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

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

Contract Number: 079/955  
Contract Name: Enteral Feeding Products  
Tender Number: 0601875

Contract Term: Three years, from 1 January 2007  
to 31 December 2009, with two by  
one year optional extensions or  
part thereof

Tender Issue Date: 18 September 2006

Closing Date: 12 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  
Contracting Services  
NSW Department of Commerce  
McKell Building  
2-24 Rawson Place  
Sydney NSW 2000  
Tel: (02) 9372 7504  
Fax: (02) 9372 7533

# Enteral Feeding Products

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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 of the Deliverables outlined below and detailed in the Specification at Annexure 1 to Part B, on the conditions stated in Part D. The Deliverables are to be supplied to the NSW public health system, and the Customers listed at Schedule 12 of Part D.

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

This Tender covers the supply and delivery of Enteral Feeding Products for the period 1 January 2007 to 31 December 2009 (3 years), in accordance with the Conditions and Specifications detailed herein. The Board reserves the right to extend the contract for a further period of up to twelve (12) months in accordance with the Conditions and Specifications mentioned above.

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

**1.3** Additional Items

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

**1.4** The Department of Health adopts as a strategy in this RFT to acquire from the tenderers for the whole of State customers use, the best price at the base rate for each product offered. Due to this, tenderers are required to provide in their offer to this RFT the best price available to customers at their base rate and not consider offering conditional offers for discounts other than those required in Part C of the RFT in order that customers can achieve the best price for products offered. Tenderers should therefore note that offers of Percentage of Business Discounts, Volume Discounts and Bundled offers are not called for in this RFT.

## 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:

Name: Prudence Pinto

Phone: (02) 937 29147

Fax: (02) 937 27633

E-mail: [prudence.pinto@commerce.nsw.gov.au](mailto:prudence.pinto@commerce.nsw.gov.au)

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

## **2.4 Nature and duration of contract**

2.4.1 The Requirement is to be met by means of a Standing Offer agreement to be embodied in a deed of agreement between the Board and the successful tenderer(s) on the conditions contained in Part D.

2.4.2 The Standing Offer agreement will be for a term of two (2) years and may be extended for a further term of up to 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 part of the Requirement.

## **2.6 Eligibility to tender**

2.6.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Board will only enter a deed of agreement with the relevant legal entity or entities.

2.6.2 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.

## **2.7 Other Eligibility Requirements**

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

## **3. Where to obtain this RFT**

### **3.1 RFT copies**

- 3.1.1 A tenderer may obtain either a hard copy or electronic copy of this RFT.
- 3.1.2 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](mailto: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 21.7 in Part C to be completed. Failure to complete tender response 21.7 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 Contracting Services.

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

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

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

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

**“Code”** means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The code can be viewed and downloaded from:

[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](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)
  - 8) a Nominee Purchaser provided that it satisfies the requirements of clause 4.2 of Part D (Deed of Agreement) and
  - 9) such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

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

**“OHS&R”** means occupational health, safety and rehabilitation.

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

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

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

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

**“Principal”** 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.

**“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**.

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

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

**“SME”** means small to medium enterprise.

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

**“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 or 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”** See definition for **Board**.

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

### 5.2 Prescribed form of Tender

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

### **5.3 General instructions for completion of Tenders**

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

### **5.4 Addenda to this RFT before close of Tenders**

- 5.4.1 A tenderer may ask the 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 Pre-Tender briefing**

- 5.5.1 An Industry Forum was held on 31 August 2006. Major and interested suppliers were notified by email.
- 5.5.2 The Industry Forum was held at Gladesville Hospital, to allow potential tenderers to discuss specifications, clarify any part of the tendering process and or provide feedback, comments and raise any issues/suggestions regarding the specifications and RFT document.

### **5.6 Provision of catalogue information**

#### **EAN or HIBCC Barcoding**

- 5.6.1 As part of the move towards more efficient management of information, including information in relation to product distribution, inventory control and data capture, the NSW Health Department has formally endorsed adoption of the European Article Number (EAN) Standard and the Health Industry Business Communications Council (HIBCC) Standard and has indicated that preference will be given to EAN or HIBCC compliant organisations.
- 5.6.2 The tenderer is required to state in Part C1 the extent of its use of EAN or HIBCC Barcoding for its products.

- 5.6.3 If Tenderers have EAN or HIBCC Barcoding in place, they shall indicate in the Pricing Schedule in Part C the EAN or HIBCC number for each of the products being offered.
- 5.6.4 Indication of compliance with this section warrants that Tenderers will provide to NSW Procurement – Contracting Services details of all EAN and HIBCC Barcodes available, or which may become available for use, for any products accepted to be supplied under any resulting contract.

## **5.7 Tenderers to inform themselves**

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

## **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](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 Economic Development through Government Procurement**

- 6.4.1 Economic development is a key policy objective in all government procurement. This objective may incorporate policies regarding:
- (a) the giving of purchasing preferences to Deliverables of Australian and New Zealand origin;
  - (b) local industry participation, and;
  - (c) Small to Medium Enterprise (SME) involvement, employment and workforce development.
- 6.4.2 Policies of particular relevance to this procurement are drawn to tenderers' attention in this clause 6. Further details are to be found in the NSW Government Procurement Policy and from sources identified in this clause.
- 6.4.3 Tenderers are encouraged to take up the services offered by the Industry Capability Network (NSW) Ltd (ICN) to assist in maximising the local content of tenders. The ICN is a business advisory service, managed by industry and funded by the NSW Government, primarily to assist business and buying organisations to source their requirements from local producers who can provide goods, equipment and services against imports. The ICN provides a free service of identifying the supply capabilities of Australian manufacturers and import replacement. The ICN also assists in the preparation of Local Industry Participation Plans. Contact details are given below.
- Industry Capability Network (NSW) Ltd  
Suite 313 Henry Lawson Business Centre  
Birkenhead Point  
Drummoyne NSW 2047
- Phone: (02) 9819 7200  
Fax: (02) 9181 3321  
E-mail: [enquiry@icnsw.com.au](mailto:enquiry@icnsw.com.au)  
Website address: <http://www.icnsw.org.au/>
- 6.4.4 The Board makes no representation or promise in relation to the suitability or otherwise of any advice or assistance offered by the ICN or its compliance with the Board's requirements.

## **6.5 NSW Government Purchasing Preference Scheme**

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

### **Preference – Australian and New Zealand Content**

- 6.5.3 Preference is applied in the form of a 20% loading on the declared imported/overseas content (excluding New Zealand) of the tendered goods (and related services). For example:
- |                            |  |
|----------------------------|--|
| Tender Price:              | \$10.00                                    |
| Imported Content:          | 80%  |
| Preference margin          | $20\% \times 80\% \times \$10.00 = \$1.60$ |
| Price used for evaluation: | $\$10.00 + \$1.60 = \$11.60$               |
- 6.5.4 No preference margin is applied when assessing Tenders for the provision of services alone.
- 6.5.5 Tenderers are required to provide details of the imported (non-Australian and New Zealand) content in the Price Schedule and to make available records (as and when required) to substantiate imported or local content claims. Tenderers must also include detailed statements from their sub-contractors on the imported content of the goods and related services they are offering.
- 6.5.6 The imported content of goods and related services is the estimated duty paid value, inclusive of the value of any services, for example overseas freight and insurance, consultancy or engineering effort, or any charges of overseas origin, together with customs clearing charges.

### **NSW Country Industries Preference Scheme**

- 6.5.7 A further preference loading of up to 5% is applied if the tenderer is based in a NSW country area in accordance with the Country Industries Preference Scheme (CIPS). The preference loading is not applied against New Zealand or other overseas Tenders or Tenders from other states or territories.
- 6.5.8 For preference to be applied to a Tender under the CIPS:
- (a) the tenderer must be registered with the Department of State and Regional Development as a country manufacturer under the Country Industry Preference Scheme (Phone 02 9338 6717) before the Closing Date and Time for Tenders;
  - (b) The tenderer must quote its Preference Registration Number allocated by the Department of State and Regional Development and the applicable preference margin in the space provided in Part C1 of this RFT;
  - (c) The goods being sought are those for which the tenderer is registered; and
  - (d) The tenderer is tendering as the prime contractor.
- 6.5.9 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State which, in comparison with their city-based competitors, suffer definable economic disadvantages which can be directly attributed to their country location. The preference applies on the following basis to approved manufacturing industries located outside the county of Cumberland, the Cities of Newcastle, Wollongong, Penrith and Liverpool and the Municipality of Camden:
- (a) In the Cities of Maitland, Greater Cessnock and Blue Mountains, the Municipalities of Kiama and Shell Harbour and the Shires of Port Stephens, Lake Macquarie, Gosford, Wyong, Wollondilly, Wingecaribee and that part of the Shire of Hornsby which was previously part of the Shire of Colo: maximum preference of 2.5%.
  - (b) Elsewhere in New South Wales: maximum preference of 5%.

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

Department of State and Regional Development  
 Regional Development Division  
 225 George Street  
 Level 43  
 Grosvenor Place  
 SYDNEY 1200  
 Telephone: (02) 9338 6717  
 Facsimile: (02) 9338 6726  
 Website address:

[www.dpws.nsw.gov.au/NR/rdonlyres/ecufn2722d4anbl464l6knvz4d7stllxzkqj2kclauhfxpfbqd6ndphucroflqsuas24astfwx5njy4ym2gkboxgiexa/NSW+Government+Preference+Scheme.pdf](http://www.dpws.nsw.gov.au/NR/rdonlyres/ecufn2722d4anbl464l6knvz4d7stllxzkqj2kclauhfxpfbqd6ndphucroflqsuas24astfwx5njy4ym2gkboxgiexa/NSW+Government+Preference+Scheme.pdf)

**6.6 Not Used**

**6.7 Not Used**

**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).

**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.

**6.12 Not Used**

**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.

## **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.
- 6.16.4 The successful tenderer will be required to develop Safe Work Procedures for the Standing Offer agreement. Safe Work Procedures must include, as a minimum, the following:
- (a) procedures that are relevant to the Tenderer's operations;
  - (b) a description of the tasks and associated hazards;
  - (c) all precautions to be undertaken to protect health and safety;
  - (d) control measures and methods to minimise health and safety risks;
  - (e) reference to health and safety legislation, codes or standards applicable to the work; and
  - (f) if requested, obtaining Safe Work Method Statements from Sub-Contractors 7 days before commencement of the Agreement.
- 6.16.5 Tenderers are required in Part C to provide evidence of their OHS&R performance record.

## **6.17 Environmental Management**

- 6.17.1 The NSW Government 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 Not Used**

## **6.19 Electronic Procurement (smartbuy®)**

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

- 6.19.2 The NSW Government seeks to maximise the use of electronic procurement and progressively move significant volumes of NSW Government purchasing on to smartbuy®.
- 6.19.3 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® is located at <http://www.smartbuy.nsw.gov.au>.
- 6.19.4 smartbuy® enables eligible clients to electronically procure goods and services, generally on terms established in Government Contracts. It is intended that all goods and services provided under the Board's Standing Offer Agreements will be browsed, searched and where appropriate, purchased online via smartbuy®. Similarly, any procurement agreement between eligible clients and suppliers can be facilitated in smartbuy®.
- 6.19.5 All successful tenderers are required to accept Orders and other business documents and communications by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000. More information on the NSW Government's policy about electronic procurement and smartbuy® can be seen at:
- a) <http://www.smartbuy.nsw.gov.au> and
- b) <http://www.dpws.nsw.gov.au/About+Us/Publications/Government+Procurement+Publications.htm>

#### **Participating in smartbuy® and smartbuy® enrolment process:**

- 6.19.6 Successful tenderers will be required to enrol with smartbuy®, which is a three step exercise conducted by the Government Procurement Delivery Systems. The first step for a successful tenderer is to register the organisation online, through the smartbuy® website, and where the smartbuy® Supplier Agreement and participation Rules are reviewed and agreed to.
- 6.19.7 The second step is for the nominated smartbuy® Supplier Administrator 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 electronic format; the format will be provided to successful Tenderers at the time of notification of acceptance of their tender response; or
- c) provide access to tendered products through an externally hosted catalogue. Tenderers are advised that where OCI protocol is used,

the outbound and any inbound requests should fully comply with OCI version 2.0B and version 3.0.

### **smartbuy® Operational Requirements**

- 6.19.11 The smartbuy® solution is comprised of a number of procurement-related applications and services including 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 out of or into the 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 Not Used**

**6.21 Compliance with relevant legislation and standards**

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

6.21.2 Certificate of compliance with relevant Standards

6.21.2.1 Tenderers are required to provide evidence of compliance with Standards requirements as laid down by State or Federal Authorities, where relevant.

6.21.2.2 In all cases where Australian Standards exist, tendered products should conform to such Standards. Tenderers are at liberty to offer items that comply with other recognised international Standards. However, where any inconsistencies exist between other Standards offered and the Australian Standards specified, full details of the inconsistencies are to be stated in the tender response.

6.21.2.3 Tenderers are required to in Part C to indicate whether certification from approved testing authorities, which confirm that the tendered items meet the relevant Australian, overseas or International Standard, is attached to Part C4.

**Compliance with Therapeutic Goods Act 1989**

6.21.2 Therapeutic goods (both drugs and devices) offered must be contained on the Australian Register of Therapeutic Goods (ARTG) unless exempted, in accordance with the *Therapeutic Goods Act 1989 (Cth)*. Products contained on the ARTG are required to meet standards in relation to quality, safety and efficacy (for registered goods) and quality and safety (for listed goods). Products not accepted onto the ARTG cannot be lawfully supplied in Australia, unless exempted. Tenderers **must**, in the space provided in the Price Schedule, state for each item offered the AUSTR number (for registered goods), the AUSTL number (for listed goods) or indicate whether the item offered is exempted.

6.21.3 Tenderers must provide copies of all relevant certification issued by the Therapeutic Goods Administration that will enable verification of any statements made in respect of the above.

- 6.21.4 Submission of a Tender will be taken as clear evidence that the tenderer will comply in all respects with “The Uniform Recall Procedure for Therapeutic Goods” as called for by the Therapeutic Goods Administration.
- 6.21.5 Labelling of products shall comply with the Therapeutic Goods Order 37, “General Requirements for Labels for Therapeutic Devices”.

#### **Certificate of compliance with relevant Standards**

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

### **6.22 Other Board Requirements**

#### **Marketing**

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

#### **Natural Rubber Latex Content**

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

## **7. Preparation of Tender – Price Schedule**

### **7.1 Price Schedule**

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

7.1.3 The Price Schedule must contain the following information in respect of each Deliverable where applicable:

- a) Item Number#
- b) Description
- c) Tenderers Trading name
- d) Manufacturer / Brand Name
- e) Tenderers Description (Unique)
- f) Purchase Order Description (Unique)
- g) Tenderer's Product Code
- h) EAN Number
- i) HIBCC Number
- j) Is GST Applicable (Y/N)
- k) Price per Order Unit excl GST
- l) Order Unit
- m) Quantity per Order Unit
- n) Minimum Order Unit
- o) Import Content %
- p) Country of Origin
- q) Vol Discount Qnty
- r) Vol Discount Price
- s) Rate (\$) per gram of Carbohydrate
- t) Rate (\$) per gram of Fat
- u) Rate (\$) per gram of Protein
- v) Rate (\$) per Litre
- w) Rate (\$) per Calorie
- x) Size
- y) Are Specifications met (Y or N)
- z) Energy Density (kcal / ml)
- aa) % of Energy from Protein
- bb) Osmolality
- cc) Volume of RDI (ml)
- dd) % Energy from Fat
- ee) % of MCT in Fat
- ff) Fibre Level (g/L)
- gg) Sodium Level (mmol/L)
- hh) Phosphorous Level (mg/L)
- ii) Magnesium Level (mg/L)
- jj) Protein Level (g/L)
- kk) Conditionally Essential Nutrient Type
- ll) Conditionally Essential Nutrient Type per 100 kcal
- mm) Type of Protein
- nn) Type of Fat
- oo) Type of Carbohydrate
- pp) %of Energy of Carbohydrate
- qq) Fat level (g/L)

- rr) Carbohydrate Level (g/100g of Powder)
- ss) Thickener Agent
- tt) Flavour
- uu) Thickness

## 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; include costs of delivery as specified in cl.7.3.2 of this Part;
- (c) include costs of packaging as specified in clause 7.3.3 of this Part;
- (d) include the Management Fee (see clause 6.11 of Part D), which is not to be shown as a separate charge;
- (e) Not Used;
- (f) include all costs associated with the preparation and submission of the Tender;
- (g) include any Government Discount, or Government Discount from list price, which applies;
- (h) exclude all other discounts;
- (i) include any Government Mark-Up on list price that applies;

### 7.3.2 Delivery charges

7.3.2.1 One of the tendered prices are to provide for delivery (shall include the cost of delivery) **FREE-INTO-STORE (FIS)** throughout NSW and the ACT, for both Hospital and private residence (where applicable), in such quantities and at such times as may be required during the period of any final contract. (NFIS will not include costs of delivery)

7.3.2.2 Delivery will be required as soon as possible within the guaranteed delivery time, after placement of orders. Tenderers shall state, **at Part C1**, the delivery time they are prepared to guarantee to complete orders for reasonable quantities of each item tendered. Contractors are required to maintain adequate stocks to be able to satisfy orders for reasonable quantities within the guaranteed delivery time. Tenderers are to note that delivery times tendered will be a factor in the evaluation of tenders. Failure to adhere to guaranteed delivery times tendered may be regarded as grounds for termination of a Contract.

7.3.2.3 Contractors shall notify the Customer (being any of the organisations described in **Schedule 12** which placed the order for the Goods) immediately and in any event in not more than 24 hours, of any item on an order that cannot be supplied within the guaranteed delivery time.

7.3.2.4 The prices tendered are to provide for goods to be suitably packed to ensure safe transport to their destination. Packs are to show details of contents and country of origin.

**7.3.2.5 THE CONTRACTOR MUST ADVISE CONTRACTING SERVICES OF ALL PROLONGED DELIVERY DELAYS DURING THE PERIOD OF THE CONTRACT.**

7.3.2.6 Delivery charges shall not apply when a purchase order has been received by the Contractor and contains a minimum total of 50% of any State Contracts Control Board contracted items.

7.3.2.7 If the Contractor is unable to provide Deliverables for any reason, the Contractor must arrange for the supply of equivalent products from an alternative supplier within the guaranteed delivery time. The Contractor is to liaise with the Customer to ensure that the alternative product is acceptable and meets the purchaser's needs.

7.3.2.8 In reference to 7.3.2.7 (where FIS price is chosen by the customer in the purchase of deliverables), any additional cost in arranging the alternative supply is to be borne by the Contractor.

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

**7.3.3 Packaging charges**

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

**7.4 Price Adjustment**

7.4.1 The Tender Price is a maximum (ceiling) price that cannot be exceeded during the term (including any extension of the term) of the Standing Offer agreement unless price variation is provided for in this RFT.

7.4.2 Deleted

7.4.3 Deleted

7.4.4 It is **Mandatory** that the tenderer submit prices that are firm for the duration of the contract being eighteen (18) months of the Standing Offer agreement then subject to review if the option period is approved based on variations in **rates of exchange, labour and material factors and/or published price list.**

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

**Exchange Rates**

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

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

**Labour and Material Factors**

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

Where:

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

**EAHR Formula:**

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

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

Where:

AW	=	Weekly award rate of pay for the labour primarily engaged in the Standing Offer agreement, including industry allowances and site-specific allowances approved by the appropriate State or Commonwealth Authority.
HW	=	Award hours per week.

LL	=	Award annual leave loading (expressed as a decimal) multiplied by the number of days paid recreation leave covered by the award divided by 5.
LA	=	Award leave allowance divided by 5.
WC	=	The recommended rate (expressed as a decimal) of contribution of Workers Compensation in accordance with the relevant legislation.
PT	=	Payroll tax percentage (expressed as a decimal).
S	=	Rate of employer's superannuation as a percentage of the employees' wages in accordance with the relevant award (expressed as a decimal).

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

**Published Price List**

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

***Publish Price List Formula***

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

(Note: \* = means multiplication)

Where:

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

application is lodged.

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

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

(Note: \* = means multiplication)

Where:

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

## 7.5 Discounts

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

## 7.6 GST Free or Input Taxed Supplies

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

## 7.7 Minimum Tender validity period

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

# 8. Submission of Tenders

## 8.1 General instructions for submission of Tenders

- 8.1.1 A Tender must be received by the Closing Date and Closing Time.
- 8.1.2 A Tender may be submitted by any of the following methods:
- (a) by delivery into the Tender Box:
- (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...0601875"

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.
- (d) Any CAD files submitted with an electronically lodged Tender must be in DWF, DWG or DXF format. A tenderer must ensure that any CAD files submitted will correctly display and print in Microstation Version 4.

8.2.5 Signatures are not required for a Tender submitted to the 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 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.
- 9.1.3 If any criterion or sub-criterion is stated to be "mandatory" a failure by the Tender to fully comply with that criterion or sub-criterion will result in automatic exclusion of the Tender without further consideration. Mandatory criteria include those in which mandatory language such as "must" or "shall" is used.

## 9.2 Selection criteria

- (a) Fitness for purpose of Deliverables offered including compliance with Specification, quality, innovative aspects, product design, performance and warranties.
- (b) Quality Assurance Systems
- (c) Price
- (d) Range of Products offered (Note: The State Contracts Control Board reserves the right to accept tenders across a number of Items, or a category of similar items rather than accepting tenders on an Item by Item basis).
- (e) Discounts offered.
- (f) Minimum order quantities/ values.
- (g) Delivery considerations.

- (h) Lifetime cost of ownership.
- (i) Availability and presentation of samples (if required)
- (j) Ability to provide In-Service Education and Training
- (k) Capacity to perform this Standing Offer agreement.
- (l) Compliance with the proposed conditions of the deed of agreement, as stated in Part D.
- (m) Compliance with NSW Government procurement policy and other applicable NSW Government policies.
- (n) Compliance with relevant legislation and standards.
- (o) Compliance with other Board Requirements.
- (p) Previous contract experience and standard of contract performance.

### **9.3 Variation of Tenders**

- 9.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may, subject to cl.9.3.2, vary its Tender:
- (a) by providing the Board with further information by way of explanation or clarification;
  - (b) by correcting a mistake or anomaly; or
  - (c) by documenting agreed changes to the Tender negotiated under cl.10.1 of this Part.
- 9.3.2 Such a variation may be made either:
- (a) at the request of the Board, or
  - (b) with the consent of the Board at the request of the tenderer;
- but only if,
- (c) in the case of variation requested by the tenderer under cl.9.3.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
  - (d) in the case of variation under cl.9.3.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 9.3.3 If a Tender is varied in accordance with cl. 9.3.1(a) or (b), the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.
- 9.3.4 A variation of a Tender under cl. 9.3.1 will not be permitted if in the Board's view:
- (a) it would substantially alter the original Tender; or

- (b) in the case of variation under cl.9.3.1(a) or (b), it would result in the revising or expanding of a Tender in a way that would give a tenderer an unfair advantage over other tenderers.

#### 9.4 Samples

- 9.4.1 Initially, tenderers should submit samples of products, for Oral Administration only, offered under from categories 1 to 45, where such products are not currently listed on the existing SCCB contract. Samples of other products offered under these categories may be requested at a later date as part of ongoing evaluation and potential clinical trials.

A minimum of the following is required for each of the above products:

- For Supplements - 1 Litre or equivalent thereof in tendered size/volume.
- For all other formulas/supplements etc - 4 individual units of the product concerned.

All samples provided must have a used-by date of at least 4 November 2006 to allow for taste testing.

Nutritional Data Analysis, Fact Sheets and samples of labelling are required to be submitted for all products offered.

Failure to provide the above information and/or samples with adequate use-by dates may result in non-consideration of your tender.

- 9.4.2 Samples must be supplied to the NSW Department of Commerce, Contracting Services, Level 2, McKell Building, 2-24 Rawson Place Sydney 2000 no later than the tender closing date. Where additional items are required for evaluation purposes they will be requested in writing, by Contracting Services.

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

- 9.4.3 On request, samples of each item offered (Pumps and Giving Sets only) shall be submitted to a designated location no later than five (5) working days after being requested to do so in writing by Contracting Services.

More than one sample of equipment and accessories may be requested. Equipment and Accessories can be collected following evaluations.

- 9.4.4 Each sample must be clearly identified with a securely attached label showing the **Tenderers name, tender number 0601875, tender item number and product code** (as per the Pricing Schedule Part C3).

**Note: Failure to provide samples as requested may result in the tender being given no further consideration.**

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

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

- 9.4.5 A **complete list** of all samples submitted as part of the tender, showing all the information listed above (ie. Tender number, tender item number, product code and the name of the tenderer) including any other relevant information

must accompany the samples. A copy of this list must be included with the tender as an attachment to Part C1.

Please provide details at clause 19.2 Part C details regarding the disposal of your samples. It should be noted that samples may be destroyed or damaged during evaluation and/or may be retained for future reference.

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

## **9.5 Exchange of information between government agencies**

- 9.5.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance 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,
- 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.

## **10.11 Market Changes**

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

# ANNEXURE 1 TO PART B

## Specification

This tender covers the supply and delivery of Enteral Feeding Products for the period 1 January 2007 to 31 December 2009 (2 years), in accordance with the Conditions and Specifications detailed herein. The Board reserves the right to extend the contract for a further period of up to twelve (12) months each in accordance with the Conditions and Specifications mentioned above.

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

Below is a list of items which suppliers are invited to tender for. If a supplier has Enteral Feeding Products that do not fall under any of the listed items suppliers are invited to offer an **Alternative**.

ITEM No.	ITEM DESCRIPTION
1	<b>Category One</b>
1.01	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, with Fibre, 200 - 500 ml, Ready to Use
1.02	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, with Fibre, 900 - 1000 ml, Ready to Use
1.03	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, with Fibre, 200 - 500 ml, Ready to Hang
1.04	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, with Fibre, 900 - 1000ml, Ready to Hang
1.05	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, with Fibre, Powder
2	<b>Category Two</b>
2.01	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, without Fibre, 200 - 500 ml, Ready to Use
2.02	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, without Fibre, 900 - 1000 ml, Ready to Use
2.03	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, without Fibre, 200-500ml, Ready to Hang
2.04	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, without Fibre, 900 - 1000ml, Ready to Hang
2.05	Enteral Formula, 1 - 1.3 kcal/ml, Lactose Free, without Fibre, Powder
3	<b>Category Three</b>
3.01	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, with Fibre, 200 - 500 ml, Ready to Use
3.02	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, with Fibre, 900 - 1000ml, Ready to Use

ITEM No.	ITEM DESCRIPTION
3.03	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, with Fibre, 200 - 500 ml, Ready to Hang
3.04	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, with Fibre, 900 - 1000 ml, Ready to Hang
3.05	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, with Fibre, Powder
4	<b>Category Four</b>
4.01	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, without Fibre, 200 - 500 ml, Ready to Use
4.02	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, without Fibre, 900 - 1500 ml, Ready to Use
4.03	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, without Fibre, 200 - 500 ml, Ready to Hang
4.04	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, without Fibre, 900 - 1500ml, Ready to Hang
4.05	Enteral Formula, High Energy, 1.4 to 1.6 kcal/ml, Lactose Free, without Fibre, Powder
5	<b>Category Five</b>
5.01	Enteral Formula, Low Energy, Low RDI Volume, 200 - 500 ml, with or without Fibre, Ready to Use
5.02	Enteral Formula, Low Energy, Low RDI Volume, 900 - 1000 ml, with or without Fibre, Ready to Use
5.03	Enteral Formula, Low Energy, Low RDI Volume, 200 - 500 ml, with or without Fibre, Ready to Hang
5.04	Enteral Formula, Low Energy, Low RDI Volume, 900 - 1000 ml, with or without Fibre, Ready to Hang
5.05	Enteral Formula, Low Energy, Low RDI Volume, with or without Fibre, Powder
6	<b>Category Six</b>
6.01	Enteral Formula, High Energy, 1.9 to 2.2 kcal/ml, Lactose Free, without Fibre, 200 - 500 ml, Ready to Use
6.02	Enteral Formula, High Energy, 1.9 to 2.2 kcal/ml, Lactose Free, without Fibre, 900 - 1000 ml, Ready to Use
6.03	Enteral Formula, High Energy, 1.9 to 2.2 kcal/ml, Lactose Free, without Fibre, 200 - 500 ml, Ready to Hang
6.04	Enteral Formula, High Energy, 1.9 to 2.2 kcal/ml, Lactose Free, without Fibre, 900 - 1000 ml, Ready to Hang

ITEM No.	ITEM DESCRIPTION
6.05	Enteral Formula, High Energy, 1.9 to 2.2 kcal/ml, Lactose Free, without Fibre, Powder
7	<b>Category Seven</b>
7.01	Enteral Formula, Elemental / Semi-Elemental for Enteral Administration, Lactose Free, without Fibre, 200 - 500 ml, Ready to Use
7.02	Enteral Formula, Elemental / Semi-Elemental for Enteral Administration, Lactose Free, without Fibre, 900 - 1000 ml, Ready to Use
7.03	Enteral Formula, Elemental / Semi-Elemental for Enteral Administration, Lactose Free, without Fibre, 200 - 500 ml, Ready to Hang
7.04	Enteral Formula, Elemental / Semi-Elemental for Enteral Administration, Lactose Free, without Fibre, 900 - 1000 ml, Ready to Hang
7.05	Enteral Formula, Elemental / Semi-Elemental for Enteral Administration, Lactose Free, without Fibre, Powder
8	<b>Category Eight</b>
8.01	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Enteral Administration, 200 - 500ml, Ready to Use
8.02	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Enteral Administration, 900 - 1000 ml, Ready to Use
8.03	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Enteral Administration, 200 - 500 ml, Ready to Hang
8.04	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Enteral Administration, 900 - 1000 ml, Ready to Hang
8.05	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Enteral Administration, Powder
8.06	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Oral Administration (Palatable), 200 - 500 ml, Ready to Use
8.07	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Oral Administration (Palatable), 900 - 1000 ml, Ready to Use
8.08	Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre, Oral Administration (Palatable), Powder
9	<b>Category Nine</b>
9.01	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Enteral Administration, 200 - 500 ml, Ready to Use
9.02	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Enteral Administration, 900 - 1000 ml, Ready to Use
9.03	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Enteral Administration, 200 - 500 ml, Ready to Hang
9.04	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Enteral Administration, 900 - 1000 ml, Ready to Hang

9.05	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Enteral Administration, Powder
<b>ITEM No.</b>	<b>ITEM DESCRIPTION</b>
9.06	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Oral Administration (Palatable), 200 - 500 ml, Ready to Use
9.07	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Oral Administration (Palatable), 900 - 1000 ml, Ready to Use
9.08	Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Oral Administration (Palatable), Powder
<b>10</b>	<b>Category Ten</b>
10.01	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Enteral Administration, 200 - 500 ml, Ready to Use
10.02	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Enteral Administration, 900 - 1000 ml, Ready to Use
10.03	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Enteral Administration, 200 - 500 ml, Ready to Hang
10.04	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Enteral Administration, 900 - 1000 ml, Ready to Hang
10.05	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Enteral Administration, Powder
10.06	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Oral Administration (Palatable), 200 - 500 ml, Ready to Use
10.07	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Oral Administration (Palatable), 900 - 1000 ml, Ready to Use
10.08	Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Oral Administration (Palatable), Powder
<b>11</b>	<b>Category Eleven</b>
11.01	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Enteral Administration, 200 - 500 ml, Ready to Use
11.02	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Enteral Administration, 900 - 1000 ml, Ready to Use
11.03	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Enteral Administration, 200 - 500 ml, Ready to Hang
11.04	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Enteral Administration, 900 - 1000 ml, Ready to Hang
11.05	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Enteral Administration, Powder
11.06	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Oral Administration (Palatable), 200 - 500 ml, Ready to Use
11.07	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Oral Administration (Palatable), 900 - 1000 ml, Ready to Use

11.08	Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Oral Administration (Palatable), Powder
<b>ITEM No.</b>	<b>ITEM DESCRIPTION</b>
<b>12</b>	<b>Category Twelve</b>
12.01	Enteral Formula, Low Sodium, Lactose Free, without Fibre, 200 - 500 ml, Ready to Use
12.02	Enteral Formula, Low Sodium, Lactose Free, without Fibre, 900 - 1000 ml, Ready to Use
12.03	Enteral Formula, Low Sodium, Lactose Free, without Fibre, 200 - 500 ml, Ready to Hang
12.04	Enteral Formula, Low Sodium, Lactose Free, without Fibre, 900 - 1000ml, Ready to Hang
12.05	Enteral Formula, Low Sodium, Lactose Free, without Fibre, Powder
<b>13</b>	<b>Category Thirteen</b>
13.01	Enteral Formula, Lactose Free, Medium Chain Triglyceride (MCT) based, 200 to 500ml, with or without Fibre
13.02	Enteral Formula, Lactose Free, Medium Chain Triglyceride (MCT) based, 500 to 1000ml, with or without Fibre
13.03	Enteral Formula, Lactose Free, Medium Chain Triglyceride (MCT) based, Powder, with or without Fibre
<b>14</b>	<b>Category Fourteen</b>
14.01	Enteral Formula, Conditionally Essential Nutrients, Lactose Free, 200 - 500 ml, with or without Fibre, Ready to Use
14.02	Enteral Formula, Conditionally Essential Nutrients, Lactose Free, 900 - 1000 ml, with or without Fibre, Ready to Use
14.03	Enteral Formula, Conditionally Essential Nutrients, Lactose Free, 200 - 500 ml, with or without Fibre, Ready to Hang
14.04	Enteral Formula, Conditionally Essential Nutrients, Lactose Free, 900 - 1000 ml, with or without Fibre, Ready to Hang
14.05	Enteral Formula, Conditionally Essential Nutrients, Lactose Free, with or without Fibre, Powder
<b>15</b>	<b>Category Fifteen</b>
15.01	Oral Nutritional Supplement, Low Fat, Vitamin and Mineral Fortified, with Fibre, Less than or Equal to 300 ml
15.02	Oral Nutritional Supplement, Low Fat, Vitamin and Mineral Fortified, with Fibre, Greater than or Equal to 500 ml
15.03	Oral Nutritional Supplement, Low Fat, Vitamin and Mineral Fortified, with Fibre, Powder

ITEM No.	ITEM DESCRIPTION
16	<b>Category Sixteen</b>
16.01	Oral Nutritional Supplement, Low Fat, Vitamin and Mineral Fortified, without Fibre, Less than or Equal to 300 ml
16.02	Oral Nutritional Supplement, Low Fat, Vitamin and Mineral Fortified, without Fibre, Greater than or Equal to 500 ml
16.03	Oral Nutritional Supplement, Low Fat, Vitamin and Mineral Fortified, without Fibre, Powder
17	<b>Category Seventeen</b>
17.01	Oral Nutritional Supplement, Vitamin and Mineral Fortified, High Energy, with Fibre, Less than or Equal to 300 ml
17.02	Oral Nutritional Supplement, Vitamin and Mineral Fortified, High Energy, with Fibre, Greater than or Equal to 500 ml
17.03	Oral Nutritional Supplement, Vitamin and Mineral Fortified, High Energy, with Fibre, Powder
18	<b>Category Eighteen</b>
18.01	Oral Nutritional Supplement, Vitamin and Mineral Fortified, High Energy, without Fibre, Less than or Equal to 300 ml
18.02	Oral Nutritional Supplement, Vitamin and Mineral Fortified, High Energy, without Fibre, Greater than or Equal to 500 ml
18.03	Oral Nutritional Supplement, Vitamin and Mineral Fortified, High Energy, without Fibre, Powder
19	<b>Category Nineteen</b>
19.01	Oral Formula, Nutritionally Complete, Lactose Free, with Fibre, Less than or Equal to 300 ml
19.02	Oral Formula, Nutritionally Complete, Lactose Free, with Fibre, Greater than or Equal to 500 ml
19.03	Oral Formula, Nutritionally Complete, Lactose Free, with Fibre, Powder
20	<b>Category Twenty</b>
20.01	Oral Formula, Nutritionally Complete, Lactose Free, without Fibre, Less than or Equal to 300 ml
20.02	Oral Formula, Nutritionally Complete, Lactose Free, without Fibre, Greater than or Equal to 500 ml
20.03	Oral Formula, Nutritionally Complete, Lactose Free, without Fibre, Powder

ITEM No.	ITEM DESCRIPTION
21	<b>Category Twenty One</b>
21.01	Oral Nutritional Supplement, High Energy, Lactose Free, with Fibre, Less than or Equal to 300 ml
21.02	Oral Nutritional Supplement, High Energy, Lactose Free, with Fibre, Greater than or Equal to 500 ml
21.03	Oral Nutritional Supplement, High Energy, Lactose Free, with Fibre, Powder
22	<b>Category Twenty Two</b>
22.01	Oral Nutritional Supplement, High Energy, Lactose Free, without Fibre, Less than or Equal to 300 ml
22.02	Oral Nutritional Supplement, High Energy, Lactose Free, without Fibre, Greater than or Equal to 500 ml
22.03	Oral Nutritional Supplement, High Energy, Lactose Free, without Fibre, Powder
23	<b>Category Twenty Three</b>
23.01	Oral Nutritional Supplement, Clear (Translucent) Liquid, Low Fat, Lactose Free, Less than or Equal to 300 ml
23.02	Oral Nutritional Supplement, Clear (Translucent) Liquid, Low Fat, Lactose Free, Greater than or Equal to 500 ml
24	<b>Category Twenty Four</b>
24.01	Enteral Formula, Elemental / Semi-Elemental for Oral Administration (Palatable), Lactose Free, without Fibre, Liquid, less than or Equal to 500 ml
24.02	Enteral Formula, Elemental / Semi-Elemental for Oral Administration (Palatable), Lactose Free, without Fibre, Powder
25	<b>Category Twenty Five</b>
25.01	Oral Formula, Conditionally Essential Nutrients, Lactose Free, with or without Fibre, Ready to Use, Liquid
25.02	Oral Formula, Conditionally Essential Nutrients, Lactose Free, with or without Fibre, Powder
26	<b>Category Twenty Six</b>
26.01	Oral Nutritional Supplement, High Energy, Pudding, Individual Serves, with or without Fibre, Ready to Eat
26.02	Oral Nutritional Supplement, High Energy, Pudding, with or without Fibre, Powder

ITEM No.	ITEM DESCRIPTION
27	<b>Category Twenty Seven</b>
27.01	Oral Nutritional Supplement, Food Bar, Single Serve, Ready to eat
28	<b>Category Twenty Eight</b>
28.01	Oral Nutritional Supplement, Low Energy, Vitamin and Mineral Fortified, Pudding or Beverage, Powder
29	<b>Category Twenty Nine</b>
29.01	Paediatric Enteral Formula, for Enteral Administration, with Fibre, 200 - 500 ml, Ready to Use
29.02	Paediatric Enteral Formula, for Enteral Administration, with Fibre, 900 - 1000 ml, Ready to Use
29.03	Paediatric Enteral Formula, for Enteral Administration, with Fibre, 200 - 500 ml, Ready to Hang
29.04	Paediatric Enteral Formula, for Enteral Administration, with Fibre, 900 - 1000 ml, Ready to Hang
29.05	Paediatric Enteral Formula, for Enteral Administration, with Fibre, Powder
29.06	Paediatric Enteral Formula, for Oral Administration (Palatable), with Fibre, 100 - 500 ml, Ready to Use
29.07	Paediatric Enteral Formula, for Oral Administration (Palatable), with Fibre, 900 - 1000 ml, Ready to Use
29.08	Paediatric Enteral Formula, for Oral Administration (Palatable), with Fibre, Powder
30	<b>Category Thirty</b>
30.01	Paediatric Enteral Formula, for Enteral Administration, without Fibre, 200 - 500 ml, Ready to Use
30.02	Paediatric Enteral Formula, for Enteral Administration, without Fibre, 900 - 1000 ml, Ready to Use
30.03	Paediatric Enteral Formula, for Enteral Administration, without Fibre, 200 - 500 ml, Ready to Hang
30.04	Paediatric Enteral Formula, for Enteral Administration, without Fibre, 900 - 1000 ml, Ready to Hang
30.05	Paediatric Enteral Formula, for Enteral Administration, without Fibre, Powder
30.06	Paediatric Enteral Formula, for Oral Administration (Palatable), without Fibre, 100 - 500 ml, Ready to Use
30.07	Paediatric Enteral Formula, for Oral Administration (Palatable), without Fibre, 900 - 1000 ml, Ready to Use

ITEM No.	ITEM DESCRIPTION
30.08	Paediatric, Enteral Formula, for Oral Administration (Palatable), without Fibre, Powder
<b>31</b>	<b>Category Thirty One</b>
31.01	Paediatric, Enteral Formula, 1.0 to 1.5kcal/ml, High Energy, Lactose free, with Fibre, 200-500ml, Ready to use
<b>32</b>	<b>Category Thirty Two</b>
32.01	Paediatric, Enteral Formula, 1.0 to 1.5kcal/ml, High Energy, Lactose free, without Fibre, 200-500ml, Ready to use
<b>33</b>	<b>Category Thirty Three</b>
33.01	Paediatric, Enteral Formula, Elemental/ Semi Elemental, for Enteral Administration, Lactose Free, without Fibre, Powder or Ready to Use
<b>34</b>	<b>Category Thirty Four</b>
34.01	Paediatric, <b>Enteral</b> Formula, 1.0 – 1.5kcal/ml, Conditionally Essential Nutrients, with or without Fibre
34.02	Paediatric, <b>Oral</b> Formula, 1.0 – 1.5kcal/ml, Conditionally Essential Nutrients, with or without Fibre
<b>35</b>	<b>Category Thirty Five</b>
35.01	Modular Product, Carbohydrate, Glucose Polymer, Liquid
<b>36</b>	<b>Category Thirty Six</b>
36.01	Modular Product, Carbohydrate, Glucose Polymer, Powder
<b>37</b>	<b>Category Thirty Seven</b>
37.01	Modular Product, Fat Emulsion, Medium Chain Triglyceride (MCT) Oil in Water Emulsion
37.02	Modular Product, Fat Emulsion, Long Chain Triglyceride (LCT) Oil in Water Emulsion
37.03	Modular Product, Fat Emulsion, <b>Combination</b> of Medium Chain Triglyceride (MCT) Oil in Water Emulsion <b>and</b> Long Chain Triglyceride (LCT) Oil in Water Emulsion
<b>38</b>	<b>Category Thirty Eight</b>
38.01	Modular Product, Fat, Oil, Medium Chain Triglyceride (MCT) Oil 100%

ITEM No.	ITEM DESCRIPTION
39	<b>Category Thirty Nine</b>
39.01	Modular Product, Protein, Powder
40	<b>Category Forty</b>
40.01	Modular Product, Protein and Fat, Emulsion, Medium Chain Triglyceride (MCT) Oil in Water Emulsion
40.02	Modular Product, Protein and Fat, Emulsion, Long Chain Triglyceride (LCT) Oil in Water Emulsion
40.03	Modular Product, Protein and Fat, Emulsion, Combination of Medium Chain Triglyceride (MCT) Oil in Water Emulsion and Long Chain Triglyceride (LCT) Oil in Water Emulsion
41	<b>Category Forty One</b>
41.01	Modular Product, Carbohydrate, Glucose Polymer and Fat, Medium Chain Triglyceride (MCT) Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Powder
41.02	Modular Product, Carbohydrate, Glucose Polymer and Fat, Long Chain Triglyceride (LCT) Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Powder
41.03	Modular Product, Carbohydrate, Glucose Polymer and Fat, Combination of Medium Chain Triglyceride (MCT) and Long Chain Triglyceride (LCT) Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Powder
41.04	Modular Product, Carbohydrate, Glucose Polymer and Fat, Medium Chain Triglyceride (MCT) Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Liquid
41.05	Modular Product, Carbohydrate, Glucose Polymer and Fat, Long Chain Triglyceride (LCT) Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Liquid
41.06	Modular Product, Carbohydrate, Glucose Polymer and Fat, Combination of Medium Chain Triglyceride (MCT) and Long Chain Triglyceride (LCT) Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Liquid
42	<b>Category Forty Two</b>
42.01	Modular Product, Fibre, Powder
43	<b>Category Forty Three</b>
43.01	Thickening Agent, Powder
44	<b>Category Forty Four</b>
44.01	Thickened Beverage, Fruit Drink / Cordial Base, Single Serve, less than or equal to 300 ml, Liquid
44.02	Thickened Beverage, Fruit Drink / Cordial Base, greater than 300ml, Liquid

ITEM No.	ITEM DESCRIPTION
44.03	Thickened Beverage, Fruit Juice Base, Single Serve, less than or equal to 300 ml, Liquid
44.04	Thickened Beverage, Fruit Juice Base, greater than 300ml, Liquid
44.05	Thickened Beverage, Milk Base, Single Serve, less than or equal to 300 ml, Liquid
44.06	Thickened Beverage, Milk Base, greater than 300ml, Liquid
44.07	Thickened Beverage, Other, Liquid
<b>45</b>	<b>Category Forty Five</b>
45.01	Thickened Beverage, Fruit Drink / Cordial Base, Single Serve (Less than or Equal to 300 ml), Powder
45.02	Thickened Beverage, Fruit Drink / Cordial Base, Greater than 300ml, Powder
45.03	Thickened Beverage, Fruit Juice Base, Single Serve (Less than or Equal to 300 ml), Powder
45.04	Thickened Beverage, Fruit Juice Base, Greater than 300ml, Powder
45.05	Thickened Beverage, Milk Base, Single Serve (Less than or Equal to 300 ml), Powder
45.06	Thickened Beverage, Milk Base, Greater than 300ml, Powder
45.07	Thickened Beverage, Other, Powder
<b>46</b>	<b>Category Forty Six</b>
46.01	Administration set, enteral feed pump with container / bag.
46.02	Administration set, enteral feed pump without container / bag, spike & screw cap types, for ready to hang / pre-prepared feeds.
<b>47</b>	<b>Category Forty Seven</b>
47.01	Optional accessories for enteral feed pumps
<b>48</b>	<b>Category Forty Eight</b>
48.01	Enteral Feeding Pumps

## **SPECIFICATIONS**

### **Category 1 - Enteral Formula, 1 to 1.3 kcal / ml, Lactose Free, with Fibre (Items 1.01 to 1.05)**

Energy Density: 1 to 1.3 kcal / ml

Protein: 13 - 20% of Energy

Osmolality: Less than or Equal to 500mOsm / Kg of water

Fibre Supplemented: Greater than or Equal to 10g / Litre

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

### **Category 2 - Enteral Formula, 1 to 1.3 kcal / ml, Lactose Free, without Fibre (Items 2.01 to 2.05)**

Energy Density: 1 to 1.3 kcal / ml

Protein: 13 - 25% of Energy

Osmolality: Less than or Equal to 500 mOsm / KG of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

### **Category 3 - Enteral Formula, High Energy, 1.4 to 1.6 kcal / ml, Lactose Free, with Fibre (Items 3.01 to 3.05)**

Energy Density: 1.4 to 1.6 kcal / ml

Protein: 13 to 20% of Energy

Fibre: Greater than or Equal to 5g / Litre

Osmolality: Less than or Equal to 900 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 4 - Enteral Formula, High Energy, 1.4 to 1.6 kcal / ml, Lactose Free, without Fibre (Items 4.01 to 4.05)**

Energy Density: 1.4 to 1.6 kcal / ml

Protein: 13 to 20% of Energy

Osmolality: Less than or Equal to 900 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 5 - Enteral Formula, Low Energy, Low RDI Volume, with or without Fibre (Items 5.01 to 5.05)**

Energy Density: 0.5 to 1.0 kcal / ml

Protein: Greater than or Equal to 16% of Energy

Osmolality: Less than or Equal to 700 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 6 - Enteral Formula, High Energy, 1.9 to 2.2 kcal / ml, Lactose Free, without Fibre (Items 6.01 to 6.05)**

Energy Density: 1.9 to 2.2 kcal / ml

Protein: 13 to 20% of Energy

Osmolality: Less than or Equal to 900mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 7 - Enteral Formula, Elemental / Semi Elemental for Enteral Administration, Lactose Free, without Fibre (Items 7.01 to 7.05)**

Energy Density: Minimum 0.8 kcal / ml

Osmolality: Less than or Equal to 900mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 8 - Enteral Formula, High Energy, Low Electrolyte, Low Mineral, Lactose Free, without Fibre for Enteral Administration or Oral Administration (Palatable) (Items 8.01 to 8.08)**

Energy Density: 1.5 to 2 kcal / ml

Osmolality: Less than or Equal to 900 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

Sodium and Potassium:	Less than or Equal to 50 mmol / Litre
Phosphorus:	Less than or Equal to 800 mg / Litre

EAR Volume: Please specify in ml

**Category 9 - Enteral Formula, High Energy, Low Protein, Low Electrolyte, Lactose Free, without Fibre for Enteral Administration or Oral Administration (Palatable) (Items 9.01 to 9.08)**

Energy Density: 1.9 to 2.2 kcal / ml

Osmolality: Less than or Equal to 900 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

Protein:	Less than or Equal to 40 g / Litre
Sodium and Potassium:	Less than or Equal to 50 mmol / Litre
Phosphorus:	Less than or Equal to 800 mg / Litre

EAR Volume: Please specify in ml

**Category 10 - Enteral Formula, Carbohydrate Modified, Lactose Free, with Fibre, for Enteral Administration or Oral Administration (Palatable) (Items 10.01 to 10.08)**

Energy Density: Greater than or Equal to 0.8 kcal / ml

Protein: 13 to 25% of Energy

Carbohydrate: Less than or Equal to 45% of Energy

Osmolality: Less than or Equal to 700 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

Fibre: Greater than or Equal to 5g / Litre

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 11 - Enteral Formula, Carbohydrate Modified, Lactose Free, without Fibre for Enteral Administration or Oral Administration (Palatable) (Items 11.01 to 11.08)**

Energy Density: Greater than or Equal to 0.8 kcal / ml

Protein: 13 to 25% of Energy

Carbohydrate: Less than or Equal to 45% of Energy

Osmolality: Less than or Equal to 700 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 12 - Enteral Formula, Low Sodium, Lactose Free, without Fibre (Items 12.01 to 12.05)**

Energy Density: 1 to 1.2 kcal / ml

Protein: 13 to 20% of Energy

Sodium: Less than or Equal to 15 mmol / Litre

Osmolality: Less than or Equal to 500 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 13 - Enteral Formula, Lactose Free, MCT Based, with or without Fibre (Items 13.01 to 13.02)**

Energy Density: 0.8 to 1.5 kcal / ml

Protein: 13 - 20% of Energy

Fat: Greater than or Equal to 30% of Energy and 70 - 90% of Fat source is MCT

Osmolality: Less than or Equal to 700 mOsm / Kg

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 14 - Enteral Formula, Conditionally Essential Nutrients, Lactose Free, with or without Fibre (Items 14.01 to 14.05)**

Enriched with 1 or more Conditionally Essential Nutrients for example (*from drop down menu on spreadsheet*) :-

Omega - 3 Fatty Acids  
RNA  
Arginine  
Glutamine  
Other – please specify

Energy Density: 0.5 - 2.0 kcal / ml

Osmolality: Less than or Equal to 700 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 15 - Oral Nutritional Supplement, Low Fat, Vitamin & Mineral Fortified, with Fibre (Items 15.01 to 15.03)**

Energy Density: 0.5 to 1.5 kcal / ml

Fat: Less than or Equal to 15g / Litre at standard dilution

Protein: Greater than or Equal to 13% of Energy at standard dilution

Fibre: Greater than or Equal to 10g / Litre

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 16 - Oral Nutritional Supplement, Low Fat, Vitamin & Mineral Fortified, without Fibre (Items 16.01 to 16.03)**

Energy Density: 0.5 to 1.5 kcal / ml

Fat: Less than or Equal to 15g / Litre at standard dilution

Protein: Greater than or Equal to 13% of Energy at Standard dilution

**Category 17 - Oral Nutritional Supplement, Vitamin & Mineral Fortified, High Energy, with Fibre (Items 17.01 to 17.03)**

Energy Density: Greater than or Equal to 1.5 kcal / ml

Fibre: Greater than or Equal to 10g / Litre

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 18 - Oral Nutritional Supplement, Vitamin & Mineral Fortified, High Energy, without Fibre (Items 18.01 to 18.03)**

Energy Density: Greater than or Equal to 1.5 kcal / ml

**Category 19 - Oral Formula, Nutritionally Complete, Lactose Free, with Fibre (Items 19.01 to 19.03)**

Energy Density: 0.8 to 1.2 kcal / ml

Protein: 13 to 25% of Energy

Osmolality: Less than or Equal to 700 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

Fibre: Greater than or Equal to 10g / Litre

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 20 - Oral Formula, Nutritionally Complete, Lactose Free, without Fibre (Items 20.01 to 20.03)**

Energy Density: 0.8 to 1.2 kcal / ml

Protein: 13 to 25% of Energy

Osmolality: Less than or Equal to 700 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 21 - Oral Nutritional Supplement, High Energy, Lactose Free, with Fibre (Items 21.01 to 21.03)**

Energy Density: 1.4 to 1.6 kcal / ml

Protein: 13 to 20% of Energy

Fibre: Greater than or Equal to 10g / Litre

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 22 - Oral Nutritional Supplement, High Energy, Lactose Free, without Fibre (Items 22.01 to 22.03)**

Energy Density: 1.4 to 1.6 kcal / ml

Protein: 13 to 20% of Energy

**Category 23 - Oral Nutritional Supplement, Clear (Translucent) Liquid, Low Fat, Lactose Free (Items 23.01 to 23.02)**

Energy Density: 0.7 to 1.5 kcal / ml

Fat: Less than or Equal to 10g / Litre

Protein: Greater than or Equal to 30g / Litre

Is product nutritionally complete yes/no ? \_\_\_\_\_ (to be specified on spreadsheet)

If so please state osmolality in mOsm / Kg of Water \_\_\_\_\_ (to be specified on spreadsheet)

**Category 24 - Enteral Formula, Elemental / Semi Elemental for Enteral Administration or Oral Administration (Palatable), Lactose Free, without Fibre (Items 24.01 to 24.02)**

Energy Density: Minimum 0.8 kcal / ml

Osmolality: Less than or Equal to 900 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify in ml

**Category 25 - Oral Formula, Conditionally Essential Nutrients, Lactose Free, with or without Fibre (Items 25.01 to 25.02)**

Enriched with 1 or more Conditionally Essential Nutrients for example : (from drop down menu on spreadsheet) -

- Omega - 3 Fatty Acids
- RNA
- Arginine
- Glutamine
- Branched Chain Amino Acids
- Other – please specify

Energy Density: 0.5 to 2.0 kcal / ml

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 26 - Oral Nutritional Supplement, High Energy, Pudding, with or without Fibre (Items 26.01 to 26.02)**

Energy Density: Greater than or Equal to 1.5 kcal / gram of prepared product

Protein: Greater than or Equal to 4g / 100g of prepared product

*From drop down menu on spreadsheet*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/100g.

**Category 27 - Oral Nutritional Supplement, Food Bar, ready to eat, Single Serve (Item 27.01)**

Energy Density: Greater than or Equal to 3.0 kcal / gram of prepared product

Please state protein in g / 100g of prepared product \_\_\_\_\_ (to be specified on spreadsheet)

Is product nutritionally complete yes/no ? \_\_\_\_\_

If so please advise the quantity of product in bars or biscuits that constitutes a nutritionally complete product. \_\_\_\_\_ (to be specified on spreadsheet)

**Category 28 - Oral Nutritional Supplement, Low Energy, Vitamin and Mineral Fortified, Pudding or Beverage, Powder (Item 28.01)**

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

Meets RDI in 1000ml of prepared product for all vitamins, minerals, protein and essential fatty acids.

EAR Volume: Please specify in ml

Do you meet the draft proposal P242 (Food for Specified Medical Purposes) yes/no?

**Category 29 - Paediatric, Enteral Formula, for Enteral Administration or Oral Administration (Palatable), with Fibre (Item 29.01 to 29.08)**

Energy Density: 0.9 to 1.1 kcal / ml

Protein: Less than or Equal to 35g / Litre

Osmolality: Less than or Equal to 400 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

RDI Volume: Volume to meet 100% of Australian RDI for Vitamins and Minerals for Children less than 12 Years in Less than or Equal to 1500ml

EAR Volume: Please specify volume in ml for children less than 12 years

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

**Category 30 - Paediatric, Enteral Formula, for Enteral Administration or Oral Administration (Palatable), without Fibre (Item 30.01 to 30.08)**

Energy Density: 0.9 to 1.1 kcal / ml

Protein: Less than or Equal to 35g / Litre

Osmolality: Less than or Equal to 400 mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify volume in ml for children less than 12 years

**Category 31 - Paediatric, Enteral Formula, High Energy, Lactose Free, with Fibre (Item 31.01)**

Energy Density: 1.0 to 1.5 kcal / ml

Protein: Less than or Equal to 50g / Litre

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify volume in ml for children less than 12 years

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre

**Category 32 - Paediatric, Enteral Formula, High Energy, Lactose Free, without Fibre (Item 32.01)**

Energy Density: 1.0 to 1.5 kcal / ml

Protein: Less than or Equal to 50g / Litre

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify volume in ml for children less than 12 years

**Category 33 - Paediatric, Enteral Formula, Elemental / Semi Elemental, for Enteral Administration or Oral Administration (Palatable), Lactose Free, without Fibre (Item 33.01)**

Energy Density: 0.8 to 1.0 kcal / ml

Protein: Less than or Equal to 30g / Litre

Osmolality: Less than or Equal to 400mOsm / Kg of Water

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify volume in ml for children less than 12 years

**Category 34 - Paediatric, Enteral Formula for Enteral Administration or Oral Administration (Palatable), Conditionally Essential Nutrients with or without Fibre (Items 34.01 to 34.02)**

Energy Density: 1.0 to 1.5 kcal / ml

Osmolality: Less than or Equal to 400mOsm / Kg of Water

Enriched with 1 or more Conditionally Essential Nutrients for example : *(from drop down menu on spreadsheet)* –

TGF-beta<sub>2</sub>  
 Omega - 3 Fatty Acids  
 RNA  
 Arginine  
 Glutamine  
 Branched Chain Amino Acids  
 Other – please specify

Is the product lactose free yes / no ? \_\_\_\_\_ *(to be specified on spreadsheet)*

Please specify if product is powder or liquid.

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

Nutritional Reference Value (NRV): Specify the NRV (RDI or AI) for each age group as set out in pricing schedule.

EAR Volume: Please specify volume in ml for children less than 12 years

**Category 35 - Modular Product, Carbohydrate, Glucose Polymer, Liquid (Item 35.01)**

Carbohydrate: Greater than or Equal to 50g / 100ml

Is the product Flavoured or Unflavoured yes / no ? \_\_\_\_\_ *(to be specified on spreadsheet)*

Please specify packaged volume.

Mixes with Cold and / or Hot Food or Beverages. If flavoured, the product should be palatable. If unflavoured, minimal effect on the original flavour of the food or beverage with which it is mixed.

**Category 36 - Modular Product, Carbohydrate, Glucose Polymer, Powder (Item 36.01)**

Carbohydrate: Greater than or Equal to 90g / 100g of Powder

Mixes with Cold and / or Hot Food or Beverages and has minimal effect on the original flavour of the Food or Beverage with which it is mixed.

**Category 37 - Modular Product, Fat, Emulsion (Items 37.01 to 37.03)**

*From drop down menu on spreadsheet;*

Please indicate if the product is either:

- (i) Medium Chain Triglyceride (MCT) Oil in Water Emulsion, Water Soluble
- (ii) Long Chain Triglyceride (LCT) Oil in Water Emulsion, Water Soluble
- (iii) Combination of (i) and (ii) above, Water Soluble

Please specify packaged volume.

**Category 38 - Modular Product, Fat, Oil (Item 38.01)**

Medium Chain Triglyceride (MCT) Oil, 100%

**Category 39 - Modular Product, Protein, Powder (Item 39.01)**

Protein: Greater than or Equal to 70g / 100g of Powder

*From drop down menu on spreadsheet;*

Please indicate if the product is either or contains:

- (i) Intact Protein
- (ii) Peptides
- (iii) Free Amino Acids

Please state the essential amino acid content in g / 100g of powder \_\_\_\_\_ (to be specified on spreadsheet)

Mixes with Cold and / or Hot Food or Beverages.

**Category 40 - Modular Product, Protein and Fat, Emulsion (Item 40.01 to 40.03)**

*From drop down menu on spreadsheet;*

Please indicate if the product is either:

- (i) Medium Chain Triglyceride (MCT) Oil in Water Emulsion, Water Soluble
- (ii) Long Chain Triglyceride (LCT) Oil in Water Emulsion, Water Soluble
- (iii) Combination of (i) and (ii) above, Water Soluble

Protein: Greater than or Equal to 15g / 100g of Product

Mixes with Cold and / or Hot Food or Beverages and has minimal effect on the original flavour of the Food or Beverage with which it is mixed.

**Category 41 - Modular Product, Carbohydrate, Glucose Polymer and Fat, Oil in Water Emulsion, with or without Vitamins, Minerals, Trace Elements, Powder or Liquid (Items 41.01 to 41.06)**

*From drop down menu on spreadsheet;*

Please indicate if the product contains either:

- (i) Medium Chain Triglyceride Oil in Water Emulsion (MCT), Water Soluble
- (ii) Long Chain Triglyceride Oil in Water Emulsion (LCT), Water Soluble
- (iii) Combination of (i) and (ii) above, Water Soluble

Please state fat content in g / 100g of powder \_\_\_\_\_ (to be specified on spreadsheet)

Does the product contain vitamins, minerals and trace elements yes / no ? \_\_\_\_\_ (to be specified on spreadsheet)

Mixes with Cold and / or Hot Food or Beverages and has minimal effect on the original flavour of the Food or Beverage with which it is mixed.

**Category 42 - Modular Product, Fibre, Powder (Item 42.01)**

*From drop down menu on spreadsheet;*

Please indicate if Single Fibre or Blended Fibre and advise amount of fibre in grams/litre.

State sources of fibre \_\_\_\_\_

State % of soluble fibre \_\_\_\_\_

Readily mixes with Cold and / or Hot Food or Beverages and has minimal effect on the original flavour and texture of the Food or Beverage with which it is mixed.

**Category 43 - Thickening Agent, Powder (Item 43.01)**

Readily mixes with Food and / or Beverages, *From drop down menu on spreadsheet;*

Please indicate mixing capability:

- (i) Cold
- (ii) Hot
- (iii) Both

- Minimal effect on the original flavour of the Item with which it is mixed.
- Must maintain stable thickness consistency over 24 hours after opening

Please specify packaged weight.

Please provide mixing instructions.

Please specify if single serve yes/no?

State number of grams of product required for thickness which;

Cannot be drunk through a straw, Can be drunk from a cup and Leaves a thick coat on the back of a spoon (often termed grade/step 2 or honey thick)

**Category 44 - Thickened Beverage for Dysphagia Management, Ready to Use (Items 44.01 to 44.07)**

Specification Categories are:-

- (i) Fruit Drink / Cordial Base
- (ii) Fruit Juice Base
- (iii) Milk Base
- (iv) Other

- Flavoured and Palatable
- Must maintain stable thickness consistency over 24 hours after opening

Please specify packaged volume.

Please provide description of fluid texture of the product e.g.

- Thickness A can be drunk through a straw, can be drunk from a cup if advised or preferred, leaves a thin coat on the back of a spoon
- Thickness B cannot be drunk through a straw, can be drunk from a cup, leaves a thick coat on the back of a spoon
- Thickness C cannot be drunk through a straw, cannot be drunk from a cup, needs to be taken with a spoon

**Category 45 - Thickened Beverage for Dysphagia Management, Powder (Items 45.01 to 45.07)**

Specification Categories are:-

- (i) Fruit Drink / Cordial Base
- (ii) Fruit Juice Base
- (iii) Milk Base
- (iv) Other

- Flavoured and Palatable
- Must maintain stable thickness consistency over 24 hours after preparing

Please specify packaged weight.

Please provide mixing instructions.

Please specify if single serve yes/no?

State number of grams per serve for thicknesses which;

Please provide description of fluid texture of the product e.g.

- Thickness A can be drunk through a straw, can be drunk from a cup if advised or preferred, leaves a thin coat on the back of a spoon
- Thickness B cannot be drunk through a straw, can be drunk from a cup, leaves a thick coat on the back of a spoon
- Thickness C cannot be drunk through a straw, cannot be drunk from a cup, needs to be taken with a spoon.

**Category 46 - Administration sets, enteral feed pump with and without container / bag (Items 46.01 to 46.02)**

State range and compatibility of feeds.

**No. 47 – Optional Accessories for Enteral feed pumps (Item 47.01)**

e.g. "pouch for portable wear", "belt mounting" & "pole mounting".

List accessories offered.

### Category 48 (Item 48.01) - Enteral Pump

Types	Mandatory Requirements	Desirable Requirements	Options/Accessories	Other - Specify
<ul style="list-style-type: none"> <li>Flushing and non-flushing types</li> <li>Rotary peristaltic</li> <li>Volumetric</li> </ul>	<ul style="list-style-type: none"> <li>Rechargeable batteries with internal recharger</li> <li>Clinically appropriate rate range (i.e. must be able to deliver at least 1 – 300 ml/hr)</li> <li>Rate accuracy equal to or better than <math>\pm 10\%</math></li> <li>Volume to be infused able to be set in the range 1ml to at least 2500 ml</li> <li>Display of volume infused</li> <li>A set based anti free-flow mechanism</li> <li>Pumps must have occlusion pressures in the range of 10 to 20 psi (state number of settings for occlusion pressure)</li> <li>Alarms shall include occlusion loss of mains power, battery failure or low battery, internal electronics failure, mechanical failure, free flow, no flow, dose complete and set out or displaced.</li> </ul>	<ul style="list-style-type: none"> <li>Automatic flush</li> <li>Robust construction as evidenced by testing documentation</li> <li>Appropriate battery life &amp; recharge time as evidenced by technical documentation (please state battery life at 125ml/hr and recharge time from full depletion)</li> <li>Error / Runtime log</li> <li>Rechargeable batteries with internal recharger</li> </ul>	<ul style="list-style-type: none"> <li>Giving sets</li> <li>Rechargeable battery</li> <li>Five legged mobile stands</li> </ul>	

## SPECIFICATIONS (HEN)

### HOME ENTERAL NUTRITION (HEN) PROGRAM

**The provision of nutrition supply service including pumps, consumable and home delivery service for NSW Health Public Healthcare Facilities and including PADP Services**

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## Specifications

### **The provision of nutrition supply service including pumps, consumable and home delivery service for NSW Health Public Healthcare Facilities and including PADP Services**

NSW Health is looking for third party supplier to provide a Home Enteral Nutrition Service [HEN] to client's discharged from their relevant Public Healthcare Facility (PHF)/Public Health Organisation (PHO).

Home enteral nutrition (HEN) is the provision of nutrition support therapy either by mouth or by feeding tube into the gastrointestinal tract in the home setting.

HEN is used to support individuals who are unable to manage adequate nutrition from normal diet alone as a result of increased nutrition needs and/or impaired ingestion, digestion or absorption of nutrients.

HEN support allows enterally fed hospital clients, who are otherwise medically stable, to be discharged to the community.

**Home delivery Service** refers to the managing the supply of Enteral feed, oral supplements and/or equipment to patients requiring tube/oral feeds at home. The feeds/oral supplement shall be those which are clinical suitable for the clients nutritional needs and acute clinical condition. Feeds/Oral Supplements are prescribed by a dietitian based on the clinical condition of the client, therefore the delivery of such feeds will and may cover a variety of products from the state contract list of feeds and supplements.

### **Equitable access to HEN product**

There should be equity in access to all HEN products throughout metropolitan and rural NSW.

### **Background** [\(back to top\)](#)

The NSW Health Department has established the (GMCT) HEN Network to advise on best practise for HEN. As an interim process the Contracting Services shall tender on core elements of HEN until other wise advised from NSW Health

The HEN home delivery service shall include the delivery of Enteral feeds, oral supplements, consumables and feeding pumps this service **will not** include clinical assessment or review of the client.

### **Core Components** [\(back to top\)](#)

- ➔ Acceptance of authorised client order from authorised PHF/PHO.
- ➔ Ability to deliver directly to client's residential address.
- ➔ Ability to deliver complete orders of enteral feeds, oral supplements
- ➔ Ability to provide feeding pumps for use within the home environment.
- ➔ Ability to provide a wide ranges of nutritional products that are deemed clinical suitable for the clients medical condition.
- ➔ Ability to source and deliver a wide range of nutrition products
- ➔ Ability to provide sample products for taste testing for patients as prescribed by the authorised PHF/PHO/healthcare facility.

### **Information on location of HEN Patients ([back to top](#))**

The following information is offered as a guide only to the location of HEN patients throughout the NSW Health system. It gives a breakdown by the approximate %age numbers of patients in each of the Area Health Service areas and the Children's Hospital Westmead.

There are currently approximately 10,000 to 11,000 patients in NSW with approximately 3000 tube patients and 7,000 to 8,000 oral patients.

The percentage breakdown is as follows:

Greater Southern	(6%)
Greater Western	(4%)
Hunter New England	(11%)
North Coast	(6%)
Northern Sydney Central Coast	(13%)
South Eastern Illawarra	(18%)
South Western Sydney	(22%)
Western Sydney	(16%)
Sydney Children's Hospital	(3%)
Newcastle Children's Hospital	(1%)
Children's Hospital Westmead	(2%)

### **How the service will operate ([back to top](#))**

Tenderers shall provide details on how they will provide this service to NSW Health PHF/PHO's to include all parties involved with the delivery of home delivery service. Areas to be covered but not limited to;

- Stock management to ensure adequate supply of HEN products
- Capabilities in delivering to **all** areas of NSW and is aware of the importance of timely delivery and safe transport of HEN products
- Delivery within Sydney and Metropolitan areas will be next day delivery; remote/ regional areas of NSW within 48 hours or less.

### **Delivery Times ([back to top](#))**

Ability to dispatch orders within 48 hours across NSW Health Service

Tenderers are requested to provide details on delivery process that occur on Fridays and Public Holidays

- Tenders should provide any innovative methods of deliveries that will ensure a delivery time within 48 hours

→

### **Ordering and Invoicing ([back to top](#))**

Tenderers to provide details on how their ordering and invoice system functions, and should include the following:

- Details of clients
- Date of delivery
- Installation date of feeding pump
- Removal date of feeding pump
- Ability to split account to PHF/PHO's and PADP Services

### **Reports ([back to top](#))**

Vendor shall provide details of reports that are available

- Back order reports
- Report on all orders fill per client
- Report on deliveries within 48 hours
- Number of pumps in service during a 4 week period
- Number and location of pumps

### **Enteral Feeding Pumps ([back to top](#))**

Tenders will be required to provide enteral feeding pumps to authorised clients this service shall include

- Delivery and collection of the enteral feeding pumps directly to the client's home address and pick
- Annual maintenance program for long-term clients.
- Management of repairs and troubleshooting service.
- Provision for respite care i.e. clients that are admitted to hospital for short period at a time. What processes are in place for managing of these clients and their feeding pump?
- Feeding pump consumables should allow for compatibility with Enteral feeding products supplied by a range of different companies.
- Provision for trouble shooting guides to be left with clients in a language that clients group can understand.
- Preventative maintenance programmes
- Pump specification shall be referred to Section B of Contract 955.

### **Warranty Servicing ([back to top](#))**

Tenderers shall provide details of a warranty that may apply.

### **Testing and Cleaning Service of feeding pumps ([back to top](#))**

- Tenderers shall provide details of their testing facility, qualification of staff undertaking testing, and service plan of testing schedules
- Tenderers will be required to have their facilities inspected and reviewed by authorised officer for NSW Health be required to undertake a site visit to inspect the method of testing to ensure that they meet with the required standards and patient safety aspects.
- Tenders shall provide details of their cleaning methods of their products offered.
- Tenderers will be required to submit consolidated monthly reports such as electrical safety, functional and fault testing

### **Servicing outside Warranty Period ([back to top](#))**

Vendor shall indicate how they will provide a service to faulty pump whilst in the home.

### **Help Desk Access** ([back to top](#))

Tenderers shall provide details of help desk arrangement for homecare clients to include trouble shooting with feeding pumps, eg 24 hour/7 day a week service. Tenderers shall also provide details of 24 hour technical support not visitation, for Health Care Provider (not just for the patient).

### **In Service Education and Training** ([back to top](#))

Tenderers shall provide details of their education and training service offered.

Tenders shall provide details on how their drivers/technicians are trained in the management of delivery of pumps and associated consumable and nutritional product to clients

### **Options and other Features** ([back to top](#))

- ➔ Tenderers shall provide additional features that may enhance the above service.
- ➔ Tenderers shall provide pricing details for any additional service.
- ➔ Tenders shall provide any clinical information system that may assist in data base management of HEN clients

### **Managing Contractors** ([back to top](#))

NSW Health policy PD2005-227: Contractors - Better Practice Guidelines Including Health/Safety in Engagement/Management/Evaluation

Tenders shall be required to provide evidence:

#### ➔ **CRIMINAL RECORDS**

Criminal record checks and working with Children check to be undertaken by all person involved with the home delivery service

#### ➔ **WORKERS COMPENSATION/INSURANCES**

Contractors are to ensure that Worker's Compensation/Personal Accident, Public Liability and any other insurance(s) required as an obligation of the work to be carried out are current, will be kept current during the course of the works, and that a Certificate of Currency for all relevant insurances will be provided NSW Contracting Services, prior to commencement of work.

## **Performance Monitoring**

Performance monitoring is key to ensuring that both parties deliver a successful outcome under this Standing Offer agreement. This process includes:

- Identifying goals
- Determining metrics
- Establishing baseline
- Measuring performance
- Communicating results
- Taking action

## **Performance Scorecard**

Prior to award of the Standing Offer agreement, a self imputed and validated Performance Scorecard will be developed in consultation with the recommended tenderer(s) and reviewed on an agreed periodic basis. The Scorecard may include the following indicators, but not be limited to:

- (i) Operational
- (ii) Management Fee
- (iii) Management / Reporting
- (iv) Customer Satisfaction

## **Periodic summary reports**

Periodic Reports prepared in a professional manner will need to be provided which show you know and understand our business and what can be done to deliver continuous improvement and value to Government.

For example:

- Sales trends in tabular and graphical forms
- Customer – total sales profiles
- Customer – product summaries (any main product lines by top customers or other trends as appropriate)
- Market share information (sales on this contract compared with total sales for this market)
- Percentage of Government sales not through SCCB contract.
- Any relevant benchmarks against your customer base / best practice
- Improvement ideas / innovation / initiatives
- Annual summary of achievements (against targets / objectives / etc.)
- Any other data that Contractors feel would be useful to highlight or grow value



Contracting Services is a Business Unit of the NSW Department of Commerce

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

## TENDER RESPONSE

Contract Number: 079/955

Contract Name: Enteral Feeding Products

RFT Number: 0601875

Contract Term: 3 years from 1 January 2007 to  
31 December 2009  
Plus two by one year optional  
extensions or part thereof

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: Prudence Pinto

Contact Phone: (02) 937 29147

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

- Are you providing supporting documents in hard copy or on CD-ROM?  
**Yes/No**
- Did you clearly mark the supporting documents as "Supporting Documents to RFT No (Guide Note: please fill in the RFT No)?"  
**Yes/No**

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## PART C The Tender Response

### PART C1 Tender Response to Part B

#### 11. Introduction

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

#### 12. Fitness for Purpose

##### 12.1 Quality Certification

###### Question 12.1.1

Indicate below whether you have attached at Part C4 any certification from approved testing authorities that confirm that the deliverables tendered meet the relevant Australian, Overseas or International Standards. Tenderers are encouraged to attach in Part C4 all manufacturing standard certification that their tendered products meet.

**Yes/No**

Answer 12.1.1

<type or write your answer here>

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##### 12.2 Quality Assurance

###### Question 12.2.1

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

Answer 12.2.1

**Yes/No**

<type or write your answer here>

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### **12.3 If certification is being sought**

Question 12.3.1

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

Answer 12.3.1

<type or write your answer here>

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### **12.4 Other certification requirements**

Question 12.4.1 Therapeutic Goods Australia - Numbers

Tenderers are requested to indicate at the Pricing Schedules in this Request for Tender (Part C3) the TGA registration numbers for their products tendered. TGA numbers, therefore, need to have been obtained at time of tender; products that are pending a TGA approval cannot be tendered, if TGA is a requirement for their use in Australia. **Copies of TGA and/or other appropriate certification documents are required and are to be attached at Part C4.**

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### **12.5 Guarantees and servicing arrangements**

Question 12.5.1

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

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

Answer 12.5.1

<type or write your answer here>

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## **12.6 Packaging**

Question 12.6.1

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

Answer 12.6.1

<type or write your answer here>

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## **12.7 Other comments on fitness for purpose**

Question 12.7.1

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

Answer 12.7.1

<type or write your answer here>

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## **12.8 Tenderer's Goods Return / Credit Policy**

Question 12.8.1

Tenderers are to provide details of their goods return / credit policy and the procedures that apply. Tenderers should describe their policies, give the details are requested below (if applicable):

- a) Purchasing error is generated by the Contractor
- b) Purchasing error is generated by the Customer
- c) Products are received faulty or damaged
- d) Maximum time to replace goods.

Answer 12.8.1

<type or write your answer here>

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### **12.8.2 Tenderer's Goods Return / Credit Policy**

Question 12.8.2

Tenderers are to provide details of their strategy regarding the removal of stock from patients who no longer require the stock

Answer 12.8.2

<type or write your answer here>

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### **12.9 Hazard Alerts / Recalls**

Question 12.9.1

For each of the tendered devices (Enteral Feeding Pump), the tenderer shall provide all information relating to product recalls, modifications or hazard alerts.

Answer 12.9.1

<type or write your answer here>

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### **12.10 Testing of Equipment**

Question 12.10.1

Each item of equipment offered shall be acceptance tested by the Australian supplier for safety and performance in accordance with the tests of Australian Standard 3551-1996.

Answer 12.10.1

<type or write your answer here>

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## 12.11 Repair and Maintenance

### Question 12.11.1

Area Covered – List below the repair outlets, number of service staff and are covered in NSW.

Location of Outlet	No of Service Staff per Outlet	Area Covered by Outlet

The tenderer shall specify the maximum turn around time for service (eg. Time for a replacement module or loan unit to be installed if equipment cannot be repaired / replaced on site).

\_\_\_\_\_ hours / days

The tenderer shall state the hourly rate for support services.

\$\_\_\_\_\_ per hour

The tenderer shall state what service contracts / maintenance agreements are available and at what cost.

## 12.12 Operator Training

### Question 12.12.1

The tenderer shall provide in-service training for nursing and medical staff, sufficient to ensure that staff on all shifts are fully conversant with the operation of each device. Tenderers are to indicate below what in-service training and training aids are available.

Answer 12.12.1

<type or write your answer here>

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## 12.13 Technical Training

### Question 12.13.1

When requested the tenderer shall provide technical training for the staff of the Biomedical Engineering Department during installation and commissioning and during the warranty period, sufficient to ensure that the department can provide full technical support at the end of the warranty period.

One copy of the completed original service manual and / or diagnostic software and technical drawings for all items tendered shall be available from the successful tenderer. The prices for these manuals are to be quoted below:  
\$\_\_\_\_\_ each.

Item Product Code (as per spreadsheet)	Maintenance & Calibration Intervals	Cost of Service Kit \$

#### 12.14 Warranty on Equipment Offered

##### Question 12.14.1

Tenderers are requested to indicate below any additional costs for extended warranty

Warranty in Months	Rate (\$)
24 Months	
36 Months	
.. Months	

#### 12.15 ANZFA (Australia New Zealand Food Authority)

##### Question 12.15.1

Do you meet the requirements of proposal P242 (Food for Specified Medical Purposes) under ANZFA?

##### Answer 12.15.1

**Yes/No**

<type or write your answer here>

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## 13 Pricing and related factors

### 13.1 Price Schedule

#### Question 13.1.1

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

### 13.2 Not Used

### 13.3 Price basis

#### Question 13.3.1

It is **mandatory** that the tenderer submit prices firm for the first twenty-four (24) months of the Standing Offer agreement.

You must select either option one (1) or two (2). If option two (2) is selection you must select from one or more of the price adjustment options (2a, 2b and 2c). Select the option/s by tick corresponding box below:

- (1) Firm for the entire duration of the Standing Offer agreement twenty-four (24) months, including the twelve (12) months optional extension period.
- (2) Firm for the entire duration of the Standing Offer agreement twenty-four (24) months, then subject to review for the twelve (12) month optional extension period according to **(a) rates of exchange, (b) labour and material factors and/or (c) published price lists.**

<indicate the appropriate box below>

1. ☐
- 2(a) ☐
- 2(b) ☐
- 2(c) ☐

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

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

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

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

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

Labour category	AW

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

<type or write your answer here>

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

(c) Materials Cost Index

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

<type or write your answer here>

13.3.4 Where you have nominated variations in published price lists, you must supply information for use in conjunction with calculation of price variations as detailed in clause 7.4.7 of Part B.

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

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

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

**13.4 Settlement discounts**

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

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

**13.5 Other discounts**

**13.5.1 Preferred Contractor to an AHS Quadrangle**

**Question 13.5.1**

Various Area Health Services are currently aggregating their purchasing power, as individual Area Health Services or groups of Area Health Services, to achieve more favourable discounts. These groups of AHS' are commonly known as "Quadrangles". Indicate below whether you are willing to offer a "Preferred Contractor to a Quadrangle discount". A "Preferred Contractor" will receive a minimum of 85% of business from an individual Quadrangle.

**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>

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**13.5.2 Preferred Contractor to an AHS discount**

Question 13.5.2

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

**Yes/No**

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

Answer 13.5.2

<type or write your answer here>

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**13.5.3 Sole Contractor to a Hospital discount**

Question 13.5.3

Indicate below whether you are willing to offer a “Sole Contractor to a Hospital” discount (Eg, If you are the sole contractor for Item 1).

**Yes/No**

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

Answer 13.5.3

<type or write your answer here>

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**13.5.4 Percentage of Business Discounts**

Question 13.5.4

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

Answer 13.5.4

**Yes/No**

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

<type or write your answer here>

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

### 13.5.5 Volume of Sales Discounts

Question 13.5.5

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

Answer 13.5.5

**Yes/No**

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

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

### 13.5.6 Volume of Sales Discounts to AHS Quadrangles

Question 13.5.6

Various Area Health Services are currently aggregating their purchasing power as individual Area Health Services or groups of Area Health Services to achieve more favourable discounts. These groups of AHS's are commonly known as "Quadrangles". Indicate below whether you are willing to offer Volume of Sales Discounts to any individual AHS or Quadrangle. The volume per annum would represent a minimum of 85% of the Quadrangles collective expenditure of Enteral Feeding Products contract.

Answer 13.5.6

**Yes/No**

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

<type or write your answer here>

< Type % Discount>	<Type \$ Sales Volume per annum> (for example)
	\$1 - \$100 000
	\$100 001 - \$250 000
	\$250 001 - \$500 000
	\$500 001 - \$750 000
	\$750 001 - \$1 Million
	\$1 Million +

### 13.5.7 Standing Order Discounts

#### Question 13.5.7

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

#### Answer 13.5.7

#### Yes/No

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

<type or write your answer here>

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

## 14. Delivery Considerations

### 14.1 Delivery times

#### Question 14.1.1

Provide details of your guaranteed delivery times from receipt of Order together with a production plan, detailing how you intend to maintain guaranteed delivery times.

The production plan must provide full details of your supply chain process for the supply of the Deliverables. The plan must outline lead times, strategic alliances or specific arrangements with suppliers or sub-contractors. Tenderers should state at 14.1.3 delivery times to various regions. Eg. Sydney metropolitan Area, Mid North Coast etc.

#### Answer 14.1.1

<type or write your answer here>

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#### Question 14.1.2 Location of branches

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

#### Answer 14.1.2

<type or write your answer here>

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#### Question 14.1.3

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

Sydney Metropolitan Area.

	Home	Hospital
1. Within 3 Hours .	<input type="checkbox"/>	<input type="checkbox"/>
2. Within 6 Hours .	<input type="checkbox"/>	<input type="checkbox"/>
3. Within 12 Hours	<input type="checkbox"/>	<input type="checkbox"/>
4. Within 24 Hours	<input type="checkbox"/>	<input type="checkbox"/>
5. Within 48 Hours	<input type="checkbox"/>	<input type="checkbox"/>
6. Other	<input type="checkbox"/>	<input type="checkbox"/>

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Regional NSW.

	Home	Hospital
1. Within 6 Hours .	<input type="checkbox"/>	<input type="checkbox"/>
2. Within 12 Hours	<input type="checkbox"/>	<input type="checkbox"/>
3. Within 24 Hours	<input type="checkbox"/>	<input type="checkbox"/>
4. Within 48 Hours	<input type="checkbox"/>	<input type="checkbox"/>
5. Other	<input type="checkbox"/>	<input type="checkbox"/>

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**Emergency Arrangements**

Question 14.1.4

Tenderers are to indicate below the delivery-time provisions offered for emergency deliveries. <indicate the appropriate box below>

Sydney Metropolitan Area.

	Home	Hospital
1. Within 3 Hours	<input type="checkbox"/>	<input type="checkbox"/>
2. Within 6 Hours .	<input type="checkbox"/>	<input type="checkbox"/>
3. Within 12 Hours	<input type="checkbox"/>	<input type="checkbox"/>
4. Within 24 Hours	<input type="checkbox"/>	<input type="checkbox"/>
5. Within 48 Hours	<input type="checkbox"/>	<input type="checkbox"/>
6. Other	<input type="checkbox"/>	<input type="checkbox"/>

Regional NSW.

	Home	Hospital
1. Within 6 Hours	<input type="checkbox"/>	<input type="checkbox"/>
2. Within 12 Hours	<input type="checkbox"/>	<input type="checkbox"/>
3. Within 24 Hours	<input type="checkbox"/>	<input type="checkbox"/>
4. Within 48 Hours	<input type="checkbox"/>	<input type="checkbox"/>
5. Other	<input type="checkbox"/>	<input type="checkbox"/>

### Local Delivery Scheduling Arrangements

#### Question 14.1.5

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

<type or write your answer here>

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#### Question 14.1.6

For patients being discharged on Friday, what is the cut off time for orders to ensure delivery is carried out within 24 hours or 48 hours ? (hospital supply some food on discharge).?

#### Answer 14.1.6

<type or write your answer here>

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#### Question 14.1.7

Describe hereunder your Disaster Recovery Plan for stock shortages

#### Answer 14.1.7

<type or write your answer here>

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Question 14.1.8

Describe hereunder your strategy (ie what assistance will be offered) for Product Returns (bearing in mind that there are no refunds available).

Answer 14.1.8

<type or write your answer here>

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Question 14.1.9

Waste issue / Delivery Packaging – Direct Stores Describe hereunder your strategy to minimise / remove waste.

Answer 14.1.9

<type or write your answer here>

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## 15. Capacity to perform agreement

### 15.1(a) Years in business

Question 15.1.1

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

Answer 15.1.1

<type or write your answer here>

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### 15.1(b) Australian Business History

Question 15.1.1b)

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

Answer 15.1.1b)

<type or write your answer here>

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## 15.2 Technical, warehousing, inventory and distribution capability

Question 15.2.1

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

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

Answer 15.2.1

<type or write your answer here>

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Question 15.2.2

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

Answer 15.2.2

<type or write your answer here>

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### **15.3 Human Resource Capability**

Question 15.3.1

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

Answer 15.3.1

<type or write your answer here>

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### **15.4 Help Desk Access**

Question 15.4.1

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

Answer 15.4.1

<type or write your answer here>

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Question 15.4.2

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

Answer 15.4.2

<type or write your answer here>

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**15.5 In-service education and training**

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

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

Answer 15.5.1

<type or write your answer here>

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**15.6 Financial viability**

Question 15.6.1

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

Answer 15.6.1

<type or write your answer here>

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#### Question 15.6.2

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

#### Answer 15.6.2

Yes/No

If “**No**”, comment below:

<type or write your answer here>

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### **15.7 Information on dealers, distributors and sub-contractors**

#### Question 15.7.1

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

#### Answer 15.7.1

**Yes/No**

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

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

Question 15.7.2

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

Answer 15.7.1

**Yes/No**

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

**PTO**

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

## **15.8 Suitability of proposed dealers, distributors and sub-contractors**

### **Question 15.8.1**

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

Answer to 15.8.1

<type or write your answer here>

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### **Question 15.8.2**

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

Answer to 15.8.2

<type or write your answer here>

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### **Question 15.8.3**

Dealers and distributors 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, distributors and sub-contractors) of the Agreement and the standard terms and conditions of the Customer Contract, and
- (b) they will offer to supply under the terms and conditions of the Customer Contract and otherwise on terms that 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 dealers and distributors, and provide a letter of commitment from any new dealers and distributors approved during the term of the Agreement?

Answer 15.8.3

<type or write your answer here>

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Question 15.8.4

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 15.8.4

<type or write your answer here>

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**15.9 Marketing**

15.9.1 The marketing of this Standing Offer agreement may include:

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

Question 15.9.2

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

Answer 15.9.2

<type or write your answer here>

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Question 15.9.3

Provide any other relevant information below

Answer 15.9.3

<type or write your answer here>

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

#### Question 15.10.1

State here any other details you may wish to add. Please also address your capacity to perform the 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.20, below, and should not be referred to here.)

#### Answer 15.10.1

<type or write your answer here>

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## **16. Compliance with proposed agreement**

#### Question 16.1

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

#### Answer 16.1

##### **Yes/No**

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

<type or write your answer here>

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#### Question 16.2

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

#### Answer 16.2

##### **Yes/No**

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

<type or write your answer here>

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Question 16.3

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

Answer 16.3

<type or write your answer here>

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## 17. 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>

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### 17.2 Not Used

### 17.3 Purchasing Preference Scheme

#### 17.3.1 NSW Country Industries Preference Scheme

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

Question 17.3.1

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

Answer 17.3.1(a)

**Yes/No**

If **“Yes”**, supply Preference Registration Number  
<type or write your answer here>

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Question 17.3.1 (b)

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

Answer 17.3.1 (b)  
<type or write your answer here>

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Question 17.3.1 (c)

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

Answer 17.3.1 (c)

**Yes/No**

If **“No”** explain below  
<type or write your answer here>

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**17.4 Not Used**

**17.5 Not Used**

**17.6 Not Used**

**17.7 Not Used**

## **17.8 SME involvement**

### **Question 17.8.1**

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

#### **Answer 17.8.1**

<type or write your answer here>

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## **17.9 Regional Development**

### **Question 17.9.1**

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

#### **Answer 17.9.1**

<type or write your answer here>

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## **17.10 Not Used**

## **17.11 Innovation, research and development**

### **Question 17.11.1**

Indicate below:

- (a) The extent to which you intend to undertake R&D in the performance of the project
- (b) How the project would support or add to your capabilities in R&D, and
- (c) The extent to which the project will lead to the transfer of new technology to the industry.

Answer 17.11.1  
<type or write your answer here>

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## **17.12 Workforce Development**

Question 17.12.1

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

Answer 17.12.1  
<type or write your answer here>

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### Opportunities for ATSI people

Question 17.12.2

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

Answer 17.12.12  
<type or write your answer here>

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## **17.13 Not Used**

## **17.14 Occupational Health, Safety & Rehabilitation**

Question 17.14.1

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

Answer 17.14.1  
<type or write your answer here>

**Yes/No**

Question 17.14.2

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

Answer 17.14.2

<type or write your answer here>

**Yes/No**

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

<type or write your answer here>

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## **17.15 Environmental Management**

Question 17.15.1

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/e7ff4llc5oil5l3lby2awxyfmwxonkmwd7imp6lenbg6hjwszcan3kf5cw2rs3ihuo26p4h5eae6fov65eivxo2b/Environmental+management.pdf>

Answer 17.15.1

<type or write your answer here>

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## **17.16 Not Used**

## **17.17 Electronic Commerce (Smartbuy®)**

Question 17.17.1

If you become the successful tenderer, you are required to review and sign the smartbuy® supplier agreement and associated Participation Rules. Please confirm your ability to accept and conform to the requirements as outlined in these documents. Documents can be requested by contacting the smartbuy® Helpdesk on 1800 003 985 or [smartbuy-infocentre@commerce.nsw.gov.au](mailto:smartbuy-infocentre@commerce.nsw.gov.au)

<type or write your answer here>

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Question 17.17.2

smartbuy® is committed to facilitating electronic procurement document exchange between NSW public organisations and its suppliers. Describe below your present capabilities and services, or future strategies in relation to E-Commerce. Please include any existing or planned B2B connections with corporate partners or Government departments and any web based procurement tools relevant to the deliverables offered. Please specify whether these capabilities are current (operational), under construction, planned or under consideration.

<type or write your answer here>

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Question 17.17.3

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

<type or write your answer here>

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Question 17.17.4

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

<type or write your answer here>

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Question 17.17.5

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

<type or write your answer here>

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Question 17.17.6

If you become a successful tenderer, you will be required to provide catalogue content information in the required format, as per the Catalogue Data Collection (CDC) tool. Short listed tenderers will receive, and be required to populate the CDC tool with catalogue content that will allow purchasing to begin on the new contract from inception. Should your organisation be short-listed for this contract, please confirm your acceptance of this catalogue content preparation requirement.

<type or write your answer here>

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#### Question 17.17.7

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

<type or write your answer here>

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#### 17.18 Not Used

### 18. Compliance with relevant legislation and standards

#### Question 18.1

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

Answer 18.1

**Yes/No**

If “No”, provide details

<type or write your answer here>

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## 19. Compliance with other Board requirements

### 19.1 Natural Rubber Latex Content

#### Question 19.1.1

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

#### Answer 19.1.1

<type or write your answer here>

Item No	Location of Natural Rubber Latex	Replacement Date

### 19.2 Disposal of Samples

#### Question 19.2.1

The tenderer must indicate below the preferred method of sample disposal.

1. Disposal at NSW Supply's discretion
2. Collection by tenderer

#### Answer 19.2.1

<type or write your answer here>

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## 20. Previous contract experience and standard of performance

### 20.1 Previous contract experience

- 20.1.1 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)

## 20.2 Previous experience in provision of Deliverables

### Question 20.2.1

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

#### Answer 20.2.1

<type or write your answer here>

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## 20.3 Previous performance of Standing Offer agreements

### Question 20.3.1

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 20.3.1

<type or write your answer here>

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## 20.4 Referees

### Question 20.4.1

Please provide three (3) names and contact details of previous customers  
<type or write your answer here>

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## 21. Other information required

### 21.1 Details of ownership

#### Question 21.1.1

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

#### Answer 21.1.1

<type or write your answer here>

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#### Question 21.1.2

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

#### Answer 21.1.2

<type or write your answer here>

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### 21.2 Contracting as agent/trustee

#### Question 21.2.1

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

#### Answer 21.2.1

<type or write your answer here>

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#### Question 21.2.2

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

Answer 21.2.2  
<type or write your answer here>

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### 21.3 Current Legal Proceedings

#### Question 21.3.1

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

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

**Yes/No**

If “**Yes**”, please supply full details below:

Answer 21.3.1  
<type or write your answer here>

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### 21.4 Cataloguing

#### 21.4.1 EAN/HIBCC Barcoding

##### Question 21.4.1

Do you have EAN/HIBCC Barcoding of your Deliverables?

Answer 21.4.1  
<type or write your answer here>

**Yes/No**

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

**Yes/No**

**21.5 Not Used**

**21.6 Not Used**

## **21.7 Addenda to this RFT after issue**

### **Question 21.7.1**

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

Answer 21.7.1

**Yes/No**

### **Question 21.7.2**

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

Answer 21.7.2

<type or write your answer here>

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### **Question 21.7.3**

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

Answer 21.7.3

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

## **21.8 Further information**

### **Question 21.8.1**

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

Answer 21.8.1

<type or write your answer here>

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## **21.9 Tender validity period**

### **Question 21.9.1**

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 21.9.1

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## **21.10 Overall Savings Achieved by Your Tender**

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

Answer 21.10

<type or write your answer here>

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## **21.11 Supply of Australian Business Number**

### **Question 21.11.1**

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

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

Answer 21.11.1

## 22. Tenderer Identification Details

### Question 22.1

Type or write your identification details as required below.

<b>1) If a company, Company Name</b>	
<b>2) If a partnership, Partnership Name</b>	
<b>3) If an individual, individual's name</b>	
<b>4) Trading Name</b>	
<b>5) Australian Business Number (ABN)</b>	
<b>6) Australian Company Number (ACN)</b>	
<b>7) Registered Office (if a company)</b>	
<b>8) Site Address (principal place of business)</b>	
<b>9) Postal Address (principal place of business)</b>	
<b>10) Alternative Address</b>	
<b>11) Contract Administration Contact Name</b>	
<b>12) Contract Administration Contact Telephone No.</b>	
<b>13) Contract Administration Contact E-mail Address</b>	
<b>14) Contract Administration Contact Fax No.</b>	
<b>15) Sales Order Contact Name</b>	
<b>16) Sales Order Phone No.</b>	
<b>17) Sales Order E-mail Address</b>	
<b>18) Sales Order Fax No.</b>	
<b>19) Management Fee Contact Name:</b>	
<b>20) Management Fee Contact Telephone No.</b>	
<b>21) Management Fee Contact Fax No.</b>	
<b>22) Chief Executive Officer's (CEO) Name</b>	
<b>23) Switchboard Telephone No:</b>	
<b>24) Company email address</b>	
<b>25) Website address:</b>	
<b>26) Tenderer's Reference No:</b>	

## 23 INFORMATION REQUIRED FOR PRODUCTS OFFERED UNDER CATEGORY 48 (ITEM 48.01) - ENTERAL PUMPS

The requirement is for offers for the supply of enteral feeding pumps, which must meet the following criteria.

Criterion	Required	Response	Technical Notes
Flushing or non-flushing	Specify which type or both		
Type of mechanism	Specify whether rotary peristaltic or volumetric		
Rechargeable batteries	Yes/No – specify number and type		
Inbuilt recharger	Yes/No		
Clinically appropriate delivery rate range	At least 1 – 300 ml/hr		
Rate accuracy	Equal to or better than $\pm 10\%$		
Volume to be infused	1 ml to at least 2,500 ml		
Display of volume infused	Yes/No		
A set based anti free-flow mechanism	Yes/No		
Occlusion pressure	In the range 10 to 20 psi		
Occlusion pressure settings	Specify number and range of settings		
Occlusion alarm	Yes/No		
Loss of mains power alarm	Yes/No		
Battery failure or low battery alarm	Yes/No		
Internal electronics failure alarm	Yes/No		
Mechanical failure alarm	Yes/No		
Free flow alarm	Yes/No		
No flow alarm	Yes/No		
Dose complete alarm	Yes/No		
Set out or set displaced alarm	Yes/No		
Automatic flush	Yes/No		
Robust construction	Yes/No – provide testing documentation		
Appropriate battery life @ 125ml/hr	Yes/No – provide technical documentation		
Appropriate recharge time – from full depletion	Yes/No – provide technical documentation		
Error / Runtime log	Yes/No		
Battery replacement interval	Specify		
Battery cost	Specify		
Giving set cost – non-flushing	Specify		

Criterion	Required	Response	Technical Notes
Giving set cost – flushing	Specify		
Service interval	Specify		
TGA listed	Yes/No		
Service manual provided	Yes/No		
Technical training provided for BMETs	Yes/No		
Training package available for evaluation	Yes/No		
Qualifications of trainers appropriate	Yes/No		

## PART C2 Statement of Compliance with Specification

Question 24

Do the tendered Deliverables fully comply with Specification?

**Yes/No**

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

Answer 23

<type or write your answer here>

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## **PART C3 Price Schedule**

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

### **TENDERER'S INSTRUCTIONS FOR ELECTRONIC TENDERING**

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

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

**DO** insert or delete rows wherever necessary.

#### **Tenderer Responsibilities**

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

## **PART C4 Certificates of Compliance to relevant Standards**

Please attach all relevant certification, of Australian, British Pharmacopoeia or other recognised International Standards as in indicate at clauses 12.1 and 12.2 of Part C1.

## Part C5 Acknowledgment And Confirmation Of Tender

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

24.1 Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Code; that you will comply with the Code; and that you agree to report to the Board any breaches of the Code for the duration of the Standing Offer agreement.

24.2 Not Used

24.3 Not Used

24.4

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

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Print Name and Title

---

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

**or**

---

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

**or**

---

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

Question 24.5

If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Commerce tenders web site is sufficient to verify and affirm that this is your Tender to supply the Deliverables at the prices tendered on the conditions contained in Part D, 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



**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**

**[\[079/955 Enteral Feeding Products\]](#)**

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## 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**

**"Adverse Event"** means any unplanned event resulting in, or with the potential for, patient injury caused by health care management in connection with the use of the Deliverables

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

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

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

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

**"Circumstances Beyond the Control of the Contractor"** include:

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

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

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

**“Contract Material”** means:

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

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

**“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.

**“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.

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

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

**“Eligible Customer”** means

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

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

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

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

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

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

**“Nominee Purchaser”** means a contractor to a public sector agency, nominated by the public sector agency to be authorised to place Orders under Standing Offer Agreements for things done as such a contractor and registered by Contracting Services.

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

**“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 C3 and any variations to the Price Schedule made by the documents forming Schedule 4 to this Agreement and/or variations made in accordance with this Agreement.

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

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

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

- (a) a government trading enterprise (including a State owned corporation);
- (b) a public or private hospital (including an area health service);
- (c) a local government agency;
- (d) a charity or other community non-profit organisation;
- (e) a public or private school, college or university;
- (f) public sector agency of:
  - (i) this State (including the Principal),
  - (ii) the Commonwealth, or

any other State or Territory; and

- (g) provided that it satisfies the requirements of clause 4.2, a Nominee Purchaser.

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

**“Schedule”** means a schedule to this Agreement.

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

**“Specification”** means the detailed description of the Deliverables to be provided under this Agreement that is attached as Schedule 2, as amended by any document attached as Schedule 4. In the event of any inconsistency between the Specification and any part of this Agreement, this Agreement will prevail to the extent of the inconsistency.

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

**“State Contracts Control Board”** means the State Contracts Control Board established by the Public Sector Employment and Management Act 2002 and includes the duly authorised delegates of the Board, including officers of 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 6.13 (Performance Guarantee),
  - (viii) clause 7.3 (Specified Personnel),
  - (ix) clause 8 (Confidentiality),
  - (x) clause 9 (Copyright and Intellectual Property); and
  - (xi) clause 12 (No assignment or novation)
- (b) in the case of a Customer Contract, a substantial breach of a term of the Customer Contract, and includes any breach of the following clauses (which will be taken in each case to be a substantial breach of the Customer Contract):
  - (i) clause 3.6 (Best Price);
  - (ii) clause 16 (Time for Delivery)

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

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

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

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

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

## **PART D2 – PROVISIONS OF THE AGREEMENT BETWEEN PRINCIPAL AND CONTRACTOR**

### **2. Supply Under a Standing Offer for the Term**

#### **2.1 Nature of the Agreement between the Principal and the Contractor**

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

#### **2.2 Formation of Customer Contracts**

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

#### **2.3 Term**

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

### **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 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 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 Changed or Additional Items**

- 3.3.1 At any time after the commencement of the contract, the Board may decide to accept, in lieu of any item accepted, and only from the successful contractor/s, changed or additional items provided that it can be substantiated that:
- (a) The functional specifications of the changed or additional item/s do not differ in any substantial sense from the functional requirements in the contract; and
  - (b) The cost effectiveness of the changed or additional item/s is not less than that of the accepted items.
- 3.3.2 Where a contractor proposes an additional item or change to any aspect of the Deliverable including the country of Manufacture, source of manufacture, composition, design or method of manufacture of the deliverable, packaging, labelling, or any other factor affecting the deliverable supplied under the Contract, it shall notify NSW Department of Commerce in writing, giving at least two (2) calendar months notice of the proposed change/addition. The request will consist of :
- (a) The current item number of the deliverable
  - (b) The product code of the deliverable
  - (c) The correct and full name (including brand name or marking) of the deliverable.
  - (d) The Order Unit in line with original tendered details
  - (e) The price per order unit.
  - (f) TGA or other legislative requirements as relevant
  - (g) Information relating to the change or reason for the addition including: sales levels, evaluation reports (if available)
  - (h) Any other details as required
  - (i) The Principal reserves the right to accept or reject any changes/additions proposed by the Contractor.



- 3.3.3 Upon receipt of the request, the Principal will have the sole discretion as to one or more of the following actions to be taken:
- (a) institute trials of the product and evaluate results;
  - (b) evaluate the change version;
  - (c) invite all existing suppliers under the Standing Offer for the Deliverables to tender for the change version;
  - (d) invite a supplementary tender for the changed version from any interested tenderers; or
  - (e) decline the request for inclusion of the changed or additional items in this Agreement.
  - (f) approve the request for inclusion of the changed or additional items in the agreement either adding this to the list or replacing the Deliverable listed in the Price Schedule with the improved version.

### **3.4 Prices for the Deliverables**

- 3.4.1 Subject to clauses 3.5, 3.6, 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 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 Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.
- 3.5.2.3 The Principal will approve or reject a price variation within six (6) weeks of lodgement of the application.
- 3.5.2.4 Decreased prices approved by the Principal shall apply to all Customer Contracts made after the "effective date" as determined by the Principal.
- 3.5.2.5 The decreased Price, once approved, becomes the basis from which any future applications for Price variations are calculated.
- 3.5.2.6 Applications for decreases in Price must be made by the individual contractors concerned. Applications by Trade or similar Associations will not be considered.

### **3.6 Best Price**

- 3.6.1 The Price for a Deliverable taking into account any Applicable Discounts on the Price must be no less favourable than the price paid by any other purchaser of substantially similar goods or services ("the similar goods or services") to the Contractor.
- 3.6.2 Where the Contractor offers more favourable prices to any other purchaser of similar goods or services, it must make the more favourable price available to all Customers entitled to the benefit of this Agreement.
- 3.6.3 A failure to comply with this clause will entitle the Principal to terminate this Agreement in accordance with clause 11.1.
- 3.6.4 If a Customer has paid a Price for a Deliverable during a period when the Contractor has offered a more favourable price, then the Contractor agrees to reimburse the Customer the difference between the amount represented by the Price less any Applicable Discount that has been paid by the Customer and the more favourable price.

### **3.7 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.

### 3.9 Goods and Services Tax

#### 3.9.1 In this clause and Agreement:

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

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

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

#### 3.9.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.

#### 3.9.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice for the Contract Price, or any instalment of the Contract Price, is received.

#### 3.9.4 If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.

#### 3.9.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 3.9.3.

#### 3.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal.

## 4. Customers

### 4.1 Contractor must supply to all Customers

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

### 4.2 Nominee Purchasers

#### 4.2.1 Subject to cl. 4.2.2, the Contractor must satisfy any Order placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser provides in its order:

- (a) its Contracting Services Registration Number;
- (b) the identity of the Nominating Agency;
- (c) the contract number, name and location of the contract in respect of which the purchase is being made; and
- (d) a statement saying that the goods or services ordered are related to carrying out its obligations under a contract with a public sector agency.

- 4.2.2 If at any time during the Term of this Agreement, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Principal. The Principal may approve the request if there are genuine commercial reasons for the Contractor's request. If approved by the Principal, the details of the restrictions will be included in Item 14, Schedule 1.
- 4.2.3 Where the Principal does not approve a request of the Contractor under clause 4.2.2 and the Contractor refuses to deal with a Nominee Purchaser, the Principal may terminate this Agreement under cl. 11.
- 4.2.4 The Contractor may at any time lift the restrictions it has placed on its dealings with a Nominee Purchaser and shall notify the Principal accordingly.
- 4.2.5 If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

## **5. Orders**

### **5.1 No Assurance of Orders and Non-Exclusive supply**

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

### **5.2 Supply through dealers and distributors**

- 5.2.1 The Contractor may supply the Deliverables through a dealer or distributor of the Contractor approved by the Principal from time to time and identified in Schedule 1 ("Approved dealer or distributor") on the terms of this clause.

- 5.2.2 The Contractor must make the approved dealer or distributor aware of this Agreement and the standard terms and conditions of Customer Contract and of this clause.
- 5.2.3 If the Principal requires it, the Contractor must arrange for the approved dealer or distributor to execute the statutory declaration at Schedule 6.
- 5.2.4 The approved dealer or distributor must offer to supply under the terms and conditions of the Customer Contract and otherwise on terms that enable the Contractor to comply with this clause.
- 5.2.5 The Contractor guarantees the dealer or distributor's performance under the Customer Contract as if the Customer Contract had been entered into by the Contractor.
- 5.2.6 The Contractor must ensure the approved dealer or distributor has an adequate system in place to supply sales information to the Contractor so as to enable the Contractor to comply with its own obligations under this Agreement to supply sales information to the Principal for calculation of the Management Fee.
- 5.2.7 The Contractor must ensure the approved dealer or distributor supplies the Contractor with the above sales information.
- 5.2.8 The Contractor must obtain the approved dealer or distributor's agreement to the Principal at its own cost taking such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the sales information supplied by the approved dealer or distributor to the Contractor.

### **5.3 Supply through Sub-contractors**

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

- (b) the Contractor will indemnify and release the Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.

5.3.8 The indemnity given under this clause may be enforced by the Customer to the relevant Customer Contract as if it was itself a party to this Agreement.

## **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, and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- (a) a broad form liability policy of insurance which includes:
    - (i) public liability insurance for at least the amount specified in item 5(a) of Schedule 1 in respect of each claim; and
    - (ii) products liability insurance for at least the amount specified in item 5(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover.
  - (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
  - (c) such other insurances as are specified in item 5 of the Agreement Details.
- 6.5.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).
- 6.5.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Principal.
- 6.5.4 All policies must, apart from workers compensation and professional indemnity insurance must:
- (a) note the interest of the Principal, the State and any subcontractor;
  - (b) not exclude liability assumed by the Contractor under this Agreement.
- 6.5.5 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 6.5.6 The Contractor must, when requested in writing by the Principal, supply proof that all insurance policies required by this Agreement are current.

- 6.5.7 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Confirmation of Insurances Obtained" form, and on-send this to the Principal within 30 days of this request. An example of this form is at Schedule 14. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.
- 6.5.8 If the Contractor fails to comply with clause 6.5, the Principal:
- (a) may effect and maintain that insurance and pay the necessary premiums; and
  - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 6.5.9 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 6.5.10 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

## **6.6 General Indemnity**

- 6.6.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement; or
  - (b) any breach of this Agreement or the confidentiality deeds required by this Agreement.
- 6.6.2 The Contractor's liability in respect of, and indemnity given in, clause 6.6.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

## **6.7 Compliance with Laws and Standards**

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

- (a) all applicable Statutory Requirements;
- (b) the codes, policies, guidelines and Australian standards listed in Item 6 of Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor; and
- (c) Where a particular Australian or other Standard has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.

- (d) Where Therapeutic goods (both drugs and devices) are supplied to a Customer, the Contractor must ensure that these goods are contained on the Australian Register of Therapeutic Goods (ARTG), unless exempted, in accordance with the Therapeutic Goods Act 1989 (Cth). The Contractor must comply in all respects with the Uniform Recall Procedure for Therapeutic Goods as called for by the Therapeutic Goods Administration. The Contractor must also comply with the Therapeutic Goods Order 37 and 69 for the labelling of therapeutic goods.

#### **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.

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

#### **6.8 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 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.
- (a) In the event that the Contractor does not complete the Report within 30 days, the Contractor shall be liable to pay to the Principal the cost to the Principal of ensuring the compliance by the Contractor with its obligations under this clause in the amount of the administrative fee in item 15 of Schedule 1 Agreement Details, calculated from the date the sales return was first due to be submitted. The statement by the Principal as to the amount of the administrative costs payable under this clause shall be final and binding and the amount shall be payable on demand as a debt due to the Principal.

AND/OR

- (b) In the event that the Contractor does not complete the Report within 30 days and thus causing a failure by the Contractor to comply with its obligations under clause 6.11.8, the Contractor shall be liable to pay the Principal a Late Payment Fee as specified in Schedule 1.
- 6.11.8 (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 the Contractor shall be liable to pay to the Principal the cost to the principal of ensuring the compliance by the Contractor with its obligations under this clause an amount contained in item 15 of Schedule 1 Agreement Details calculated from the date the payment was first due to be made. The statement by the Principal as to the amount of the costs payable under this clause shall be final and binding and the amount shall be payable on demand as a debt due to the Principal.

AND/OR

- (d) In the event that the Contractor does not provide payment within sixty days the Contractor shall be liable to pay to the Principal a Late Payment Fee as specified in Schedule 1.
- 6.11.9 The tax invoice will set out the Management Fee payable to the Principal and the GST payable on the Management Fee.
- 6.11.10 The Principal may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.
- 6.11.11 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should consult with the Principal and the Parties may agree on the amount of any adjustment.
- 6.11.12 Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of that Payment Period, a report stating that no Deliverables were provided by the Contractor to any Customer during the Payment Period.
- 6.11.13 The Contractor must set up and maintain a system which:
- (a) to the reasonable satisfaction of the Principal is suitable for identifying all purchasers of the Deliverables that are eligible Customers whether pursuant to Official Orders or otherwise and
  - (b) enables monitoring by the Principal of the Orders placed with and invoices issued by the Contractor or its approved dealers or distributors and for the provision of the sales information; and
  - (c) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.
  - (d) Failure to establish such a system to the reasonable satisfaction of the Principal shall constitute a breach of this Agreement and the Contract Authority may, in its discretion terminate the Agreement.
- 6.11.14 (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

- (i) 99% or more of management fee was paid
- (ii) 90-98% of management fee paid
- (iii) 75-89% of management fee paid
- (iv) 50-74% of management fee paid
- (v) less than 50% of payable management fee paid

Portion of Audit costs to be borne

- (i) \$0
- (ii) 25% of audit and other costs
- (iii) 50% of audit and other costs
- (iv) 75% of audit and other costs
- (v) 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 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® ™)**

- 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®.
- 6.16.2 A Customer and the Contractor may agree to do business electronically as is necessary for the performance of the Customer Contract.

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

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

**6.18 Provision of Catalogue Information for E-commerce Initiatives**

- 6.18.1 From time to time the Principal may request the Contractor to supply information in the nature of catalogue information, for use in e-commerce initiatives in NSW Government contracting.
- 6.18.2 The Contractor must promptly supply any such information that is reasonably requested by the Principal in the format, and using the method of delivery, specified by the Principal at the time of the request.
- 6.18.3 The Contractor consents to the use of such information, including any personal information, in any catalogue created by 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](http://www.kids.nsw.gov.au).
- 6.19.3 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:
- (a) if any work under a Customer Contract is "child-related employment" under the Prohibited Employment Act (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor:
    - (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and

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

## **6.20 Notification of Adverse Events**

- 6.20.1 The Contractor must notify the Chief Executive of the Health Service and the Principal in writing of any adverse event relating to the use of the Deliverables in any jurisdiction within 48 hours of becoming aware of the adverse event. The written notification must include the following details:
  - (i) Date of Adverse Event.
  - (ii) Nature and circumstances of Adverse Event
  - (iii) Identification details for Deliverable involved in Adverse Event.
  - (iv) Patient Outcome.
  - (v) Location (facility, state, country) where Adverse Event occurred.
  - (vi) Names of any regulatory authorities (i.e. Therapeutic Goods Administration, State Health Department) that the Contractor has informed of the Adverse Event.
  - (vii) Results of any investigations undertaken or planned by the Contractor as a result of the Adverse Event.
  - (viii) Details of any remedial, corrective or preventative action taken or planned by the Contractor as a result of the Adverse Event.

- (ix) Whether the Contractor is aware of any similar Adverse Events, and if so, details of these.
- (x) Any statistical information demonstrating the risk of likely occurrence of further similar events.

## **6.21 Changes in indication for use**

6.21.1 The Contractor must notify the Chief Executive of the Health Service and the Principal in writing of any change in the recommended indications or contraindications for use or any change in instructions for use of the Deliverables within 48 hours of becoming aware of the change. The written notification must include the following details:

- (i) Reasons for the change, (including details of any Adverse Event(s) which influenced the change as set out in the clause 6.20.1 (i) – (x).
- (ii) How the Contractor has or will communicate the change to users of the Deliverables (i.e. will instructions be modified, training be conducted, leaflets distributed).
- (iii) Names of any regulatory authorities (i.e. Therapeutic Goods Administration, State Health Department) that the Contractor has informed of the change.
- (iv) Results of any investigations undertaken by the Contractor which influenced the change.

## **6.22 Corrupt Conduct**

6.22.1 The Contractor shall not give or make available any Inducement or Reward to any public servant, employee, agent or contractor to the SCCB or the Government of NSW in connection with the Agreement.

6.22.2 The Contractor shall not engage in corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act (1988)*.

6.22.3 The Contractor agrees that it is a Substantial Breach under clause 11.1 of the Agreement if the Contractor, at any time during the term of the Agreement, breaches 6.22.1 and 6.22.2.

## **6.23 Australian Standards Specifications**

6.23.1 In all cases where Australian Standards exist, the deliverables should conform to such Standards. Contractors may offer items that comply with the British Pharmacopoeia or other recognised International Standards as agreed between the Principal and the Contractor.

6.23.2 Where a Standard is revised and altered during a contract period, evidence of compliance to the new Standard will be required to be submitted to Contracting Services within a reasonable period of time. Failure to submit evidence of compliance may result in termination of the Agreement.

## 7. Performance Monitoring and Exchange of Information

### 7.1 Monitoring of Performance

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

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

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

[Performance as per the Performance Scorecard indicators](#)  
[Periodic summary reports](#)  
[Goods/service delivered](#)  
[Sales Data](#)

- 7.1.3 The successful Contractor/s will be required to provide to Contracting Services, on a monthly basis, **electronic** returns showing the total units sold, of all items they are contracted to supply, in the following format. Nil sales should also be indicated.
- 7.1.4 A pro forma return will be provided by Contracting Services in Microsoft Excel format.
- 7.1.5 This information is in addition to the monthly Management Fee return (template available on request from Brendon (Vendor Management) and should be forwarded separately (on disk or via email), addressed to Brendon Morcom, Contract Officer, Vendor Management, Department of Commerce, Level 12 Mckell Building, 2-24 Rawson Place, Sydney. Telephone number 9372 7622 or e-mail [brendon.morcom@commerce.nsw.gov.au](mailto:brendon.morcom@commerce.nsw.gov.au)

### 7.2 Exchange of information between government agencies

- 7.2.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 7.2.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.

- 7.2.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 22 of the Defamation Act 1974 (NSW).
- 7.2.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

**7.3 The Contractor's personnel/specified personnel**

- 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**

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

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

## **8. Confidentiality**

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

## **9. Not Used**

## **10. Variations**

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

## **11. Termination**

### **11.1 Termination for cause**

- 11.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
- (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;
  - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
  - (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;

- (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
- (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts the Customer Contract except in accordance with this Agreement;
- (f) in the case of the Contractor's Insolvency;
- (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any Order; or
- (h) If in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of the Agreement.
- (i) where the Contractor fails to comply with clauses 6.20 and 6.21, of this Agreement.

#### 11.1.2 Effect of Termination for cause

- (a) If the Principal terminates this Agreement for cause the Principal may:
  - (i) contract with any other person to complete the provision of the Deliverables including but not limited to any Order remaining to be filled;
  - (ii) 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
  - (iii) 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.
- (b) 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

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

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

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

#### **14.2 Severability**

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

#### **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**

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

**14.6 Rights Cumulative**

- 14.6.1 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**

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

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

16.2 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.

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

#### **16.2 Extension of Time**

16.2.1 Where there is likely to be a significant delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:

- (a) within 7 days of becoming aware of the possibility of such a significant delay, notify the Customer, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and

- (b) request a reasonable extension of time.
- 16.2.2 The Customer may consent to a request for extension of time under this clause 16.2 provided that:
- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
  - (b) where appropriate, the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.
- 16.2.3 The Customer may terminate the Customer Contract in accordance with clause 24 if the delay continues beyond the time consented to in this clause 16.
- 16.2.4 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

## **17. Supply of Deliverables**

### **17.1 Specified Models/Products**

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

### **17.2 Packaging**

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

### **17.3 Expenses of Delivery**

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

### **17.4 Delivery and Acceptance of Deliverables**

- 17.4.1 The Contractor must deliver the Deliverables to the place or places and within the Guaranteed Delivery Time and shall obtain a receipt of their delivery.
- 17.4.2 Title in the Deliverables shall pass to the Customer on satisfactory delivery of the Deliverables in accordance with the Customer Contract.
- 17.4.3 Delivery and receipt of the Deliverables shall not be taken to be an acceptance of the Deliverables by the Customer.

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

## **17.5 Rejection of Deliverables**

- 17.5.1 Upon rejection of any Deliverables, on reasonable grounds, the Customer shall notify the Contractor and may direct that the rejected Deliverables be removed and replaced or rectified at the Contractor's risk and expense within such reasonable time as the Customer may direct. If the Contractor is unable to provide Deliverables for any reason, the Contractor must arrange for the supply of equivalent products from an alternative supplier within the guaranteed delivery time. The Contractor is to liaise with the Customer to ensure that the alternative product is acceptable and meets the purchaser's needs.
- 17.5.2 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Customer may have the rejected Deliverables re-delivered at the Contractor's risk and expense.
- 17.5.3 Where the Contractor fails to deliver the Deliverables by the Guaranteed Delivery Time, or where Deliverables are rejected and the Contractor fails to replace the rejected Deliverables or supply suitable alternative Deliverables, or to deliver Deliverables conforming to the Agreement, the Customer:
  - (a) may purchase from another supplier substitute Deliverables of the kind and quality ordered; or

- (b) where it is not possible or practicable to purchase from another supplier substitute Deliverables of the kind or quality ordered, purchase goods or services which in the opinion of the Customer are most suitable, even though such goods or services are of a superior kind and quality to the Deliverables.

- 17.5.4 In both cases listed in clause 17.5.3 any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Customer.
- 17.5.4 Contractors are not permitted to withdraw products from the Contract, for any reason, whilst that product is still available on the market. Tenderers should be aware of the options available to the Purchasing Authorities in the event of non-supply as detailed at Clause 17.5.3.
- 17.5.5 It is expected that an alternative generic equivalent be made available in the event of non-supply. Contractors are to source the alternative product and make arrangements for the supply of this item.

## **17.6 Non Free-into-Store (NFIS) Arrangements**

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

## **17.7 Home Delivery**

- 17.7.1 It is required that all Contractors supplying Deliverables that are for home use agree to the delivery of the product to the residence of the home user.
- 17.7.2 The Contractor will be required to ensure documentation regarding driver accreditation, criminal checks and training are completed and available. The Contractor is responsible to ensure that information is supplied to the assigned Driver of any special requirements for any sites of delivery. The Contractor is also responsible for ensuring all deliveries are made direct into the designated storage area of any private residence or hospital. Contractors should pre arrange alternative delivery sites for private Residences if an occasion ever arises that the resident is absent at the time of the delivery.
- 17.7.3 The Contractor should ensure the drivers gather the necessary information from each home site to enable reporting to be undertaken on stock condition, rotation of stock, returns.
- 17.7.4 The Contractor will be responsible for contacting the patient before each delivery, undertaking a stock check to ensure no variation to delivery is required and to supply reports to the Relevant Area Health Service of the deliveries made to home patients and the details obtained by the drivers. The reporting required will cover stock condition, rotation of stock, returns etc and any other information as required by the parent unit.
- 17.7.5 Once an order is placed and accepted for delivery to a Home patient it is expected that the delivery will be completed preferably within 10 working days for Regional (Rural) Areas and 5 working days for Metropolitan Areas.

## 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 Not Used

## 19. Payment

**19.1 Payment of Contract Price**

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

**19.2 Invoices and Time for Payment**

- 19.2.1 Subject to this clause 19.2, the Customer shall make payment within 30 days from the end of the month after receipt of a correct claim and documents necessary to evidence delivery to the Customer.
- 19.2.2 All claims made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Customer.
- 19.2.3 The making of a payment is not an acknowledgment that the Deliverables have been supplied in accordance with the Customer Contract, but shall be taken to be payment on account only.
- 19.2.4 If the Customer disputes the invoice amount the Customer shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with the Customer Contract.
- 19.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Deliverables.
- 19.2.5 All invoices shall include the customers purchase order numbers.

**19.3 Set-Off/Money Recoverable by Customer**

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

**19.4 Suspension of Payments**

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

**20. The Contractor's additional expenses**

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

**21. Contractor's Warranties****21.1 Contractor's warranties (Goods)**

- 21.1.1 In relation to Deliverables that are goods, the Contractor warrants that:
- (a) at the time ownership of a Deliverable passes to the Customer, the Deliverable will be free from any charge or liability;

- (b) during the Warranty Period, each Deliverable:
  - (i) shall be new and shall conform with the Specification;
  - (ii) shall conform to the description, model number and the sample (if any) provided by the Contractor; and
  - (iii) shall be free from defects.

## **21.2 Contractor's warranties (Services)**

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

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

## **21.3 Contractor's warranties (General)**

21.3.1 The Contractor warrants that:

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

## **21.4 Warranty Period**

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

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

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

### **21.5 Third party warranties**

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

## **22. No assignment or sub-contracting of Customer Contract**

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

- 22.9 The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Customer Contract and that the sub-contract is consistent with those terms and conditions.
- 22.10 This clause does not apply in the event that the Principal requests a particular sub-contractor to provide the Deliverables.

### **23. Variation of the Customer Contract**

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

### **24. Termination by Customer**

- 24.1 Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Contractor ("Notice of Termination"):
- (a) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
  - (b) where the Contractor commits a Substantial Breach of the Customer Contract that is not capable of remedy;
  - (c) where the Contractor commits a Substantial Breach of the Customer Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
  - (d) where the Contractor assigns its rights and/or obligations, or subcontracts the Customer Contract otherwise than in accordance with the Customer Contract; or
  - (e) in the case of the Contractor's Insolvency.
- 24.2 In the event of termination, the Customer:
- (a) may procure from any other source a reasonably similar alternative to the Deliverable suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
  - (b) may, by notice in writing to the Contractor, require the Contractor at its expense to remove the specified Deliverable not accepted by the Customer and to dismantle or remove specified work from the Customer's premises by a date specified in the notice;
  - (c) shall be liable under the Customer Contract to pay only for the Deliverables delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
  - (d) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.

This clause will survive the termination of the Customer Contract.

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

## **25. Issue Resolution**

### **25.1 General**

- 25.1.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed in this order until an issue is resolved:
- (a) Amicable Resolution (clause 25.2);
  - (b) Expert Determination (clause 25.3)

### **25.2 Amicable Resolution**

- 25.2.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of the Customer Contract or about any matter arising under or out of the Customer Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 25.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Customer Contract, it must give the Issue Notice to the Customer and to the State Contracts Control Board.
- 25.2.3 If the Party giving the Issue Notice is the Customer, it must give the Issue Notice to the Contractor and to the State Contracts Control Board.
- 25.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 25.2.5 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 25.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.

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

### **25.3 Expert Determination**

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

## **26. Notices (Customer and Contractor)**

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

**27. Additional conditions**

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

### **Schedule 1 Agreement Details**

<b>Item 1</b>	<b>Request for Tender No.....date submitted.....(clause 1.1)</b>
<b>Item 2</b>	<b>Contractor's Name (clause 1.1)</b>
<b>Item 3</b>	<b>Specified Personnel (if any)(clause 7.3):</b>
<b>Item 4</b>	<b>Term: (clause 2.3.1)</b> Commencement Date: Expiry Date:  <b>Period of extended term (if any): (clause 2.3.2)</b> Commencement Date: Expiry Date:
<b>Item 5</b>	<b>Broad Form Liability Insurance Policy Amount</b> (clause 6.5)  (a) Public Liability Insurance Limit of Indemnity: <b>\$AUS 25M</b> (b) Product Liability Insurance Limit of Indemnity: <b>\$AUS 25M</b> (
<b>Item 6</b>	<b>Codes (clause 6.7.1(b))</b>  1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement. 3. Standards in accordance with specifications
<b>Item 7</b>	<b>Management Fee Rate (clause 6.11)</b>  1.0%
<b>Item 8</b>	<b>Payment Period of Management Fee (clause 6.11)</b>
<b>Item 9</b>	<b>Sales Information (clause 6.11.6)</b>  1. The names of the ten largest Customers listed by dollar value invoiced by the Contractor in the relevant Payment Period (6.11.6). Electronic returns showing total units sold, of all items contracted to supply (7.1.2)
<b>Item 10</b>	<b>Expert Determination Amount (clause 13.3.7):</b>  <b>\$A:\$100,000.00</b>

<b>Item 11</b>	<b>Security</b> : Not Used
<b>Item 12</b>	<b>A. List of approved dealers and distributors</b> (Clause 5.2) <b>B. List of approved sub-contractors</b> (Clause 5.3)
<b>Item 13</b>	<b>Notices to:</b> (clause 14.3) <b>The Contractor's contact name and address:</b> Name: Address: Position: Telephone: Facsimile:  <b>The Principal's contact name and address:</b> Name: Chairman, SCCB Address: McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000 Telephone: 9372 8818 Facsimile: 9372 8803
<b>Item 14</b>	<b>Restrictions on Nominee Purchasers</b> (clause 4.2)
<b>Item 15</b>	<b>Interest for Late Payment of Management Fee</b> (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 - Refer Annexure 1 B parts A&B**

**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 for Sub-Contractors**

**Schedule 7      Not Used**

**Schedule 8      Not Used**

**Schedule 9      Not Used**

**Schedule 10 Contractor Information**

**Schedule 11    Approved Dealer, Distributor or Sub-Contractor Information**

## Schedule 12      Schedule of Customers

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

- (ii) For the purposes of sub-clause (b) (vii) Authorities to which permission has been given generally have:-

- . Charitable or benevolent status.
- . Not-for-profit objective.
- . Level of government subsidy/support.

Examples are:-

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

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

### **Schedule 13    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 <Contract Officer to insert Contract title>  
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.

<b>CONTRACTOR:</b> ..... <b>ABN/ACN:</b> .....	<b>AUDITOR:</b> ..... <b>ABN/ACN:</b> .....
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*

### Option 1. Company

**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*