fulfilling the statutory obligations arising from the Salary Packaging Scheme
 - (c) failure to ensure that the Salary Packaging Scheme meets the requirements of an “effective SSA” in terms of Taxation Ruling TR 2001/10
 - repeated non-compliance with performance requirements specified in the contract which indicates that the Service Provider/s is not maintaining the capacity to perform to the required standards
 - failure to correct an action, or for failing to take an action which can be sought under the terms of the Contract, following notification by Customers that correction of an action, or the taking of an action is required, and the correction of, or the taking of an action has not been fulfilled by the Service Provider/s within 10 working days as specified by Customers in their notification.
- 6.4 It is intended that the Scheme’s administration fees be paid by the participants, and varied subject to the range of benefits packaged.

7. CONTRACT ARRANGEMENTS

- 7.1 The Contract provides for certain items to be defined in Schedules to the Contract and provides for variations to these items without the need to execute a new Contract.
- 7.2 Items defined in Schedules to Part B – Specification relate to policies, business rules, report formats and performance indicators which must be kept up to date with legislative requirements and current practice.
- 7.3 The Principal, the NSW Premier’s Department and Service Provider/s will each nominate a representative to be responsible for all matters relating to the Contract and all subsequent negotiations relating to changes to the items listed in the Schedules to the Contract.
- 7.4 Service provider/s will administer the Scheme under the contract in accordance with the performance standards indicated in the Schedules to these specifications.

<i>Schedule 1a –</i>	<i>NSW Premier’s Department Salary Packaging Policy</i>
<i>Schedule 1b –</i>	<i>Policy Issues for all Agencies</i>
<i>Schedule 2 –</i>	<i>Business Rules for the Salary Packaging Scheme</i>
<i>Schedule 3 –</i>	<i>Report Format Requirements</i>
<i>Schedule 4 –</i>	<i>Performance Indicators</i>
<i>Schedule 5 –</i>	<i>Dispute Resolution Procedure</i>

<i>Schedule 1a</i>	<i>NSW Premier's Department Salary Packaging Policy</i>
<i>Schedule 1b</i>	<i>Policy Issues For All Customers</i>
<i>Schedule 2</i>	<i>Business Rules for the Department's Salary Packaging Scheme</i>
<i>Schedule 3</i>	<i>Report Format Requirements</i>
<i>Schedule 4</i>	<i>Performance Indicators</i>
<i>Schedule 5</i>	<i>Dispute Resolution Procedure</i>

SCHEDULE 1(a) NSW PREMIER'S DEPARTMENT SALARY PACKAGING POLICY

- 1.1 Participants may elect to include one novated lease motor vehicle as a benefit item in their salary package. The motor vehicle must be acquired via a 100 per cent private use novated lease only, but is subject to the NSW Premier's Department Memorandum 2006 /05 that does not allow public sector service staff to novate V8 powered motor vehicles. The motor vehicle will be subject to any restriction applicable under Australian taxation legislation and Australian Taxation Office (ATO) rulings.
- 1.2 Salary Packaging is available to:
- Permanent employees including permanent part-time employees and
 - Temporary employees subject to Customer convenience.
- Casual employees are eligible to salary sacrifice to superannuation subject to Customer convenience.
- 1.3 Participants may package up to one hundred (100%) per cent of their gross salary, and may include a range of benefits as defined from time to time by the NSW Premier's Department in consultation with Service Provider/s. The limit of 100% per cent must be maintained even if variations to the participant's packages are made or if post-tax contributions are commenced or ceased.
- 1.4 The list of benefit items allowed to be packaged under the Scheme will be shown at 3.2.2.1 of the specifications, as amended from time to time by agreement between the NSW Premier's Department and the Service Provider/s.
- 1.5 All novated motor vehicles will have their FBT liability calculated using the Statutory Formula method.
- 1.6 Twenty per cent is the default Statutory Fraction for calculating the FBT liability relating to packaged motor vehicles, except where an existing Scheme participant has a proven record in the Scheme of his or her vehicle travelling distances which indicates a different statutory fraction is appropriate. A proven record means that the participant must complete a travel diary for 12 successive weeks, or for some other period which is consistent with ATO guidelines or procedures.

SCHEDULE 1(b) POLICY ISSUES APPLYING TO ALL AGENCIES

1. POLICY ISSUES

- 1.1 The NSW State Contracts Control Board (SCCB) out-sources the administration of the Scheme, with the requirement that the provision of salary packaging to eligible employees be at no cost either directly or indirectly to Customers.
- 1.2 The first point of contact for any participant or potential participant in the Scheme in relation to any enquiries is the Service provider/s, not Customers. Arrangements between participants and the Service Provider/s will be fully documented to the satisfaction of the Principal.
- 1.3 Employees who are eligible to participate in the Scheme are defined in Section 1 Background, Clauses 1.1.1 and 1.1.2 of Part B of the Specification of this Contract, and in Clause 1.2 of Schedule 1a. When an application is made for participation in the Scheme, Service provider/s will be responsible for checking to ensure that the applicant is eligible to participate in the Scheme.
- 1.4 Customers will be free to choose any of the successful Service Provider/s for all or part of their packaging arrangements
- 1.5 Customers also have the option to provide some or all of the salary packaging administration services in-house
- 1.6 Employees will be able to choose any of the Service Provider/s engaged by their employers to provide salary packaging services
- 1.7 Scheme participants are to meet the full cost of salary packaging.
- 1.8 Scheme participants agree to deductions from salary to meet the full cost of their salary packaging.
- 1.9 Scheme participants agree to variation of deductions from salary to maintain the integrity of their package and to ensure that arrears of obligations such as FBT do not arise.
- 1.10 When making alterations to their packaging arrangements, Scheme participants will sign a variation form.
- 1.11 Participants may elect to make post-tax contributions towards the costs of a packaged novated lease motor vehicle.
- 1.12 The Principal agrees to a panel of approved financiers who are authorised to provide leasing finance to participants in the Scheme for novated motor vehicle leases. Service Provider/s must advise the Principal, NSW Premier's Department and all potential participants as to which financiers the Service Provider proposes be authorised to provide finance on a non-exclusive basis under the Scheme for motor vehicles, based on their compliance with ATO requirements, their use of taxation compliant documentation and use of the NSW Crown Solicitor's Office Deed of Novation. Any changes to the panel of authorised financiers must be advised to the Principal, NSW Premier's Department and all potential participants within 5 business days.

- 1.13 The Principal does not agree to endorse a list of recommended financial advisers for the Scheme.
- 1.14 The documentation envisaged by paragraph 1.1 Schedule 2 with employees who intend to participate in the Scheme will contain a declaration that they have taken financial advice in relation to salary packaging, before their salary packaging commences, or that they agree to waive their rights to obtain professional financial advice.
- 1.15 A minimum of one change to a participant's salary packaging arrangements, in addition to any end of FBT year adjustments, will be permitted without charge.
- 1.16 Customers will indicate to Service Provider/s the names of authorised Customer officers for the purposes of signing deeds of novation.
- 1.17 Service Provider's administration fees will be paid at regular intervals to the Service provider/s by Customers subject to satisfactory performance of the contractual requirement and adjusted for services not provided by the payment date provided that payment of an account shall not be considered or given effect to as a waiver of the rights of Customers or participants in respect of a breach or non-performance by the Service provider.
- 1.18 Service Provider/s will provide a system for informing Scheme participants of the need to make motor vehicle declarations at the end of the FBT year. Whether or not the participant receives a communication from the Service Provider requesting the declaration, Scheme participants have the responsibility to ensure that their motor vehicle declarations are lodged by the required date, and that the information in the declarations is correct. This obligation on the Scheme participants applies whether or not Service Provider/s complies with the contractual requirement to request and collect the subject data on the motor vehicle declarations.
- 1.19 Customers will not accept motor vehicle declarations from Scheme participants after the due date, nor will it accept alterations to the information contained in motor vehicle declarations after the due date. Customers will not lodge requests for amendment to FBT returns as the result of Scheme participants indicating that they have not lodged a declaration, or that the information provided in a declaration is incorrect.

CROWN SOLICITOR'S OFFICE DEED OF NOVATION**DATED** _____ **2006**.....
("Lessor")

and

.....
("Employer")

and

.....
("Employee")

DEED OF NOVATION OF MOTOR VEHICLE LEASE

I V KNIGHT
Crown Solicitor
60-70 Elizabeth Street
SYDNEY NSW 2000

DX 19 SYDNEY

Tel: 9224 5053
Fax: 9224 5055
Ref: PRE128.242
Ms Ferris

THIS DEED is made on the ____ day of _____ 2005.

BETWEEN: The party nominated as the Lessor in Part 1 of Schedule 1 ("Lessor");

AND: The person nominated as the Employer in Part 2 of Schedule 1 ("Employer");

AND: The person nominated as the Employee in Part 3 of Schedule 1 ("Employee").

WHEREAS:

- A.** The Employee has leased the Motor Vehicle from the Lessor under the Lease.
- B.** The Employer employs the Employee and as part of the remuneration package which it provides to the Employee the Employer has agreed, with the consent of the Lessor and upon the terms and conditions of this Deed, to the rights and obligations of the Employee under the Lease being novated to the Employer.
- C.** The Lessor has consented to the discharge of the Employee from the Lease and to the novation of the Lease to the Employer and accordingly the parties to this Deed have agreed that with effect from the execution of this Deed the Employee's rights and obligations under the Lease will be novated to the Employer.

NOW THIS DEED WITNESSES:

1. DEFINITIONS:

In this Deed unless the context otherwise requires:-

"Business Day" means the day on which trading banks are open for general banking business in Sydney, New South Wales;

"First Novation Date" means the date of execution of this Deed.

"Lease" means the lease between the Lessor and the Employee attached in Schedule 2, the particulars of which are set out in Part 5 in Schedule 1;

"Motor Vehicle" means the Motor Vehicle specified in Part 4 in Schedule 1;

"Second Novation Date" means the date on which the earlier of the Trigger Events occurs.

"Trigger Event" means any event listed in subclause 5.3.

2. NOVATION TO THE EMPLOYER

- 2.1 With effect on and from the First Novation Date the Employer will be substituted for the Employee under the Lease and thereby becomes the lessee instead of the Employee and all references in the Lease to the Employee in any capacity shall be read and construed as if they were references to the Employer; and
- 2.2 The Employer will be bound by and comply with the provisions of the Lease that bind the lessee and will enjoy all the rights and benefits of the lessee under the Lease.
- 2.3 On and from the First Novation Date up to but not including the Second Novation Date the Lessor releases the Employee from all the Employee's obligations under the Lease as novated to the Employer except in relation to payment of any rental or other amounts owed by the Employee to the Lessor as at the First Novation Date.

3. EMPLOYEE INDEMNITIES

- 3.1 The Employee indemnifies the Lessor from and against any loss, damage, cost or expense suffered or incurred by the Lessor arising out of or in connection with the lease of the Motor Vehicle to the Employee and/or the Employer as the case may be. In particular, the Employee indemnifies the Lessor from and against any loss, damage, cost or expense suffered or incurred by the Lessor as a result or consequence of the Employer not performing any obligation under the Lease as novated to the Employer.
- 3.2 The Employee indemnifies the Employer from and against any liability incurred by the Employer as a result of any action, demand, claim or proceeding against the Employer by the Lessor under or in respect of the Lease as novated to the Employer by this Deed which relates to loss of, or damage to, the Motor Vehicle whether before or after the First Novation Date.

4. ACKNOWLEDGMENTS

- 4.1 The parties acknowledge that the Employee is not entitled to any rights of exclusive possession or other similar rights in relation to the Motor Vehicle under the Lease as novated to the Employer notwithstanding the Employer making the Motor Vehicle available for the use of the Employee or the Employee's associates (as defined in the Fringe Benefits Tax Assessment Act 1986).
- 4.2 The Employee acknowledges that:
 - (i) in deciding whether to enter into this Deed, the Employee has not relied upon any advice or information provided by the Employer and has relied on his or her own enquiries and independent advice;
 - (ii) he or she has entered into this Deed of their own volition and understands the meaning and effect of this Deed;

5. NOVATION OF LEASE BACK TO THE EMPLOYEE

- 5.1 On and from the happening of the earlier of any of the Trigger Events listed in subclause 5.3 the parties agree that, by operation of this clause, the Employee will be substituted as lessee for the Employer under the Lease as novated to the Employer by this Deed and all references in the Lease which by this Deed are read and construed as references to the Employer in any capacity shall be read and construed as if they were references to the Employee.
- 5.2 The Employee will be bound by and comply with the provisions of the Lease as novated to the Employer which were binding upon the Employer and the Employee will then also enjoy all the rights and benefits of the Employer under the Lease as novated to the Employer.
- 5.3 For the purposes of subclause 5.1, a Trigger Event is the earlier of:
- (a) The last business day before the date of the expiry of the term of the Lease; or
 - (b) The date upon which written notice is given by the Employer to the Lessor that:
 - (i) the Employee has ceased to be an employee of the Employer; or
 - (ii) the Employer has suspended the employment of the Employee; or
 - (iii) in the Employer's opinion, which is a matter for the absolute discretion of the Employer, the Employee has failed to take reasonable care of the Motor Vehicle; or
 - (iv) the Employer and the Employee have agreed that they wish the Lease to be novated to the employee; or
 - (c) the Motor Vehicle is lost or stolen; or
 - (d) the Motor Vehicle is so damaged that, in the opinion of the Lessor, its repair is uneconomical and the Lessor gives written notice to the Employer and the Employee of this opinion.
- 5.4 On and from the Second Novation Date the Lessor shall release the Employer from all the Employer's obligations under the Lease as novated to the Employer except in relation to payment of any rental or other amounts owed by the Employer to the Lessor as at that date.

6. COSTS AND STAMP DUTY

The costs of preparation, execution and stamping of this Deed are payable by the Employee.

7. NOTICES

- 7.1 All notices, requests, demands, consents or other communications ("notices") required to be given or served or given or served to or upon any party pursuant to or in connection with the Deed shall be in writing and shall be deemed to be duly given or made:
- (a) in the case of personal delivery, when delivered;
 - (b) in the case of by letter, on the second Business Day following posting;

- (c) in the case of facsimile transmission, subject to cl.7.2, when despatched provided the machine of the sending party has produced a printed record or transmission to the party to which such notice is to be given or served if given or served at the address or facsimile number of such party as specified in this Deed.

- 7.2 A written notice includes a notice by facsimile transmission. The issuer of any notice by facsimile transmission shall forthwith confirm the same by letter but the failure of the addressee to receive such letter shall not prejudice the validity or effect of such notice. Any notice given by facsimile transmission on a day that is not a Business Day shall be deemed despatched on the next succeeding Business Day.

8. GOVERNING LAW

- 8.1 The Deed will be governed by the law of the State of New South Wales and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

9. SEVERABILITY

- 9.1 If any provision of this Deed is held invalid, unenforceable or illegal for any reason, this Deed will remain otherwise in full force apart from such provision, which will be deemed to be deleted.

10. COUNTERPARTS

- 10.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one Deed.

EXECUTED AS A DEED

SIGNED SEALED AND DELIVERED by)
THE LESSOR by its)
 authorised officers as specified)
 below:)

.....
 Signature of Director

.....
 Signature of Witness

.....
 Full name of Director

.....
 Full name of Witness

.....
 Signature of Director/Company Secretary

.....
 Signature of Witness

.....
 Full name of Signatory

.....
 Full name of Witness

SIGNED SEALED AND DELIVERED by)
THE EMPLOYER by its)
 authorised officer as specified)
 below, *for and on behalf of the Crown in*)
right of the State of New South Wales)
[delete as appropriate])

.....
 Signature of Authorised Officer

.....
 Signature of Witness

.....
 Printed name of Authorised Officer

.....
 Printed name of Witness

SIGNED SEALED AND DELIVERED by)
THE EMPLOYEE)

.....
 Signature of Employee

.....
 Signature of Witness

.....
 Printed name of Employee

.....
 Printed name of Witness

SCHEDULE 1**PART 1 LESSOR**

Name:
Address:
Fax No:

PART 2 EMPLOYER

Name:
Address:
Fax No:

PART 3 EMPLOYEE

Name:
Address:
Fax No:

PART 4 MOTOR VEHICLE

Make:
Model:
Registration No:
Vehicle ID (VIN) Chassis No:
Engine No:

PART 5 LEASE

Date of Lease:
Account No:
Monthly Rental Payments:
Due Date of monthly Rental Payments:
Date of Expiry of Term:

SCHEDULE 2

THE LEASE

[Attach a copy of the Lease]

**SCHEDULE 2 BUSINESS RULES FOR THE WHOLE OF
GOVERNMENT SALARY PACKAGING SCHEME**

The Business Rules for the Whole of Government Salary Packaging Scheme are defined under the following headings:

- Customer Service
- Taxation Matters
- Accounting Issues
- Reporting

This Schedule of Business Rules forms part of the Contract between the Principal and Service Provider/s.

1. CUSTOMER SERVICE

1.1 Starting new Scheme participants

Service Provider/s will:

- induct new starters into the Scheme in accordance with the policies indicated in Schedule 1 of these specifications
- prepare appropriate documentation, including confirmation to Customers that all transactions have been completed, (for example, appropriate contact with superannuation authorities to check that compliance certificates exists, has been completed and arrangements made for transmittal of superannuation payments)
- provide comprehensive and user-friendly information to the packaging applicant about options and procedures (including a list of all finance providers and novated leasing options, pre and post-tax methods, sources of information and communication channels) their obligations under the SPS, the impact of tax legislation and costs associated with not meeting their obligations, and NSW Premier's Department policies where relevant.
- guide the packaging applicant through the completion of all necessary documentation and review submitted documentation.

- have participants sign an agreement and acknowledgement relating to the operation of the salary packaging scheme in a form specified by the NSW Premier's Department.
- forward all necessary documentation to Customers in accordance with the timelines specified in the performance standards listed in the schedules to this document.
- prepare all payroll deduction calculations, documents and agreements for establishing / varying a participant's salary sacrifice arrangement, review submitted documentation and forward documentation to Customers for review and signature.
- ensure that funds are transmitted within the timeframes agreed with Customers (initially as set out in Schedule 4)
- provide all information needed by Customers to correctly identify the salary packager so that Customers can forward to the Service Provider/s the correct amounts of money from the participant's payroll.

1.2 Participant enquiries

Service Provider/s will:

- receive and deal with all enquiries
- provide a dedicated call centre with a well-publicised toll-free telephone contact number to handle all telephone enquiry calls
- log and record all calls to the call centre in accordance with the Performance Indicators in Schedule 4
- allocate an enquiry number to all calls to the call centre which will be given to the caller for use if the enquiry matter can only be resolved with further phone calls
- ensure that all calls which are not of a general enquiry nature are dealt with by a dedicated service group
- log and track all written communications received by the Service Provider to facilitate filing and identification
- appoint a Senior, dedicated Account Manager to deal with all enquiry matters which require the involvement of the NSW Premier's Department, for example, in relation to policy matters
- not refer participants in the scheme directly to Customers.

1.3 Changes to packages

- Service Provider/s will inform Customers within the current pay cycle of the changes to packages required
- confirm to Customers aspects of the packaging have been altered appropriately, for example, adjustments notified to relevant superannuation authorities

1.4 Terminations

Service Provider/s will within 14 days of becoming aware:

- inform Customers of the termination of salary packaging by an Scheme participant
- ensure that terminating participants receive continued service until all aspects of the termination have been managed to completion

Service Provider/s will:

- check participant accounts to ensure that any outstanding balances in respect of benefit items or FBT liability are identified and included in the earliest possible pay cycle.

Service Provider/s will within 24 hours of becoming aware:

- inform Customers of any outstanding liabilities which can be recovered from pay entitlements

1.5 Customer Service and Accounting Issues

Service Provider/s will:

- Ensure that they enter into a Memoranda of Understanding with any finance companies selected to be a Financier for the Scheme, and for Service Provider/s. The Memoranda of Understanding shall contain provisions for:
 - i) flexible methods of making the first lease payment (prior to accumulation of sufficient packaged funds from an Customer's pay cycle) such as payment of the employee contribution and structured finance options for deferred payment
 - ii) acceptance by the finance provider of payments by electric funds transfer

- iii) no default notices to be issued to lessees prior to notification to the Service Provider/s.
- Provide a means by which individual salary packagers can access details of their current salary packaging accounts, including their benefit accounts, FBT accounts, and employee post-tax contributions where applicable. Access to individual accounts is to be controlled by means of Personal Identification Numbers
- Upon cessation of salary packaging for any reason, provide a reconciliation of balances in the individuals' accounts, including the proportion of the total sums in the accounts which is represented by post-tax employee contributions

1.6 Indemnity:

Without limiting the generality of any other provision, Service Provider/s must indemnify Customers and Participants against loss flowing from any breach or non-performance by Service Provider/s.

2 TAXATION MATTERS

- 2.1 In setting up each package due regard will be paid to Taxation Ruling TR 2001/10, which defines the ATO's view regarding the effectiveness of salary sacrifice arrangements (refer <http://law.ato.gov.au/pdf/tr01-010.pdf> and <http://law.ato.gov.au/pdf/tr01-1-a.pdf>)
- 2.2 Service Provider/s will:
 - ensure that tax is not overpaid or underpaid, it being noted that funds for FBT payments will at all times be handled by Customers not Service Provider/s.
 - ensure that all lease arrangements comply with relevant law.
 - ensure that the SCHEME participants electing to make a post-tax contribution benefit from an approximately equivalent reduction in both their FBT deduction and their benefit deductions.
 - ensure that no FBT liability is created for a participant electing to make a post-tax contribution, by monitoring and where necessary adjusting the post-tax contributions prior to the end of the FBT year.
- 2.3 Service Provide/s will supply systems to account for the provision of benefits and calculate the FBT liability of participants in the scheme and account to Customers and participants for any credit due in respect of a Participant.

- 2.4 Service Provider/s will report to Customers in the defined formats and to the agreed deadlines (as detailed in Schedules 3 and 4), to allow them to meet their obligations to lodge returns with the ATO.
- 2.5 Appropriate current NSW Premier's Department Circulars relating to salary packaging will apply to all salary sacrifice arrangements subject to the Premier's Department policy on salary packaging for Non SES employees.
- 2.6 FBT applying to packaged items will be calculated using the lower type 2 gross-up rate which is currently 1.8691 (refer to http://www.premiers.nsw.gov.au/pubs_dload_part4/prem_circs_memos/prem_circs/circ2000/c2000-46.htm.) Based on this gross-up rate, the participating employee will bear the GST inclusive cost of relevant expenses, and will not be entitled to any Input Tax Credits (ITC) that may be available to Customers.
- 2.7 Package agreements must be prospective, in that they relate to the participant's future earning of an entitlement to an amount of remuneration from which package benefits are financed.
- 2.8 The accounting period for all salary sacrifice arrangements will be the FBT year or part thereof.
- 2.9 Package arrangements will be closed-off seven (7) business days after the end of the FBT year, 31 March and no changes will be made to reported benefits or deductions after that date.
- 2.10 Service Provider/s will write off positive and negative small balance amounts less than twenty cents, that represent rounding differences from the calculation of participants' FBT liability.
- 2.11 Account balances, positive or negative, will be rolled over to the next accounting period and payroll deductions for that FBT year will be calculated to effectively eliminate those balances simultaneously with that accounting period's provision of benefits.
- 2.12 The agreement signed with each participant is to make provision to adjust the payroll deductions for FBT or ECM as required to maintain the status of the package benefits, within the relevant FBT year.

- 2.13 Participants will be provided with an annual reconciliation of their package for each FBT year or part thereof, and Customers will be provided with a summary report (one line per participant) of the reconciliations.
- 2.14 Purchase or reimbursement of benefit items is generally to be from GST registered suppliers. Customers are to be advised of any variation from this rule.
- 2.15 Tax invoices are to be obtained for each purchase or reimbursement of benefit items, and retained in accordance with legislative requirements.
- 2.16 PAYG withholding requirements are to be followed where a supplier is not registered for GST.
- 2.17 Where a participant elects to package a vehicle under a novated lease, the following rules apply:
- the default statutory fraction for car benefit estimates is 20% for Public Sector Service Agencies and other Customers subject to NSW Premier's Department policy;
 - participants are entitled to a refund on reconciliation where the actual FBT liability is less than the estimate;
 - a car will only be considered to be "unavailable for private use" when the participant supplies documentary evidence that the car is in a repair workshop for longer than one day.
 - the participant must supply odometer-reading declarations to the Service Provider within one week of the end of each quarter of the FBT year.
- 2.18 Service Providers will ask all participating employees who salary package a novated lease motor vehicle to supply:
- an odometer-reading within one week of the end of each quarter of the FBT year, and
 - an (online) odometer-reading declaration within one week of the end of the FBT year (the use of the odometer reading provided at the time of fuel purchases does not satisfy this requirement.)

- 2.19 Participants may elect to make a post-tax contribution to Customers in order to negate the FBT component of the package. Service Provider/s must maintain a system that records the post tax payment of running and standing costs made by participating employees.
- 2.20 A new agreement must be signed at the time of electing to make post-tax contributions to reflect all payroll deduction amounts correctly.
- 2.21 Where a participant signs an agreement to make post-tax contributions in order to negate the FBT component of the package, Service Provider/s will monitor the progress of each participant's car usage and FBT liability at quarterly intervals against the estimated kilometres and in accordance with the agreement signed by the participant. Service Provider/s will take all reasonable steps to ensure that no FBT liability arises, and ensure that any credit is appropriately accounted for to the relevant participant.
- 2.22 Service Provider/s will provide information and counselling to participating employees where necessary on package variations where quarterly monitoring of distance travelled and a post-tax employee contributions/ payments indicates that salary packaging estimates are not being met. If a variation, and particularly a FBT shortfall is identified, the Service Provider/s will contact the Participant within fourteen business days to confer and recommend action and advise the employee of risks if remedial action is not taken, document the discussions and agreed action and provide a copy to the Participants' Human Resource Manager. Where appropriate, the Service Provider/s will request payroll administrators to adjust the deductions for FBT or ECM where required, and inform the participants of the action taken.

3. BANKING AND ACCOUNTING ISSUES

Service Provider/s will:

- 3.1 establish bank accounts in the name of a respective Customers' Salary Packaging Scheme (or such names as the Principal may from time to time specify in writing) for all Participants' funds and will make payments by electronic funds transfer or by cheque for the benefits elected y the participants from the appropriate bank accounts.
- 3.2 establish procedures to accommodate a range of benefit payment frequencies, such as annual, periodic, or one-off.
- 3.3 maintain a computerised accounting system featuring an audit trail of transaction processing, internal controls for data integrity and a full reporting function.

- 3.4 ensure that the accounting system's chart of accounts will support
- detailed reporting formats for indicating to participants the current state of their accounts
 - receipt of deductions from Scheme participants clearly separated into pre-tax and post-tax components.
 - tracking benefit payments for participants to third parties
 - calculation and reporting FBT liabilities, GST input tax credits and GST liability for employee contributions.
- 3.5 report FBT year-end reconciliations of packages and roll-over of balances to individual participants and to their Customers
- 3.6 ensure all documentation to establish a salary package is complete and correct in accordance with the terms of the Contract, tax law and NSW Premier's Department policy where applicable prior to forwarding the documentation to Customers for signature.
- 3.7 obtain and hold tax invoices required under GST legislation, to support Customers entitlements to input tax credits and report the correct amounts for the tax period for inclusion in the Business Activity Statement.
- 3.8 obtain and hold all substantiating documentation required under FBT legislation.
- 3.9 reconcile the participants' contributions collected with expenditure on lease payments or running costs, and report on the reconciliation quarterly, within two weeks of the end of the quarter.
- 3.10 note that all documentation in relation to the Scheme held by Service Provider/s remains the property of Customers.
- 3.11 ensure that funds are transmitted with the time frames agreed and set out in Schedule 4.
- 3.12 supply up-to-date computerised accounting systems, including local database structures, adequate to process the volume of transactions required and to provide a full reporting function
- 3.13 provide control over integrity of data and an audit trail of transaction processing.
- 3.14 provide a copy of their annual audit report for the Scheme to the NSW Premier's Department and the Principal
- 3.15 calculate all payroll deductions for each package and forward the calculation sheet as part of the establishment package for review and signature

- 3.16 accept liability for errors in the calculation of deductions or for neglecting to request that deductions be made and rectify the error at no cost to Participant.
- 3.17 maintain a system which records Payroll deductions specified by:
 - superannuation
 - benefit amounts
 - fringe benefits tax component
 - administration fee
 - post-tax contributions
- 3.18 maintain a strict separation of pre-tax and post-tax amounts in relation to deductions for superannuation, benefit amounts and post-tax contributions which will be forwarded fortnightly to Service Provider/s and will be transmitted within seven days of the due date
- 3.19 provide information on post-tax contributions which attract GST, each month
- 3.20 provide reconciliations at regular intervals for all cash flows, FBT liability and post-tax contributions.
- 3.21 deductions for the FBT component will be credited to Customers FBT Expense Accounts.
- 3.22 deductions for the Administration Fee will be retained in an Customer bank account and remitted at regular intervals to Service Provider/s, subject to performance of service.

4. REPORTING

Service Provider/s will:

- 4.1 provide reconciliation reports to Finance Units for all aspects of benefit cash flows and account balances, FBT liabilities with variance of estimates to actuals, in the defined format contained in Schedule 3 to these specifications;
- 4.2 provide monthly reports by the fifth day of the following month covering all details required to facilitate completion of the relevant Business Activity Statement, including tax invoices, input tax credits, and employee contributions, in the defined format contained in Schedule 3 to these specifications;
- 4.3 provide NSW Premier's Department and the Principal with a copy of the annual audit report of the operation of the Scheme;
- 4.4 report on the following reconciliations to Taxation Units in respective Customers:

- cash flows for benefit amounts and post-tax contributions reconciled to actual payments with variances, each quarter;
 - FBT liability year-to-date reconciliation against deduction amounts specified, each quarter;
 - annual FBT reconciliation of packages and roll-over balances;
 - individual participants' administration fees against the invoiced amounts, monthly
- 4.5 provide report of refunds and cessations of salary packaging payments for the current fortnight
- 4.6 provide Participants with an annual FBT reconciliation of packages summaries, by 21 April in each FBT year
- 4.7 provide the electronic report of FBT details for the Annual Return lodgement by 21 April in each FBT year
- 4.8 provide a list of Participants who have not submitted odometer-reading declarations quarterly within 14 days of end of quarter and for whom Service Provider/s will initiate follow-up action
- 4.9 provide GST monthly reports for lease and maintenance costs and post-tax employer contributions, by the fifth business day of each month
- 4.10 report quarterly to participants on all aspects of their salary packaging including:
- tracking of actual kilometres against estimated kilometres;
 - FBT budget / deductions against estimated FBT liability (allowing for actual post-tax contributions and payments);
 - the balance of their benefit accounts;
 - actual against budget for fuel and maintenance; and
 - initiate remedial action/s (if actuals do not reflect estimates) and risks if action/s not taken.

- 4.11 Customers may request ad-hoc reports from time to time in relation to the Agreement or specific package arrangements. These are to be provided at no additional cost within 21 days of request.

SCHEDULE 3 REPORTING FORMATS

All reports should be formatted to provide the types of information indicated below or in the following sections of this Schedule, according to the information requirements of Customers. The format and content of reports will be as agreed between Customers and Service Provider/s from time to time. Sample formats follow and where none are given the Service Provider/s should offer a format to Customers for consideration.

The Tax Invoice is to be provided in both hard copy form and electronic form.

All reports are to be provided in electronic media, as determined to meet the needs of each Customer.

Summary of Reports required:

<i>Report</i>	<i>Frequency</i>	<i>Performance Standard</i>
1. Tax Invoice for Administration Fees	monthly	Within 5 th business day of following month
2. Packaging Arrangements Employer Report (refer sample format)	monthly year end	Within 14 days of end of month Within 14 days of year end
3. Payroll Requests a) Deduction b) refund on termination (refer sample format)	as required as required	within 14 days of advice
4. Reconciliation Reports	Participants (Customers will receive a summary of Participants' reconciliations): a) on termination b) on reasonable request of the Customers or the Participant	Within 14 days of advice Within 21 days

<i>Report</i>	<i>Frequency</i>	<i>Performance Standard</i>
<p>5. Employer & Participant Salary Packaging reconciliation Report (includes FBT reconciliation) (refer sample format)</p> <p>To include:</p> <p>Employees identification, first and last names, FBT contributions, estimated for period, estimated year-to-date, actuals for period, actuals year-to-date, forecast for full year and details of action taken or proposed to address shortfalls.</p>	<p>Quarterly</p> <p>annually</p>	<p>within 5 days of end of quarter</p> <p>within 21 days of end of year</p>
<p>6. Annual FBT return</p> <p>To include:</p> <p>registration number, first and last names, employee identification, date first held, disposal date, base value (GST incl), odometer start, odometer end, days not available, total lease charges, registration expense, insurance expense, other expenses recipients contribution, packaged component, value</p>	<p>year end</p>	<p>By 21 April</p>
<p>7. GST Report</p> <p>a) Monthly</p> <p>b) Year to date</p> <p>(refer sample format)</p>	<p>Monthly</p> <p>Year end</p>	<p>By 5th business day of the following month</p> <p>By 5th business day of the end of the year</p>
<p>8. Dispute Report</p> <p>Full listing provided to Principal of all complaints received from Participants and their employers, and advice relating to those complaints.</p>	<p>quarterly</p>	<p>Within 14 days of end of quarter</p>
<p>9. Report on small balances written off</p>	<p>annually</p>	<p>by 14 April</p>
<p>10. Report of participants who haven't submitted odometer readings and action taken to address same</p>	<p>quarterly</p>	<p>Within 14 days of end of quarter</p> <p>Tolerance 5% first 3 quarters – 0% final quarter</p>

2. Packaging Arrangements Employer Report

Employer Name

Employer Address

.....

.....

.....

Period: DD MM YYYY to DD MM YYYY

Report Date: DD MM YYYY

Benefit Category	Number of Employees Packaging				Forecast Annual Amount
	At Start of Period	New	Ceased	Total at End of Period	
Fee Categories					
Superannuation Only					
Superannuation and Other Benefits					
Benefits Only					
Total					
Benefit Type					
Vehicle					
Mortgage					
Education					
Superannuation					
Lap Top					

3a) Payroll Deduction Request

Employer: NSW Dept of BBB

Attention: <BBB payroll officer>

PAYROLL DEDUCTIONS.

Variations requested: <Service provider officer>

Date: <date of request: dd/mm/yyyy>

Pay cycle:

– effective payroll date: dd/mm/yyyy

Serial No	Surname	First Name	Super	Benefits	FBT	Admin Fee	Post Tax	Reason	End Date
								1	
								4	
								4	
								2	
								3	21/06/07

Code	Reason
1	Commence packaging
2	Amend benefits
3	Shortfall recovery
4	Cease packaging
5	Requested return of surplus

3 b) Payroll Refund Request on Termination

Employer: CCC

Attention: <CCC payroll officer>

PAYROLL REFUND REQUEST.

Requested by: <Service provider officer>

Date: <date of request: dd/mm/yyyy>

Pay cycle: Effective payroll date: dd/mm/yyyy

Serial No	Surname	First Name	Pre-Tax Amount	Post-Tax Amount	Reason

Code	Reason
6	Cease packaging
7	Requested return of surplus

5. Salary Packaging Reconciliation Report

This report is to be received within 5 business days of the end of the Quarter. The dollar amounts in the report are to be FBT year-to-date cumulative.

Quarterly Cash Flow Reconciliation to
Taxation Unit

Employer: DBA

Attention: **Taxation Unit**

Quarter Ending: <dd/mm/yyyy>

Serial No	Surname	Participants' Non-Car Benefit Amounts Including Super			Participants' Car Benefits							Employee Contribution Method Car Benefit			Fringe Benefits Tax			Proposed Action to address shortfalls
		Collectd	Paid Out	Var'ce	Tax Value	Open KM	Close KM	SP %	Collectd	Paid Out	Var'ce	Collectd	Reqd	Var'ce	Collected	Reqd	Var'ce	
	Totals																	

Note: Figures based on the following information: $TV = \text{Car Value} \times SP$

$FBT = TV \times \text{Type 2 gross up rate}$

$ECM = TV$

7. GST Reports

Customers will take up Input Tax Credits in accordance with Premier's Circular 2000-46 and will meet the GST payable on post-tax employee contributions. The GST monthly report will provide sufficient detail to ensure compliance with legislative requirements.

Employee ID	Input Tax Credits	Tax Invoice Held	GST on contributions	Employee name	Employee contribution (in months & YTD)	ITC/GST difference
Number	Summary data on input tax credits available on benefits provided to employees	(Yes/No)	Summary data on employee contributions received – taken up to eliminate FBT liability			

SCHEDULE 4 PERFORMANCE INDICATORS

Requirement	Performance Standard
Commencing SCHEME participants	
All necessary information is transmitted to Customers to facilitate payroll action and maintain a record	100% For inclusion in the earliest possible pay cycle (cut-off for each transaction is 12:00 noon six working days prior to the payday)
Service provider/s to check and maintain a record that prospective participants have completed the acknowledgement in the agreement that they have taken financial advice or accept responsibility for not having done so.	100%
Service provider/s to check and maintain a record that prospective participants have certified in Agreement that they were fully informed by Service provider/s	100%
Documentation is forwarded: <ul style="list-style-type: none"> • to the prospective participant for signature and return • to Customers for execution 	Within twenty-four hours Within twenty-four hours of sign-off by participant
All package data complete and accurate	100%
Enquiries	
Telephone calls to the call centre	80% of calls answered within 20 seconds & addressed within 3 minutes on a monthly basis.

Initial enquiries concerning packaging problems relating to individual participants	Completion of enquiry within five working days
Funds Transfers	
Making and or directing benefit payments to third parties on behalf of participants in the SCHEME."	Funds to be disbursed to third parties by relevant due date - zero tolerance
Terminations	
Termination of salary packaging by a participant	Customers to be informed within 14 days of advice of termination Participant accounts to be checked in 100% of cases to identify outstanding balances for inclusion in earliest possible pay cycle
Outstanding liabilities	Customers to be informed within twenty four hours so that recovery can be made from pay entitlements
Package alterations	
All necessary information to be transmitted to Customers	For inclusion in the earliest possible pay cycle
Schedules of alterations to packaging details to be forwarded to Payroll Administrator	No errors to be present in information contained in the schedules 100%

Requirement	Performance Standard
Taxation matters	
Close-off of package arrangements at end of FBT year	By seventh business days after 31 March Tolerance less than 1%
Identification and rectification of FBT anomalies on a quarterly basis	Investigate and report within 14 days of notification
Accounting matters	
Detailed information for each participant will be supplied by Service provider/s for the preparation of Customers' FBT returns	By 21 April
GST registered suppliers	Zero tolerance
Tax Invoice for Administration Fee provided promptly	By seventh business day of following month
Reporting	
Refer "Summary of reports" on p. 34	Refer "Summary of reports" on p. 34

CONTACT REPRESENTATIVES

1. Signatories to the Contract

-

2. Contact Officers for Contractual Issues

Phone (02)

Fax (02)

Service provider

Postal address :

Phone (*Fax* (*Email address:*3. *Account Manager**Service provider**Postal address:**Phone* (*Fax* (*Email address :*

4. Contact Officers

HUMAN RESOURCES DIRECTORATE

Postal address :
 Phone: (02) Fax:
 (02)

Service provider
 Postal address :

Phone (
 Fax (
 Email address:

PAYROLL BUREAU

Postal address:
 Phone (02)
 Fax (02)

Service provider
 Postal address:

Phone
 Fax
 Email address:

TAXATION UNIT

Postal address:

Phone (02)

Fax (02)

Service provider

Postal address:

Phone (

Fax (

Email address:

Schedule 5**3 step dispute resolution procedure
Salary Packaging (Contract 0601745)**

1. You should first contact your salary packaging service provider to determine whether your concern can be addressed without lodging a written dispute. If you agree on a resolution ask when the matter will be resolved eg will an adjustment be made in the next pay period.
2. If your issue is not resolved following initial contact with the service provider you may lodge a written dispute them. Your service provider is required to have a procedure for resolving complaints within 10 working days. This is posted on their web site. Your written dispute should:
 - Provide evidence in support of your claim eg relevant dates, amounts, copies of receipts or account statements where available;
 - State how and when you became aware of the problem;
 - Inform the service provider of whether you have had previous contact on this issue, eg phone calls, and the dates of those calls;
 - Note any changes that the service maker has made in response to previous contact and explain why this has not adequately addressed your issue;
 - Clearly state the remedy you are seeking;
 - Sign, date and keep a copy of all correspondence with the service provider. If you lodge your complaint via the service provider's web site, make sure to copy and keep the complaint for future reference.
3. You may refer any unresolved disputes with the salary packaging service provider to the Vendor Management Group Department of Commerce 2-24 Rawson Place Sydney 2000. You must first allow the service provider *10 working days* from *receipt* of your dispute form to resolve the matter. You must use the attached form.

Dispute Resolution Form - Salary Packaging (Contract 0601745)**When to use this form**

You must use your service provider's complaints procedure *before* lodging this form with the Department of Commerce. Salary package service providers are required to have a complaint handling system to resolve written complaints within 10 working days of receipt. Their complaints procedure and a copy of this form are available on their website.

If 10 working days have passed since the service provider received your written complaint AND the matter has still not been resolved to your satisfaction you may forward this form to:

Vendor Management Group
Department of Commerce
2-24 Rawson Place
SYDNEY 2000

Your given names:

Surname:

Your Employer:

Name of your Salary Packaging Service Provider:

Your day time contact number:

Your address for written correspondence:

Date when you *first* contacted the service provider about your issue eg phone inquiry:

Dates of any subsequent contact with the provider, whether initiated by you or the provider:

Date when you lodged your *written* dispute with the service provider. Please append a copy of your complaint.

Has the service provider provided a response (other than acknowledgement of receipt) to your written complaint? YES/NO

If YES, Please append the response and explain why you believe their proposed course of action fails to resolve your complaint or only partially resolves your complaint.

What remedy are you now seeking?

I authorise the Vendor Management Group, Department of Commerce to disclose information on this form to the service provider or my employer in order to investigate this dispute.

Checklist:

- Is it at least *10 working days* since the service provider *received* your complaint?
- Have you appended copies of all correspondence, including supporting evidence, with the service provider?
- Have you provided your contact details?
- Have you signed and dated this form?

Signature:

Date: