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TENDERER**

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This file is provided on the Commerce tenders web site when the Request For Tender (RFT) document is issued in Dmax Lite format.

This file contains (below) a brief scope statement and extracts from the RFT documents, but is not a complete RFT document and does not contain the responsible questions.

To participate in this tendering process you MUST first return to the Commerce tenders web site:

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

Then from the RFT web page (see RFT number below) download a full copy of the RFT documents, including the responsible components, and also any addenda issued to date; and also during the tender period.

Copy/Save the RFT documents to your own computer drive or network location – the blue “DOWNLOAD A SOFT COPY” link at the bottom provides access to the page from which you can do this.

DmAX Lite Software

You will need to have a current licensed copy of the Dmax Lite 5 software to read, complete, and respond to the RFT with your tender. If you do not currently have such a licensed copy it can be optionally purchased and downloaded when downloading the full RFT documents from the tenders web site.



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

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

Request for Tender 0701004

Total Apparel Management for NSW Fire Brigades

1 July 2008 to 30 June 2011 with two by one year
optional extensions

Tender Issue Date: 13 August 2007

Closing Date: 11 October 2007

Closing Time: 9:30 am Sydney Time

Note: In order to respond to this RFT tenderers must have a current license for DMax Lite software.
Licenses can be purchased through NSW Procurement | eBusiness Solutions SupportDesk at:

eBS_SupportDesk@commerce.nsw.gov.au or 1800 003 985

at a cost of \$110 (inclusive of GST) (representing the DecisionMax license fee). This provides 12 months unlimited application to any Tender formatted in TenderMax Pro. It is anticipated that most RFTs released by the SCCB will be in this format.

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

Other matters should be directed to:

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

Total Apparel Management for NSW Fire Brigades

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PART A Tender Conditions - The Requirement and Specifications

1. Outline Description of the Requirement

1.1 Introduction

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

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

1.2 Overview

- 1.2.1 Tenders are sought for the provision of a Total Apparel Management (TAM) service for the NSW Fire Brigades – Supply of Personal Protective Clothing (PPC) and Equipment (PPE), Dress Uniform and Accoutrements, on behalf of the NSW Fire Brigades (NSWFB).
- 1.2.2 The TAM service calls for the manufacture/sourcing, stocking, management and distribution of the range of PPC/PPE, dress uniform and accoutrements as used by the NSWFB as well as a logistic infrastructure capable of supporting the operations of the NSWFB in respect to the items supplied.
- 1.2.3 This contract covers the requirements for both **supply items** and **managed items**.
- 1.2.4 It is a **mandatory** requirement that the successful tenderer provide both the full range of supply and managed items.
- 1.2.5 Supply items are considered to be those items that are sourced / manufactured and supplied by the contractor.
- 1.2.6 Managed items are those specialist items available under contracts arranged separately by the NSWFB. The successful tenderer will be authorised to access these contracts directly and purchase the items in bulk from the nominated supplier at the contract price. The successful tenderer will stock these items and supply the items to NSWFB stations as required. These items will not be sold to any other organisations without the prior agreement of NSWFB. The successful tenderer will be required to manage the relationship with the nominated supplier with the assistance of NSWFB. The managed items are listed at 1.3.3 below.

Note: The range of supply and managed items and the estimated annual usage for each item is detailed at Annexure 2 to Part A.

1.3. Background

- 1.3.1 The NSWFB is a dedicated organisation providing emergency services to over 90% of the States population (6.8million people) through a network of 339 fire stations with over 6500 firefighters both full and part time as well as approximately 5500 Community Fire Unit volunteers. The specialist functions of the NSWFB take in;
 - Education in preventing and preparing for emergencies
 - Provision of rapid reliable help in emergencies 24 hours a day, 7 days a week.

- Protection from emergencies involving fire, road accidents and other dangerous situations.
 - Protection from hazardous material emergencies and building collapse.
 - Provision of terrorist consequence management
 - Minimisation of damage to the environment by treating chemical biological or radiological releases on land and inland waters.
 - Minimisation of damage to property and the States economy and protection of community infrastructure valued at \$1400 billion.
- 1.3.2 For the purpose of this tender, Personal Protective Clothing (PPC) is the name given to the special primary protective and duty wear garments that are designed to protect the firefighter in the performance of their duties. These items are;
- Protective Ensemble – Structural (comprises protective coat and overtrouser)
 Trouser – Duty Wear
 Shirt – Duty Wear
 Hood – Heat Protective
 Coat – Wild Land
 Ensemble – Community Fire Unit (comprises, coat, trouser, T Shirt)
- 1.3.3 Personal Protective Equipment (PPE) covers the category of items which are worn by the firefighter in conjunction with the protective garments. These are also the **managed items** as described at 1.2.6 above.
- Boot, Firefighting - Structural
 Boot, Community Fire Unit
 Glove, Firefighting - Structural
 Glove, Duty Wear General Purpose
 Helmet, Firefighting - Structural
 Helmet, Firefighting – Multi Purpose
- Tenderers are to state their proposed pricing structure/management fee to undertake this service. This should be expressed as a percentage of the purchase cost.
- 1.3.4 Dress Uniform defines those items of corporate clothing of a non primary protective nature that identify and provide a professional appearance to NSWFB firefighters.
- 1.3.5 Accoutrements are the badges, insignia and clothing accessories for all uniformed personnel.

2 Summary information for tenderers

2.1 Interpretation

- 2.1.1 Definitions of terms used in Parts A-C are contained in cl.6 of Part B

2.2 Structure of Request for Tender

- 2.2.1 This Tender is structured in the TenderMax Pro format.

TenderMax Pro is an e-sourcing application designed to fully automate the traditional paper-based tendering process introducing best practice processes in Electronic Tender production, submission and evaluation.

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

Tender Conditions

Part A: The Requirement and Specification;

Part B: The Tender Process;

Response to be completed by Tenderer

Part C: Tender Response, to be completed by the Tenderer.

Conditions of Contract

Part D: Agreement

Part C and other responses, once completed forms the Tender, and is to be submitted in accordance with Parts A, B and D.

2.3 Contact Officer

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

Name: Sam Aiello
Phone: 02 9372 7626
Fax: 02 9372 7799
E-mail: sam.aiello@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 Pre-Tender briefing

2.4.1 A pre-Tender briefing will be held on the date, and at the time and place, nominated in the advertisement or listed below.

Date: 29 August 2007
Location: Amarina Ave. Greenacre , NSW 2190
Time: 10.00 a.m.

2.4.2 The purpose of the pre-tender briefing is to discuss all aspects of this tender and prospective tenderers are encouraged to attend

2.4.3 Tenderers are to notify Guy Tesoriero (tel: 02 9742 7442) or via email (guy.tesoriero@nswfire.nsw.gov.au) by 27 August 2007, of their intention to attend the briefing.

2.5 Samples

2.5.1 As part of the essential completion of a response to this RFT, tenderers are required to provide samples of some items specified, and these samples will be evaluated as part of the overall evaluation process. Where samples are not required to be submitted with the tender for evaluation purposes, the successful tenderer will be required to submit samples of these items for NSWFB approval prior to production.

2.5.2 Samples are to be one (1) example only of each of the following Items:

| Product | NSWFB Specification No. | Size |
|--|-------------------------|-------|
| Firefighting, Structural Ensemble – Protective Overtrouser | CI:06835 | Large |
| Firefighting, Structural Ensemble – Protective Coat | CI:06835 | Large |
| Firefighting, Jacket – Wildland | CI:06839 | Large |
| Firefighting Sock – Fire Resistant | CI:07057 | Large |
| Firefighting Hood – Protective | CI:06828 | N/A |
| Duty Wear, Trousers – Firefighters | CI:06832 | 95 |
| Duty Wear, Shirt – Firefighters | CI:03529 | Large |
| Shirt, Short Sleeve – Male | CI:07047 | 44 |
| Shirt, Long Sleeve – Male | CI:07050 | 44 |
| Shirt, Blouse, Short Sleeve | CI:07046 | 14 |
| Trouser, Dress - Male | CI:06831 | 95R |
| CFU, Ensemble - Coat | CI:07044 | Large |
| CFU, Ensemble - Trousers | CI:07044 | Large |
| Footwear, Male - Lace-up | CI:07048 | 9 |

2.5.3 Samples must not be packaged and delivered with tender responses but sent separately (by 9.30am on 11 October 2007) to the following address:

Attention: Guy Tesoriero
NSW Fire Brigades
Logistic Support
Receipt and Despatch
Amarina Avenue
Greenacre NSW 2190

2.5.4 Each individual sample must be labelled with a securely attached label in a format in keeping with the following example:

Tender 0701004
Sample of Coat – Wildland Firefighting Jacket
Tenderer: Fred Smith Industries
Product: Ajax Brand Coat, product code No. 123456.

2.5.5 Care labels and company identifying markings are not to be sewn to the garments. A sample care label for each garment is to be provided separately for evaluation only.

2.5.6 Cartons or boxes in which samples are delivered must be securely packed and labelled. Accompanying the complete lot of samples must be a list itemising the tenderer's samples, in the same format as the individual labels. That is, all the information which identifies each sample should be on this list for cross checking purposes.

2.5.7 The tender sample shall be complete as meeting the standard and ready for use. Any sample not ready for use or with extra fitments shall be set aside.

2.5.8 These samples shall be provided at nil cost to NSWFB.

2.5.9 The samples may be tested in field evaluations and further thermal testing. The testing will be to the destruction of the item.

- 2.5.10 All charges relating to delivery and return of tender samples are the tenderer's responsibility.

2.6 Certification of Products

2.6.1 Certification of Products

The successful tenderer will ensure that the following products are tested to the relevant NSWFB specification by an authorised National Association of Testing Authorities (NATA) test laboratory. Manufacturers shall be licensed to produce the Certified Products listed at the time of tender close:

| Product | NSWFB Specification No. |
|---|-------------------------|
| Firefighting Ensemble Structural (includes coat and over trouser) | CI:06835 |
| Firefighting Jacket – Wildland | CI:06839 |
| Firefighting, Sock – Heat Resistant | CI:07057 |
| Firefighting, Hood – Protective | CI:06828 |
| Duty Wear, Trouser – Firefighters | CI:06835 |
| Ensemble – CFU (includes trouser and coat) | CI:07044 |

- 2.6.2 The successful tenderer shall provide test certificates (ie product certification documents) for these products from an approved independent third party Certification Authority accredited through the Joint Accreditation System of Australia and New Zealand (JAS-ANZ)
- 2.6.3 The successful tenderer will be required to provide to the NSWFB one approved sample of each of the supply items. The sample will become the quality benchmark against which future production will be compared.

2.7 Accoutrements

- 2.7.1 The successful tenderer will also be required to provide the badges, insignia and clothing accessories for all uniformed personnel. For the purpose of this tender the accoutrement items are divided into;

Category A items – metalware and miscellaneous and;

Category B items – rank insignia epaulettes.

Prices for Category B items – rank insignia epaulettes - (specification no. CI:07053) **are** to be submitted with the tender.

Prices for Category A items – metalware and miscellaneous **are not** required to be submitted with the tender. Samples of these items will be provided to the successful tenderer and pricing will be negotiated after contract award as a contract variation (see Clause 13.1.1 – variations)

2.8 Viewing of existing examples

NSWFB appreciates that tenderers may wish to examine existing examples of the coats, trousers and other garments currently used by the NSWFB, for the purposes of meeting the specifications of this tender. To assist tenderers in this regard, NSWFB shall make such examples available for viewing, by appointment only, in a viewing area and for a period of time solely designated by NSWFB, at

their Greenacre facility. Tenderers should contact Mr Guy Tesoriero, as per the details in Clause 2.4, to arrange this viewing, in advance. If such arrangements are not made with reasonable notice, NSWFB will not be held responsible for tenderers not being able to access the examples in the time before this tender closes. Any costs incurred by a tenderer availing themselves of the option to view examples as per this Clause are to be borne entirely by the tenderer. Sample viewings cannot be held on the same day as the pre production meeting.

2.9 Nature and duration of agreement

2.9.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer(s) on the terms of Part D.

2.9.2 The agreement will be for a term of three years and may be extended by a further term of two by one years.

2.10 Eligibility to tender

2.10.1 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 contract with the relevant legal entity or entities.

2.10.2 The Board may submit any financial information provided by the tenderer for independent financial assessment of the Tenderer's business.

2.10.3 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.

2.10.4 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial assets.

2.10.5 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 or parent company guarantee, or an unconditional performance bond in a form satisfactory to the Board.

2.10.6 Tenderers must read, understand and comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below. Tenderers must disclose any potential conflict of interests (including any relevant relationships) in the Tender Response.

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

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

2.11 Other Eligibility Requirements

- 2.11.1 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.
- 2.11.12 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. Submission of Tenders

3.1 General instructions for submission of Tenders

- 3.1.1 A Tender must be fully received by the Closing Date and Closing Time.
- 3.1.2 In order to prepare and lodge a response, tenderers must have a current license for the DMax Lite software being used. DMax Lite is the application required to participate and respond to any RFT published in the TenderMax Pro format.
- 3.1.3 A Tender must be lodged into the designated tender box/es, and may be lodged by:
 - a) **electronic lodgement** to the **electronic tender box for this RFT**, in accordance with Section 8 of this RFT, through the NSW Department of Commerce eTendering website at:

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

Locate the web page for RFT *(Insert RFT Number)*, and follow the instructions, to lodge the tender through the blue LODGE A RESPONSE link
 - b) Files lodged must be contained in one or more Dmax

4. Evaluation of Tenders

4.1 General

- 4.1.1 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.
- 4.1.2 The selection criteria for this RFT that do not relate to price will account for (70)% of the total evaluation score. The selection criteria for this RFT that relate to price will account for (30)% of the total evaluation score.
- 4.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.

- 4.1.4 If any criterion or sub-criterion is stated to be “mandatory” a failure by the Tender to fully comply with that criterion or sub-criterion will result in automatic exclusion of the Tender without further consideration. Mandatory criteria include those in which mandatory language such as “must” or “shall” is used.

4.2 Selection criteria

- (a) Price considerations
- (b) Capacity to perform the agreement including but not limited to:
 - Quality Assurance systems in place
 - Provision of help desk service
 - Inventory management and warehousing provisions
 - Provision of measurement (try on) service
 - Provision of a dress uniform galatea service
 - Provision of an alteration and repair service
 - Research and development capabilities
 - Emergency supply provisions
- (c) Previous Contract Experience and Standard of Performance
- (d) Quality of samples
- (e) E Commerce Capabilities
- (f) Compliance with NSW Government procurement policy and other applicable NSW Government policies.
- (g) Compliance with the technical specifications
- (h) Compliance with the proposed conditions of contract

VALUE FOR MONEY: Value for money does not automatically mean the lowest price. It is determined by considering all factors relevant to a particular purpose. It includes the cost of deliverables, whole of life costs, innovation and value adding components, such as meeting the Government’s economic, social and environmental policy objectives.

5. PREPARATION OF TENDER - PRICE SCHEDULE

5.1 Price Schedule

5.1.1 Complete the Price Schedule at Part C3.

5.2 Calculating the Tender Price

5.2.1.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the agreement, including packing and delivery (if applicable);
- (c) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- (d) include all costs associated with the preparation and submission of the Tender;
- (e) take account of the Department of Commerce Management Fee (1%), which is not to be shown as a separate charge.

5.3 Price Variation

5.3.1 The tenderer may determine the Tender Price on the basis of one or more of the four options below. The tenderer will be asked to indicate which option(s) is or are selected in Part C.

- (1) Firm for the entire duration of the agreement three (3) years plus two (one) years optional extension period.
- (2) Firm for the first twelve (12) months of the term of the agreement] then subject to review at the end of that period and each twelve (12) months, including for any extension period following based on variations in **rates of exchange**.
- (3) Firm for the first twelve (12) months of the term of the agreement then subject to review at the end of that period and each twelve (12) months, including for any extension period following based on variations in **labour and material factors**.
- (4) Firm for the first twelve (12) months of the term of the agreement] then subject to review at the end of that period and each twelve (12) months, including for any extension period following based on **Consumer Price Index (CPI)**.

5.3.2 If option (2) is selected, 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.

5.3.3 If option (3) is selected, variation will be on the basis of the following formulae.

Labour and Material Factors

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

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 agreement/s [make singular or plural, as appropriate], 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 agreement/s [make singular or plural, as appropriate], most recently published at twenty-one days before tender closing.

Z = The Materials Factor, expressed as a decimal, being the proportion of the 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.

Note: Y (Labour Factor) and Z (Material Factor) must be expressed as a decimal and together, must total 0.9.

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 agreement/s [make singular or plural, as appropriate], 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). |

5.3.4 If option (4) is selected, variation will be on the basis of the following formulae.

CPI Option

$$RP = OP * \frac{L}{Lo}$$

(Note: * = means multiplication)

Where:

| | |
|------|------------------------------|
| RP = | Revised Contract Price. |
| OP = | Original Contract Prices. |
| L = | CPI at price variation date. |
| Lo = | CPI at the Base Date. |

5.4 GST Free or Input Taxed Supplies

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

5.5 Minimum Tender validity period

5.5.1 Tenders must remain open for acceptance for a period of at least 12 months from the Closing Date and Time for Tenders. Tenderers must state in Part C if their Tenders will remain open for any longer period.

PART B Tender Conditions -The Tender Process

6. Definitions of terms used in Parts A-C

6.1 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. 7.5.

“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 Departments and other public sector agencies ; and
- On-going contract administration and management,

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

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

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

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

“Conforming Tender” means a Tender that:

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

“Contractor” means the tenderer as a party to the proposed agreement.

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

“Government Businesses” means in general, entities which:

- (a) have some form of public sector ownership;
- (b) are engaged in trading goods and/or services;
- (c) have a large measure of self sufficiency; and
- (d) are subject to Executive control.

In this context, the term Government business includes Public Trading Enterprises, State Owned Corporations and General Government Businesses.

“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.

“Non-Conforming Tender” means a Tender that:

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

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

“On Request Items” means any Deliverables nominated as On Request Items.

“Price” includes a price expressed as a lump sum or a rate per unit of quantity, calculated in accordance with cl.5.3.

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

“Principal” means the party named as Principal in the proposed agreement.

“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.

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

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

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

“Tender Price” means, in respect of each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable.

7 Tender Process – General

7.1 Conformity of Tenders

- 7.1.1 The Board seeks Conforming Tenders.
- 7.1.2 Non-Conforming Tenders that do not include a fully completed Part C, in particular those Tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or, in the case of electronic tenders, which cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.
- 7.1.3 Tenderers may, if they choose, submit an Alternative Tender. Tenderers are encouraged to offer options or solutions that contribute to the Principal's ability to carry out its business in a more cost-effective manner.
- 7.1.4 Alternative Tenders will only be considered if submitted in conjunction with a Conforming Tender.
- 7.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.
- 7.1.6 An Alternative Tender must be clearly marked "Alternative Tender".
- 7.1.7 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.

7.2 Prescribed form of Tender

- 7.2.1 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.
- 7.2.2 The Tender will be taken to be for the supply of the Requirement on the terms and conditions stated in Part D except to the extent that these are amended by the Tender.

7.3 General instructions for completion of Tenders

- 7.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 7.3.2 Tenderers must complete ALL of Part C of this RFT, as directed and must not amend any of the questions provided.
- 7.3.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 7.3.4 All tenders must be provided in the TenderMax Pro format, using DMax Lite software, and Part C must be included in one or more files with an extension of *.dtr.

- 7.3.5 Product samples, models and other supporting items that are required to be delivered must be identified in the tender and delivered in accordance with arrangements made with the Contact Officer before lodgement of tender.

7.4 Tenderers to inform themselves

- 7.4.1 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 agreement.

- 7.4.2 The following must be considered:

- (a) The eTendering system is at peak use on the morning prior to Tenders closing.
 - 1) Due to communication traffic via this means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
 - 2) When lodging 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.
- (b) 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. In this case Tenderers may break down the lodgement into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3. A tenderer is referred to cl. 8.1.4(b) for instructions as to compressing electronically submitted Tenders.

- (1) If submitting an electronic tender with supporting items:

- a) The complete Tender, including the required supporting items unless otherwise directed, must be submitted by Closing Date and Closing Time, and
- b) Supporting items should be clearly designated as "Supporting Items to..." the RFT to which they relate.
- c) Supporting items not required to be lodged as part of the initial Tender by the RFT should not be lodged in the tender box, and arrangements should be made with the Contact Officer.

- 7.4.3 A tenderer is not required to provide multiple copies of a Tender. Any "Alternative Tender" under clause 7.1 must be attached to the Conforming Tender at Part C of this RFT.

- 7.4.4 If a tenderer provides multiple lodgements, the latest tender received in a NSW Department of Commerce Tender Box will be the tender evaluated.

7.5 Addenda to RFT

- 7.5.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued.
- 7.5.2 In each case, an Addendum becomes part of the RFT.
- 7.5.3 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 7.5.4 or 7.5.5 as applicable.
- 7.5.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.
- 7.5.5 Failure to complete tender response 21.7 in Part C may result in your tender not being considered.

7.6 Late Tenders

- 7.6.1 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 delay is not the fault of the tendering party.

7.7 Extension of the Closing Date and Time

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

8. Tender Process – Submission of Tenders

8.1 Electronic Tenders to the NSW Department of Commerce *eTendering* website

- 8.1.1 A tenderer is 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.
- 8.1.2 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.
- 8.1.3 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” link 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” link, 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.

- 8.1.4 A tenderer must observe the following format for lodgements:
- (a) An electronically lodged Tender must be lodged in a file 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) The file/s name/s must have an extension and not have invalid characters or file names/loading pathnames too long for the system, as detailed on the NSW Department of Commerce *eTendering* website
- 8.1.5 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.
- 8.1.6 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.
- 8.1.7 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 promptly in writing.
- (a) 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.

9. Tender Process – Evaluation of Tenders

9.1 Variation of Tenders

- 9.1.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may, subject to cl.9.1.2, 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.10.2 of this Part.

- 9.1.2 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.9.1.1(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.9.1.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 9.1.3 If a Tender is varied in accordance with cl. 9.1.1(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.
- 9.1.4 A variation of a Tender under cl. 9.1.1 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.9.1.1(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.

9.2 Corrupt or unethical conduct

- 9.2.1 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, the Client Agency or the NSW Government in connection with this RFT or the submitted Tender;
 - (b) committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*, or
 - (c) a record or alleged record of unethical behaviour,
 - (d) not complied with the requirements of Commerce Business Ethics Statement available at:
<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>
- 9.2.2 The Board may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

9.3 Exchange of information between government agencies

- 9.3.1 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.

- 9.3.2 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.
- 9.3.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 9.3.4 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. 9.3.
- 9.3.5 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.
- 9.3.6 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.

10. Outcomes

10.1 Acceptance or rejection of Tenders

- 10.1.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with cl. 7.1, any Alternative Tender or other Non-Conforming Tender.
- 10.1.2 The Board is not bound to accept the lowest or any Tender.
- 10.1.3 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. 10.3.

10.2 Negotiations before determination of outcome

- 10.2.1 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.

- 10.2.2 The Board will generally not enter into negotiations on the standard conditions of contract contained in Part D.

10.3 Post Tender negotiations in the event all Tenders are rejected

- 10.3.1 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 an 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.
- 10.3.2 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.

10.4 Custody of Tenders after receipt

- 10.4.1 All tenders lodged are kept in a NSW Department of Commerce Tender Box, which is a secure tender box, until after the Closing Date and Closing Time.
- 10.4.2 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."
- (a) 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.
- (b) The e-mail receipt that is sent to the Tenderer after successfully uploading and lodging the Tender electronically is the only evidence of Tender lodgement provided.

10.5 Ownership of Tenders

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

10.6 Discontinuance of the Tender process

- 10.6.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.

- 10.6.2 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.

10.7 Notification of outcome

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

10.8 Complaints

- 10.8.1 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

10.9 Entry into agreement

- 10.9.1 The Board may enter into an agreement with the successful tenderer either by letter of acceptance or by execution of a formal agreement in terms of Part D. If the Board chooses to proceed by way of formal agreement it will indicate in any notification of acceptance that such acceptance will be formalised by execution of a formal agreement.

10.10 Disclosure of information concerning tenderers and outcome of the tender process

- 10.10.1 Details of tenderers and the outcome of the tender process may be disclosed in accordance with the NSW Government Tendering Guidelines, available at:
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>

An outline of these requirements can be found in Annexure 1 of Part B of this RFT.

10.11 Monitoring of Contractor Performance

- 10.11.1 During the course of the 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>

- 10.11.2 The terms and conditions of the proposed agreement, set out in Part D, detail the performance criteria to be applied in the monitoring of Contractor performance.

ANNEXURE 1 TO PART A

Specification

Please refer to the attached electronic copies of the specifications.

ANNEXURE 2 TO PART A

Estimated Annual Usage

| DRESS UNIFORM | | DUTY WEAR | |
|---------------------------------------|-----------------|--|-------------|
| Shirt, Long Sleeve - Male | 267 | Trousers - Firefighters | 3500 |
| Shirt, Short Sleeve - Male | 2165 | Shirt, Long Sleeve - Firefighter | 5509 |
| Shirt, Blouse - Short Sleeve - Female | 93 | T Shirt, Short Sleeve | 8595 |
| Trouser, Male | 1852 | Beanie, General Purpose | 503 |
| Sock - Office | 522 | Beanie, Cold Climate/Alpine | 483 |
| Footwear - Boot - Elastic Sided | 1218 | Raincoat | 154 |
| Footwear - Shoe - Male - Lace up | 51 | | |
| Footwear - Shoe - Female | 11 | PERSONAL PROTECTIVE CLOTHING | |
| Pullover | 643 | | |
| Coverall, Standard Industrial | 10 | Firefighting, Structural Ensemble - Protective Overtrouser | 1521 |
| Shorts, Athletic | 418 | Firefighting, Structural Ensemble - Protective Coat | 1185 |
| Parka, Bomber Style | 625 | Firefighting, Jacket - Wildland | 771 |
| Parka, Cold Weather Castro Style | 131 | Firefighting, Hood - Protective | 1731 |
| Sweater, Rib Knit | 127 | Firefighting, Sock - Fire Resistant | 7606 |
| Pullover, Sleeveless | 105 | Vest - ICS | 52 |
| Trouser, Female | 55 | Vest - High Visibility | 490 |
| Cardigan | 12 | | |
| Necktie, Female - Bow Style | 34 | | |
| Belt, Trouser - Leather | 1487 | | |
| Necktie, Male - Standard | 88 | | |
| Necktie, Male - Clip On | 658 | | |
| Cap, Firefighter | 300 | | |
| Cap, Station Officer | 106 | | |
| Cap, Superintendent & Inspector | 41 | | |
| Cap, Asst Commissioner | To order | | |
| Cap, Commissioner | To order | | |
| Cap, Women's Service | To order | | |
| Cap, Baseball | 2947 | | |
| Hat, Sun | 500 | | |
| Raincoat, Navy - Full Length | 71 | | |

| | |
|---|------|
| ACCOUTREMENTS - CATEGORY A | |
| Bar, Service Ribbon - National Medal | 65 |
| Bar, Service Ribbon - Queen's F.S.M. | 0 |
| Badge, Embroidered, Shoulder Patch | 483 |
| Badge, Lapel, Mess Jacket | 84 |
| Insignia Sleeve Good Conduct Star | 44 |
| Badge, Chrome, Permanent, Motor Driver | 15 |
| Badge, Chrome, Retained, Motor Driver | 41 |
| Button Scroll Screw Shank | 319 |
| Button Scroll Eye Shank 15mm | 323 |
| Button Scroll Eye Shank 18mm | 1536 |
| Button Scroll Eye Shank 24mm | 1154 |
| Cap Badge Semi Ornate Senior Officers | 172 |
| Cap Badge Standard Firefighters | 546 |
| Braid, Decorative, Inspector & above, Chin Strap | 6 |
| Braid, Decorative, Station Commander, Russian | 6 |
| Insignia Rank Gorget Chrome Oak Leaves | 13 |
| Insignia Rank Straight Bar Gorget | 24 |
| Insignia Rank Impellor 16mm | 31 |
| Insignia Rank Impellor 20mm | 140 |
| Insignia Rank Impellor 24mm | 342 |
| Insignia Rank Brigades Crest | 6 |
| Insignia Rank Crown 22mm | 117 |
| Epaulette Hardboard Senior Officers | 147 |
| Epaulette Velvet Commissioners | 2 |
| Epaulette Velvet Senior Officers | 32 |
| Epaulette Velvet Inspectors | 3 |
| Epaulette Velvet Chaplain | 4 |
| Badge, Cloth, Retained Motor Driver | 10 |
| Badge ID Wallet | 177 |
| Leather ID Wallet | 243 |
| ACCOUTREMENTS - CATEGORY B - EPAULETTES - SOFT | |
| Inspector | 147 |
| Inspector Communications | 2 |
| Inspector Hazmat | 2 |
| Inspector Rescue | 276 |
| Inspector Fire Safety | 5 |
| Station Officer | 622 |
| Station Officer Communications | 19 |
| Station Officer Hazmat | 83 |
| Station Officer Rescue | 358 |
| Station Officer Fire Safety | 5 |
| Leading Firefighter | 280 |
| Leading Firefighter Communications | 13 |
| Leading Firefighter Hazmat | 26 |
| Leading Firefighter Rescue | 153 |
| Leading Firefighter Fire Safety | 5 |
| Senior Firefighter 15 years | 329 |

| | |
|--|------------|
| Senior Firefighter 15 years Communications | 56 |
| Senior Firefighter 15 years Hazmat | 82 |
| Senior Firefighter 15 years Rescue | 186 |
| Senior Firefighter 15 years Fire Safety | 5 |
| Senior Firefighter | 651 |
| Senior Firefighter Communications | 45 |
| Senior Firefighter Hazmat | 78 |
| Senior Firefighter Rescue | 410 |
| Senior Firefighter Fire Safety | 5 |
| Qualified Firefighter | 685 |
| Qualified Firefighter Communications | 11 |
| Qualified Firefighter Hazmat | 65 |
| Qualified Firefighter Rescue | 267 |
| Qualified Firefighter Fire Safety | 5 |
| Firefighter Communications | 5 |
| Firefighter Hazmat | 21 |
| Firefighter Rescue | 179 |
| Firefighter Fire Safety | 5 |
| Recruit | 540 |
| Commissioner | 5 |
| Deputy Commissioner | 5 |
| Assistant Commissioner | 5 |
| Chief Superintendent | 5 |
| Superintendent | 2 |
| Superintendent Communications | NEW |
| Inspector | NEW |
| Inspector Communications | NEW |
| Inspector Hazmat | NEW |
| Inspector Rescue | NEW |
| Inspector Fire Safety | NEW |
| Station Officer | NEW |
| Station Officer Communications | NEW |
| Station Officer Hazmat | NEW |
| Station Officer Rescue | NEW |
| Station Officer Fire Safety | NEW |
| Captain | NEW |
| Captain Rescue | NEW |

| ACCOUTREMENTS - CATEGORY B - EPAULETTES - RETAINED | |
|---|------------|
| Captain | 103 |
| Captain Rescue | 162 |
| Deputy Captain | 117 |
| Deputy Captain Rescue | 164 |
| Retained Firefighter 15 years | 169 |
| Retained Firefighter 15 years Rescue | 208 |
| Retained Firefighter 10 years | 227 |
| Retained Firefighter 10 years Rescue | 251 |
| Retained Firefighter 5 years | 377 |
| Retained Firefighter 5 years Rescue | 336 |
| Retained Firefighter Rescue | 391 |
| Student | 131 |

| PERSONAL PROTECTIVE EQUIPMENT (MANAGED ITEMS) | |
|--|-----------------|
| Firefighting, Helmet - Structural | 715 |
| Firefighting ,Helmet - Multipurpose | 372 |
| Firefighting, Glove - General Purpose | 1890 |
| Firefighting, Glove - Structural | 2427 |
| Firefighting, Boot - Structural | 2885 |
| Firefighting, Boot - CFU | New Item |

ANNEXURE 1 TO PART B (Disclosure of Information)

Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 10.10.1 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

| Tender Type | Level of disclosure | Basis of disclosure |
|---|---|--|
| For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector. | As a minimum: a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; and location of the tender call documents. The names and addresses of all entities which submit responses. | Routine public disclosure at the time tender calls are advertised. Routine public disclosure within 7 days of the date tender calls closed. |
| In a multi-stage tender process. | The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process. | Routine public disclosure within 7 days of these entities being advised of their shortlisting. |

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 10.10.1 above, the following **contract** information is required to be disclosed -

| Contract size and type | Level of disclosure | Basis of disclosure |
|--|---|--|
| Class 1 contracts All government contracts with estimated value \$150,000 or above). | (a) The name and business address of the contractor; (b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract; (c) The date on which the contract became effective and the duration of the contract; (d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract; (e) The estimated amount payable to the contractor under the contract; | Routine public disclosure within 60 days after the contract becomes effective. |

| | | |
|--|---|---|
| | <p>(f) A description of any provisions under which the amount payable to the contractor may be varied;</p> <p>(g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>(h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and</p> <p>(i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</p> | |
| <p>Class 2 contracts Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> - result from a direct negotiation where there has not been a tender process; or - have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or - involve operation or maintenance obligations for 10 years or longer; or - involve a privately financed project as defined by relevant Treasury guidelines; or - involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. | <p>The information required for class 1 contracts and</p> <p>(a) Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer;</p> <p>(b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</p> <p>(c) The results of any cost-benefit analysis of the contract conducted by the agency;</p> <p>(d) The components and quantum of the public sector comparator if used;</p> <p>(e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</p> <p>(f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</p> <p>(g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</p> <p>(h) Particulars of any other key elements of the contract.</p> | <p>Routine public disclosure within 60 days after the contract becomes effective.</p> |
| <p>Class 3 contracts Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p> | <p>The information for class 1 and 2 contracts and the complete contract, less confidential information.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose:</p> <ul style="list-style-type: none"> the reasons for not publishing the contract or provisions; a statement as to whether the contract or provisions will be published and, if so, when; and where some but not all of the provisions of the | <p>Routine public disclosure within 60 days after the contract becomes effective.</p> |

| | | |
|--|--|--|
| | contract have been disclosed, a general description of the types of provisions that have not been published. | |
|--|--|--|

3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information contained in schedules 1 or 2, or for a copy of a contract, which is not required to be routinely disclosed under section 15A of the FOI Act. The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

4. Disclosure of amendments or variations to contract information under the FOI Act

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

5. Confidential information

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in schedule 3 to the Freedom of Information Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the Freedom of Information Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the Freedom of Information Act. This will enable a person seeking the information to have the appeal rights available under the Freedom of Information Act.

6. Tenderers are invited to nominate items they consider are confidential and why.

Dated: <Insert Date>

The Principal

and

AGREEMENT FOR

Total Apparel Management for NSW Fire Brigades

PART D – CONDITIONS OF AGREEMENT

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SCHEDULE 13**63**

Sample Transition-Out Plan to be provided by the Contractor

63

THIS AGREEMENT is made on the ____ day of _____ 200..

BETWEEN:

the Crown in right of the State of New South Wales, acting through the State Contracts Control Board of McKell Building, 2-24 Rawson Place Sydney in the State of New South Wales 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 contract for the supply of Deliverables in the form of this Agreement.

1. Interpretation

1.1 Definitions

Guide Note: If accepting a tender by letter of acceptance, it is not necessary to fill out/attach documents to, the schedules to this agreement. The contents of the agreement, contained in the documents listed below, will be incorporated by reference. If executing a formal agreement, the relevant documents should be attached to the schedules indicated.

If for the particular RFT, any other documents will also comprise the agreement, they should be added to the list below.

"Agreement" means this agreement including:

- (a) the Schedules to this agreement;
- (b) the Tender and any documents evidencing agreed changes to the Tender; and
- (c) any documents notifying the Principal's acceptance.

"Confidential Information" means, information including any documents or correspondence provided by the Principal to the Contractor that:

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

"Confidential Information" means Information including any documents or correspondence provided by the Principal to the Contractor that:

- (a) is by its nature confidential;

- (b) is designated by the Principal as confidential; or
- (c) the Contractor knows or ought to know is confidential;

and includes:

- (d) the Contract Material;
- (e) The Principal's Material including but not in any way limited to the financial information, the corporate information and the commercial information of the Principal;
- (f) any material which relates to the affairs of a third party;

"Conflict of interest" means 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 this Agreement.

"Circumstances Beyond the Control of the Contractor" include:

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

a serious industrial dispute

"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").

"Contractor Information" means the information provided by the Contractor in Schedule 9.

"Contract Price" means in respect of each Deliverable, the price nominated in the Price Schedule and any subsequent variation agreed by the Parties.

"Contractor's Delegate" means the individual or the position title nominated by the Contractor in its Tender.

"Contractor's Insolvency" means any of the following:

- (a) The Contractor becomes insolvent;
- (b) The Contractor indicates that it does not have the resources to perform this Agreement;
- (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; notice is given of a meeting of creditors for the purposes of a deed of arrangement; or
- (g) Any actions of a similar effect are taken.

"Date of Commencement of Supply" means the date on which the Contractor commences supply of Deliverables as specified in Schedule 1.

"**Deliverables**" means the goods and/or services to be supplied by the Contractor in accordance with this Agreement.

"**Delivery Date**" means the date on which the Deliverables are supplied as directed by the Principal

"**Imported Component**" means a Component that is imported into Australia.

"**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 Board in accordance with the Management Fee Deed

"**On Request Items**" means any Deliverables nominated as On Request Items.

"**Outworkers Code**" means the Code of Practice on employment and outwork obligations for Textile Clothing and Footwear Suppliers 1998 as amended from time to time.

"**Parties**" means the Principal and the Contractor.

"**Payment Period**" means each period nominated in the Management Fee Deed 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.

"**Price Schedule**" means the Price Schedule attached to the Tender and any variations to the Price Schedule made by the documents forming Schedule 3 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, the Principal's Delegate, or the Crown to the Contractor .

"**Principal's Delegate**" means the person or entity acting as contract administrator and is named in Schedule 1.

"**Public Service**" has the same meaning as that given to it in the *Public Sector Management Act 1988* (NSW).

"**Request for Tender**" means the request for tender for the Deliverables issued by the Principal, including any addenda.

"**Schedule**" means a schedule to this Agreement;

"**Security**" means the security described in Schedule 1 or as otherwise agreed.

"**Specification**" means the detailed description of the Deliverables to be provided under the Agreement, contained in Part C2 to the Tender (Specification and Statement of Compliance) and any subsequent variation agreed by the Parties.

"**State Contracts Control Board** " or "**Board**" mean the State Contracts Control Board established by the *Public Sector Employment and Management Act 2002* and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

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

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

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

“Tender” means the tender submitted by the Contractor in response to the Request for Tender, including any accepted variation to the tender.

“Term” means the term of this Agreement, if any, set out in Schedule 1 or otherwise agreed, and any extension of the Term in accordance with this Agreement.

“Transition-In Plan” means the plan submitted by the Contractor forming part of the Tender, as amended, and as approved by the Principal.

“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 incorporated;
- (d) any thing (including a right, obligation or concept) includes each part of it, for example a reference to a part of this Agreement includes a reference to subordinate parts of that part.

1.2.3 A singular word includes the plural and vice versa.

1.2.4 A word that suggests one gender includes the other genders.

1.2.5 If a word is defined, another part of speech of that word has a corresponding meaning.

1.2.6 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.

1.2.7 A reference to the Principal includes, where the context so requires, its employees, agents, sub-contractors, officers and duly authorised delegates.

1.2.8 If the Contractor consists of more than one party, each obligation of the Contractor shall bind those parties jointly and severally and will be enforceable against them jointly and severally.

1.2.9 If there is an inconsistency between the terms of this Agreement then, for the purpose only of resolving the inconsistency, the documents that comprise this Agreement are to be construed in their date order, in descending order of priority from the latest date to the earliest date.

2. Principal's Delegate

- 2.1 The Principal's Delegate is responsible for administering this Agreement.
- 2.2 The Contractor must comply with any reasonable direction given by the Principal's Delegate in connection with the performance of work under this Agreement.
- 2.3 Unless this Agreement provides otherwise, and subject to the Principal's direction, the Principal's Delegate may exercise rights and discharge obligations conferred or imposed on the Principal under this Agreement.
- 2.4 The Principal's Delegate is not authorised to waive or vary any provision of this Agreement, release the Contractor from any obligation under this Agreement, or terminate this Agreement without the Principal's approval.

3. Supply under an Agreement for the Term

3.1 Nature of the Agreement between the Principal and the Contractor

- 3.1.1 This Agreement is for the term specified in Schedule 1, or as otherwise agreed, unless terminated sooner in accordance with this Agreement.
- 3.1.2 The Principal may in its sole discretion extend this Agreement for the further term or terms specified in Schedule 1.

4. Supply of Deliverables

4.1 Supply

- 4.1.1 The Contractor shall supply the Deliverables as directed by the Principal in accordance with this Agreement, including any agreed project plan.
- 4.1.2 The Contractor shall supply any On Request Items, as and when requested by the Principal at any time during the Term.

4.2 Conforming Deliverables

- 4.2.1 All Deliverables shall conform to the Specification and the standards specified in this Agreement

4.3 Delay in supply

- 4.3.1 The Contractor will give prompt, written notification to the Principal of any likely delay in the supply of any of the Deliverables beyond any agreed delivery date.

- 4.3.2 Written notification of delay will not release the Contractor from its obligation to supply by the agreed delivery date unless the Principal agrees in writing to extend the date.
- 4.3.3 If in the Principal's opinion the delay has arisen from a cause beyond the reasonable control of the contractor, the Principal will not refuse a proposed extended delivery date without reasonable grounds for doing so.
- 4.3.4 The Contractor will not be entitled to any price increase or any costs or expenses in connection with the delay.

4.4 Acceptance – goods

- 4.4.1 A reference in this clause to Deliverables is to be read as a reference to Deliverables that are goods.
- 4.4.2 The Contractor must follow the agreed project plan as a condition of the Principal's acceptance under this Agreement.
- 4.4.3 Delivery and receipt of the Deliverables by an agreed delivery date shall not be taken to be an acceptance of the Deliverables by the Principal.
- 4.4.4 The Principal, within 14 days of satisfactory delivery in accordance with this Agreement, may reject any Deliverables that do not conform to the requirements of this Agreement.
- 4.4.5 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Principal may have the rejected Deliverables re-delivered at the Contractor's risk and expense.
- 4.4.6 The Principal will be taken to have accepted the Deliverables within 14 days of satisfactory delivery in accordance with this Agreement if and to the extent that the Principal does not reject the Deliverables, or any of them.
- 4.4.7 Receipt of delivery, acceptance or payment does not prevent the Principal from bringing an action for breach of condition or warranty should the Deliverables prove to be of inferior quality or contrary to the requirements of this Agreement.

4.5 Ownership and risk

- 4.5.1 Title in the Deliverables shall pass to the Principal on acceptance of the Deliverables in accordance with this Agreement.

4.6 Specified Models/Brands

- 4.6.1 The Contractor agrees that where a particular model, brand or product of Deliverables is specified in this Agreement, the Contractor must supply only that model, brand or product unless otherwise approved in writing by the Principal.

4.7 Packaging

- 4.7.1 The Contractor must ensure that all Deliverables are properly, safely and securely packaged and labelled for identification and country of origin.

5. Prices and Payment

5.1 Contract Price

- 5.1.1 The Contractor must supply the Deliverables for the Contract Price.
- 5.1.2 The Contract Price, except as specifically provided or agreed, is inclusive of all costs and expenses of supply.
- 5.1.3 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.

5.2 Payment

- 5.2.1 For the purposes of this clause, a Claim is a claim for payment:
- (a) in the form of a Tax Invoice;
 - (b) substantiated by an itemised account and any further details reasonably requested by the Principal;
 - (c) if made in respect of goods, accompanied by a receipt of delivery from the Principal;
 - (d) if made in respect of services, accompanied by any required certificate of acceptance from the Principal.
- 5.2.2 Subject to this clause, the Principal shall make payment within 30 days of receipt of a Claim for the Deliverables.
- 5.2.3 If the Principal is the Crown all payments shall be made by the Crown acting through the Principal's Delegate and not through the Board.
- 5.2.4 If progress payments are to be made in accordance with an agreed project plan, each progress payment will be made within 30 days of receipt of a Claim for the relevant progress payment.
- 5.2.5 If the Principal has requested further details regarding the invoice, the time for payment will be extended until 14 days after the date the information is supplied.
- 5.2.6 Unless a certificate of acceptance has been issued, a payment is not an acknowledgment that the Deliverables have been supplied in accordance with this Agreement, but shall be taken to be payment on account only.
- 5.2.7 If the Principal disputes the invoice amount it shall certify the amount it believes is due for payment and shall pay that amount. The liability for the balance of payment shall be determined in accordance with this Agreement.
- 5.2.8 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.

5.3 Set-Off/Money Recoverable by Principal

- 5.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Deliverables.
- 5.3.2 Without limiting the above, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of this Agreement may be deducted from money then due to the Contractor under this Agreement. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Principal and may be set off against any other money due to the Contractor by the Principal under this or any other agreement between the Principal and the Contractor.
- 5.3.3 Nothing in this clause will affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

5.4 Suspension of Payments

- 5.4.1 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, the Principal may suspend all payments to the Contractor without penalty until such instructions or requirements have been complied with by the Contractor.

5.5 Additional expenses

- 5.5.1 The Principal will only reimburse the Contractor any reasonable costs, expenses, or charges incurred by the Contractor and not provided for in this Agreement where the Contractor has first obtained the Principal's written approval.
- 5.5.2 If the Principal is the Crown, all reimbursement shall be made by the Crown acting through the Principal's Delegate, and not through the Board.

5.6 Price Variation

- 5.6.1 Prices are firm unless otherwise stated in this Agreement.
- 5.6.2 Where an agreed price variation mechanism is stated in Part C1 of the Tender, the Contractor must follow the following procedure in making application for any variation to prices in accordance with that mechanism, unless otherwise agreed:
 - 5.6.2.1 The application for variation must be in the form of a written statement, containing details of the existing approved price and the proposed new price in respect of each Deliverable for which price variation is sought.
 - 5.6.2.2 The application must be accompanied by all relevant documents in support of the claim.

- 5.6.2.3 The application must be submitted in writing to the Principal as far in advance as practicable of, and at least 21 days before, the date from which the variation is sought to commence.
- 5.6.3 The onus will be on the Contractor to prove to the satisfaction of the Principal all details of any variation claimed. The Contractor shall make available to the Principal such further information as the Principal shall require to satisfy itself as to the details of the claim. Failure to do so shall entitle the Principal to reject the application.
- 5.6.4 No price increase shall be granted retrospectively nor backdated prior to the date of the Contractor's application for approval.

5.7 Best Price

- 5.7.1 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 the Deliverables to the Contractor.
- 5.7.2 Where the Contractor offers more favourable prices to any other purchaser of the Deliverables, it must make the more favourable price available to the Principal.
- 5.7.3 If the Principal 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 Principal the difference between the amount represented by the price less any applicable discount that has been paid by the Principal's Delegate and the more favourable price.
- 5.7.4 A failure to comply with this clause will entitle the Principal to terminate this Agreement in accordance with clause 15.1.

5.8 Maximum ceiling price

- 5.8.1 The Contract Price is a maximum ceiling price which cannot be exceeded without the Contractor applying for a price variation in accordance with this Agreement.

5.9 Goods and Services Tax

- 5.9.1 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.
- 5.9.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.

- 5.9.3 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.
- 5.9.4 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.
- 5.9.5 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 this clause.
- 5.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal

5.10 The Contractor's on-costs

- 5.10.1 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.

5.11 Mistakes in information

- 5.11.1 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.

5.12 Management Fee

- 5.12.1 The Contractor must execute the Management Fee Deed attached as a Schedule to this Agreement and must pay to the Board the Management Fee in accordance with that Deed.
- 5.12.2 The Management Fee will be the amount prescribed in the Management Fee Deed and shall be paid as stipulated in that Deed.
- 5.12.3 The Contractor agrees that the Management Fee has been allowed for in the Contract Price together with all costs associated with the calculation and proving payment of the Management Fee.
- 5.12.4 The Contractor shall during the Term of this Agreement and for a 12 month period after this Agreement has expired or is terminated, keep secure all relevant documents and Information for the purposes of this clause and will give any auditor appointed by the Board access to those documents and Information at all reasonable times.
- 5.12.5 The Principal may terminate this Agreement if the Contractor fails to comply with this clause, including where the Contractor has not for three consecutive Payment Periods paid the Management Fee.

6. Conduct of Agreement

6.1 The Contractor's personnel

- 6.1.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced.
- 6.1.2 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.

6.2 Contractor to establish necessary facilities

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

6.3 Access to the Contractor's premises

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

6.4 Electronic Commerce

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

6.5 Sub-contractors

- 6.5.1 The Contractor may sub-contract part or all of the Agreement to a sub-contractor approved by the Principal from time to time and/or identified in Schedule 13 ("approved sub-contractor") on the terms of this clause.
- 6.5.2 The Contractor must make the approved sub-contractor aware of the terms and conditions of the Agreement and this clause.
- 6.5.3 If the Principal requires it, the Contractor must arrange for the approved sub-contractor to execute the statutory declaration at Schedule 5.
- 6.5.4 The terms and conditions of the sub-contract must be consistent with the Agreement.

- 6.5.5 The Contractor will continue to be bound by, and responsible for performance of, the Agreement notwithstanding that part or all of it may have been sub-contracted.
- 6.5.6 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 the Agreement. The Principal will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 6.5.7 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 Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.

6.6 Maintenance of Contractor's Information and Sub-Contractor's Information

- 6.6.1 The Contractor must notify the Principal of any change in the Contractor Information supplied in their Tender, if any.
- 6.6.2 The Contractor must notify the Principal of any change in the sub-contractor Information, if any.
- 6.6.3 The Contractor must provide this information in any manner and format requested by the Principal.

6.7 Security of sub-contract payments

- 6.7.1 "Paid when paid provision" means a term of a sub-contract under which:
 - (a) the Contractor's liability to pay for Deliverables is contingent on a payment being made by the Principal or
 - (b) the due date for payment for Deliverables is dependant on the date on which a payment is made by the Principal.
- 6.7.2 The terms of any sub-contract of this Agreement must not include a paid when paid provision.
- 6.7.3 The Principal is not liable for any failure by the Contractor to comply with this clause.

6.8 Contractor's warranties

- 6.8.1 In relation to Deliverables that are goods, the Contractor warrants that:
 - (a) the Deliverables will be new;
 - (b) will conform to the description, model number and the sample (if any) provided by the Contractor;

- (c) at the time ownership of a Deliverable passes to the Principal, the Deliverable will be free from any charge or liability;
- (d) during the Warranty Period, each Deliverable:
 - (i) will conform to the Specification; and
 - (ii) shall be free from defects.

6.9 Contractor's warranties

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

- (a) it will provide the Deliverables in accordance with the requirements of this Agreement, including any agreed project plan, 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 this Agreement in the manner and to a standard satisfactory to the Customer, without first obtaining the Customer's consent.

6.10 Contractor's warranties

6.10.1 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 will not allow or cause any action, or enter into any arrangements that impedes or is likely to impede the proper and effective conduct and management of all the contractor's obligations under this Agreement, and to a standard, that is satisfactory to the Principal without first obtaining the Principal's consent.
- (d) it has established and will comply with and maintain during this Agreement, the quality assurance arrangements set out in the Tender

6.11 Defective goods

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

6.11.2 If the Contractor fails to remedy an error or defect in a warranted Deliverable within 30 days after notification by the Principal, the Principal may:

- (a) arrange for performance of the necessary remedial work by a third party at the Contractor's expense; or
- (b) arrange the return of the Deliverable to the Contractor at the Contractor's expense and immediately obtain a full refund of the price of that Deliverable from the Contractor.

6.11.3 The rights and remedies provided in this clause are in addition to, and do not limit, any other rights of the Principal under this Agreement or otherwise at law.

6.12 Defective services

6.12.1 If in the opinion of the Principal the Contractor has not supplied a Deliverable in accordance with this Agreement ("Defective Deliverable"), the Principal may require the Contractor to do all things reasonably necessary to remedy the situation.

6.12.2 In rectifying the Defective Deliverable the Contractor will, at its own expense, comply with all reasonable directions of the Principal consistent with the terms of this Agreement.

6.12.3 If the Contractor fails to comply with such a direction the Principal may arrange for an alternative contractor to supply the Defective Deliverable at the Contractor's expense.

6.12.4 Any direction given, or the arrangement of alternative supply of the Deliverable, will not amount to a waiver of the Principal's rights under this Agreement.

6.13 Third party warranties

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

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

6.14 Performance guarantee

6.14.1 Should the Principal agree to the tenderer's proposal, it shall be subject to the following conditions:-

6.14.2 The Contractor shall lodge an irrevocable bank guarantee in the amount of \$150,000.00 as security in the event of the contractor's non-performance or breach of contract.

6.14.3 Such guarantee to be from a recognised bank listed on an Australian Stock Exchange and in a form approved by the Principal and shall be

lodged with the Principal within fourteen (14) days of contract execution, and prior to any advance payment being made.

6.14.4 All charges incurred in obtaining, confirming and maintaining such a guarantee shall be met by the contractor.

6.14.5 The Principal shall be entitled to recover and require part or full payment from such Bank Guarantee and apply same toward the satisfaction of any amount that may be payable to the Principal as a result of any breach by the Contractor of any of the terms, covenants or conditions of the Contract.

6.14.6 Such payment shall not be deemed to waive the Contractor's breach entitling the Principal to recover monies due hereunder without being limited or restricted to the value of the said bank guarantee.

6.15 Performance monitoring

6.15.1 The Contractor must meet with the Principal from time to time and/or at nominated intervals, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement by the Contractor.

6.15.2 If there is an agreed project plan for this Agreement, the Principal may choose to monitor performance in accordance with project milestones or stages as set out in that plan.

6.15.3 The Principal may also elect, in its discretion, to monitor performance of any sub-contracts under this Agreement.

6.15.4 If the Principal elects to monitor sub-contract performance the Contractor will do all things reasonably necessary to facilitate arrangements for such monitoring to take place.

6.15.5 As part of the monitoring of performance of this Agreement the Principal may ask the Contractor for its assessment of the progress of the Agreement and its assessment of the Principal's performance of its responsibilities under the Agreement including through the Principal's Delegate.

6.15.6 At the conclusion of this Agreement the Principal will complete a performance report and pass this report to NSW Supply.

6.15.7 NSW Supply will provide the Contractor with a copy of all performance reports prepared with regard to the Contractor (and will similarly provide any sub-contractor with performance reports regarding its sub-contract).

6.15.8 NSW Supply will give the Contractor (and any sub-contractor) the opportunity to seek an independent review of each such report by an officer of NSW Supply if required.

6.15.7 The Contractor, and any sub-contractor, must bear their own costs of complying with this clause. In particular, to avoid doubt, all meetings under this clause are at no additional costs to the Principal.

6.16 Keeping of records and access to records

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

- 6.16.2 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.

6.17 Exchange of information between government agencies

- 6.17.1 The Contractor authorises the Principal, including the Principal's Delegate and their 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/or the Principal's Delegate and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 6.17.2 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.
- 6.17.3 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 2005* (NSW).
- 6.17.4 The Contractor releases and indemnifies the State of New South Wales (which term includes its officers, employees and agents) from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases 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.

6.18 Conflict of Interest

- 6.18.1 The Contractor undertakes 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 this Agreement.
- 6.18.2 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.
- 6.18.3 The Principal may terminate the Agreement in accordance with clause 16.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

6.19 Transition Arrangements

Transition-in arrangements

- 6.19.1 On commencement of the Agreement the Contractor shall cooperate fully and in good faith with the Principal and any third party (including the outgoing contractor) with regards to handover of the Agreement.
- 6.19.2 The Contractor shall, at its own cost, implement the Transition-In Plan so that Deliverables will be available from the Date of Commencement of Supply.

Transition-out arrangements

- 6.19.3 On termination of this Agreement (whether by termination for cause or for convenience or expiry of the term) the Contractor shall cooperate fully with the Principal and the Successor to ensure the handover of the Agreement to the Successor.
- 6.19.4 In clause 6.19 and in the Transition-In Plan and Transition-Out Plan the term "Successor" shall mean the entity designated by the Principal to supply Deliverables in succession to the Contractor (or the Principal if it takes over this function).
- 6.19.5 Upon termination or expiry of the Agreement the Principal and the Contractor shall take all reasonable steps to ensure an orderly transfer of the Agreement to the Successor.
- 6.19.6 If directed in writing by the Principal the Contractor shall continue to supply the Deliverables for a period of up to sixty (60) days, being the period in the written direction, after termination of the Agreement. Supply by the Contractor in accordance with the Principal's written direction given in accordance with this clause shall be deemed to be subject to the terms and conditions of the Agreement as though the Agreement had not ended.
- 6.19.7 The Principal may at any time in writing direct the Contractor to provide to the Principal a Transition-Out Plan to the effect of Schedule 13 to this Agreement. Once the Principal has approved the Transition-Out Plan prepared by the Contractor the Contractor shall implement the Transition-Out Plan.
- 6.19.8 The Contractor shall ensure it holds at least one (1) sample of each item of the Deliverables. If requested by the Principal the Contractor shall, at the Contractor's own cost, provide these items to the Principal for the purposes of preparation of the subsequent Request for Tender in accordance with the Transition-Out Plan.
- 6.19.9 Failure to comply with Clause 6.19.7 may, in addition to a claim for damages or any other remedy available to the Principal, entitle the Principal to terminate the Agreement in accordance with Clause 15.1.

Stock disposal

- 6.19.10 On termination of the Agreement the Successor shall be required to purchase from the Contractor the Deliverables held by the Contractor up to a maximum of twelve (12) weeks supply calculated with reference to the supply volumes for each item for the previous 12-month period as reported by the Contractor in accordance with the Transition-Out Plan.
- 6.19.11 The price for the Deliverables purchased in accordance with clause 6.19.10 will be the Contract Price less fifteen (15) percent.

6.19.12 Deliverables not purchased by the Successor in accordance with clause 6.19.10 will be the responsibility of the Contractor.

6.19.13 n termination of the Agreement the Contractor shall be responsible for any works in progress and raw materials including fabric and component stocks held by the Contractor.

6.19.14 he Contractor must ensure that Deliverables disposed of other than in accordance with clause 6.19..10 have all customer markings and identification removed, unless otherwise approved in writing by the Principal.

7. Confidentiality

7.1 Subject to this clause, the Contractor must not disclose any Confidential Information in connection with this Agreement to any person other than the Principal or the Principal's Delegate without first obtaining the written consent of the Principal .

7.2 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.

7.3 The Contractor must ensure that the Confidential Information is used solely in connection with, or for the purposes of, the provision of the Deliverables.

7.4 This clause does not affect the Contractor's obligation to disclose any Confidential Information that is required to be disclosed by law.

7.5 This clause will survive the termination of this Agreement.

8. Intellectual Property

8.1 Ownership

8.1.1 Subject to and in accordance with this clause, ownership of all New Contract Material, including all Intellectual Property rights which may arise in respect of New Contract Material, vests on its creation in the Principal.

8.1.2 The Contractor hereby assigns to the Principal copyright, including future copyright, in all New Contract Material, including each and every stage of design and construction of such material.

8.1.3 Title to, and Intellectual Property rights (other than copyright) in all New Contract Material, including each and every stage in the design and construction of such material, shall on its creation be transferred and assigned to the Principal without the need for further assurance.

8.1.4 This Agreement does not affect the Intellectual Property rights in Existing Contract Material but, unless otherwise agreed, the Contractor hereby grants and shall ensure that relevant third parties grant to Principal, a non-exclusive, non-transferable licence:

(a) to use, reproduce and adapt for its own use; and

- (b) where specified in the Agreement, to perform any other act with respect to copyright and to manufacture, sell, hire or otherwise exploit a product or process, or to provide a service, or to license any third party to do any of those things in respect of;

all those Intellectual Property rights but only as part of the Contract Material (and of any future development of that material).

- 8.1.5 On the expiry or earlier termination of this Agreement, the Contractor shall deliver to the Principal all Contract Material together with all copies thereof except to the extent that the Principal agrees otherwise.
- 8.1.6 This clause does not prevent the contractor from keeping a copy of the Contract Material for their records.
- 8.1.7 The Contractor shall ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement.
- 8.1.8 The Principal may terminate this Agreement for cause if the Contractor infringes any Intellectual Property Rights of the Principal or third parties in performing this Agreement.
- 8.1.9 This clause shall survive the termination of this Agreement.

8.2 Indemnity

- 8.2.1 The Contractor must not at any time infringe any Intellectual Property rights of any third party in the performance of this Agreement.
- 8.2.2 The Contractor agrees to indemnify and keep indemnified the Principal, (the Principal's officers, employees and agents) from and against any actions, claims, proceedings, demands, costs, expenses, losses and damages, arising from or in connection with any infringement or alleged infringement of any Intellectual Property rights.
- 8.2.3 The Principal may take legal proceedings including injunctive proceedings against the Contractor if there is any actual, threatened or suspected breach of this clause.
- 8.2.4 The Principal may terminate this Agreement for substantial breach if the Contractor infringes third party rights in breach of this clause.
- 8.2.5 In the event of any claim being made or brought against the Principal in respect of any breach or alleged breach by the Contractor of any Intellectual Property rights, the Principal will notify the Contractor. The Contractor will, with the reasonable assistance, if required, of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of such claims or any litigation that may arise in connection with the claim. If the Contractor fails to conduct such negotiations or settlement the Principal may suspend payment of any money due to the Contractor under this Agreement until such claim has been satisfied, settled, or withdrawn.

9. Principal's Material

- 9.1 The Contractor must keep secure any Principal's Material and any Contract Material that it holds or controls for the performance of this Agreement.

- 9.2 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 it has in its possession or under its control.
- 9.3 The Contractor agrees that it will not make any alteration to the Principal's Material without the prior written consent of the Principal.

10. General Indemnity

- 10.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and the Principal's Delegate, including their 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 any confidentiality deeds required by this Agreement.
- 10.2 The Contractor's liability shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal or the Principal's Delegate or their officers, employees or agents caused or contributed to the loss.

11. Minimum Insurance Requirements

- 11.1 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 broad form liability policy of insurance which includes:

- (i) public liability insurance to the value of at least the amount specified in Schedule 1 in respect of each claim; and
- (ii) products liability insurance to the value of at least the amount specified in Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover.

12. Compliance with Legal Requirements

12.1 Compliance with laws

- 12.1.1 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 Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor; and
- (c)(i) The Contractor must operate for the duration of this Agreement a Quality System conforming to the appropriate Quality System standard and shall possess a current certificate issued by a Joint Accreditation System of Australia and New Zealand (JAS-ANZ) accredited certification body certifying the Contractor's compliance with that Quality System.
- (ii) For the purpose of this clause , the appropriate Quality System standards shall be the Standards Australia Quality System Standards (or if there are no such standards, equivalent Quality System standards) applicable to the Deliverables for their design, manufacture, supply, delivery and maintenance as appropriate.

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

12.3 Licences and Approvals

- 12.3.1 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.

12.4 Payment of wages and allowances

- 12.4.1 The Contractor shall ensure that all persons employed by it in or in connection with supply of the Deliverables (including any sub-contractors) are paid all wages and allowances required to be paid by or under any relevant award, determination or order of the State or Territory in which the Deliverables are being provided or by or under any industrial agreement that is in force in the State or Territory in which the Deliverables are being provided and that all such persons are employed under the conditions contained in any such award, judgment, order or industrial agreement.
- 12.4.2 If requested by the Principal, the Contractor will provide a statutory declaration that all persons employed by the Contractor in providing the Deliverables have been paid in compliance with the provisions of this clause and a statutory declaration from each sub-contractor to the same effect.

13. Variations

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

14. No Assignment or Novation

- 14.1 The Contractor must not assign or novate this Agreement without first obtaining the written consent of the Principal.
- 14.2 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.

15 Completion of the Agreement by the Principal

- 15.1 If this Agreement is terminated, the Contractor must assist the Principal in transferring responsibility for the obligations under the Agreement either to an alternative supplier or to the Principal itself, and this will include:
 - (a) upon request by the Principal, the Contractor must produce and make available all Contract Material relating to this Agreement;
 - (b) assignment to the Principal, or such other person as the Principal nominates, of any agreement entered into by the Contractor for the supply of any Components or Materials; and (c) if requested, offer to sell, at fair market value, to the Principal, or such other person as the Principal nominates, any equipment used by the Contractor in conjunction with and dedicated solely to the delivery of the Agreement.
- 15.2 The Contractor must continue to carry out obligations under this Agreement in full until termination of the Agreement.

16. Termination

16.1 Termination for cause

- 16.1.1 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 this 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, sub-contracts or novates this Agreement other than in accordance with this Agreement; or

- (f) in the case of the Contractor's Insolvency;
- (g) If in the Principal's view a conflict of interest exists for the Contractor, which prevents the proper performance of the Agreement.

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

- (a) at its option, for an appropriate part payment of the Contract Price (as agreed by the parties or failing agreement as determined by an agreed expert), require the Contractor to deliver to the Principal any Deliverables (for example, Deliverables that are components of other Deliverables) in the possession or under the control of the Contractor as at the date of termination
- (b) contract with any other person to complete the provision of the Deliverables;
- (c) deduct loss or damages arising from or in connection with the termination (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 otherwise) and/or from the Security (if any); and
- (d) 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.

16.2 Termination for convenience

16.2.1 The Principal may terminate this Agreement in whole or in part 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.

16.2.2 Effect of Termination for convenience

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

- (a) must be supported by written evidence of the costs claimed;
- (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.

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

16.2.2.3 If the Principal is the Crown, all reimbursement shall be made by the Crown acting through the Principal's Delegate and not through the Board.

- 16.2.2.4 The Contractor must, wherever possible, include in all sub-contracts and supply agreements an equivalent provision to this clause.
- 16.2.2.5 The Principal may at its option, for an appropriate part payment of the Contract Price (as agreed by the parties or failing agreement as determined by an agreed expert), require the Contractor to deliver to the Principal any Deliverables (for example, Deliverables that are components of other Deliverables) in the possession or under the control of the Contractor as at the date of termination

17. Issue Resolution

17.1 General

- 17.1.2 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;
 - (b) Expert Determination.

17.2 Amicable Resolution

- 17.2.1 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 this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 17.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under this Agreement, it must give the Issue Notice to the Principal.
- 17.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 17.2.4 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.
- 17.2.5 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.
- 17.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.
- 17.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 17.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.

- 17.2.9 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 17.2.10 If a Referral Notice has not been given within 28 days of becoming entitled to do so then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

17.3 Expert Determination

- 17.3.1 If a Referral Notice is properly given to refer an issue for expert determination, 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.
- 17.3.2 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
 - (c) a person who the Parties have not been able to agree on.
- 17.3.3 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 attached as a Schedule to this Agreement
 - (d) any other matter which is relevant to the engagement.
- 17.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 17.3.5 The procedure for expert determination is attached as a Schedule to this Agreement
- 17.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 17.3.7 If the expert determines that one Party must pay the other an amount exceeding the amount shown in 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.
- 17.3.8 Unless a Party has a right to commence litigation in accordance with this issue resolution procedure
- (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.

17.4 Performance of Agreement during issue resolution

The Parties agree to continue performing their obligations under this Agreement while the issue is being dealt with in accordance with the above issue resolution procedures.

18. General

18.1 Waiver

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

18.2 Severability

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

18.3 Notices

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

18.3.2 Service of any notice under or relating to this Agreement shall be sufficiently served:

(a) if delivered personally to the Party to be served;

(b) if left at or sent by pre-paid registered post to:

(i) the address of the Party to be served as set out in Schedule 1;

(ii) the last known place of abode or business of the Party to be served which is a company; or

(iii) the registered office of any Party to be served which is a Company;

and in the case of posting such notice shall be deemed to have been duly served on the second day after such notice has been posted; or

(c) if sent by facsimile transmission to the last known facsimile number of the party to be served and shall be deemed to have been duly served at the time such facsimile transmission is sent.

18.3.3 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.

18.4 Counterparts

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

18.5 Applicable Law

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

18.6 Rights Cumulative

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

18.7 No agency/no employment/no partnership

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

18.8 Survival clause

Unless the context otherwise provides, the rights and obligations under this Agreement will survive the expiration or earlier termination of this Agreement.

18.9 Entire Agreement

This Agreement constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.

EXECUTED AS AN AGREEMENT THISDAY OF.....20..

EXECUTION BY GOVERNMENT PARTY:

| | | |
|---|---|---|
| |) | |
| |) | |
| Signed for and on behalf of |) | |
| |) | |
| |) | |
| [insert name of Principal] |) | (signature of Principal's representative) |
| |) | |
| |) | |
| by..... |) | |
| [insert name of Principal's representative] |) | |
| |) | |
| |) | |
| In the presence of..... |) | |
| | | (signature of witness) |
| | | |
| [insert name of witness] | | |

EXECUTION BY CONTRACTOR

Execution where Contractor is a corporation:

| | | |
|---|---|---|
| THE COMMON SEAL of |) | |
| |) | |
| [insert name of Contractor] |) | |
| |) | |
| ABN: |) | |
| [insert Contractor ABN] |) | (Corporate Seal) |
| |) | |
| was duly affixed hereto at |) | |
| [insert name of City/Town/Territory] |) | (signature of Director) |
| |) | |
| in the State of..... |) | |
| [insert name of State or Territory] |) | |
| |) | |
| In the presence of |) | |
| |) | (signature of Secretary or other permanent officer) |
| |) | |
| [insert name of Secretary or other permanent officer] |) | |

Execution where Contractor is a natural person:

| | | |
|---|---|---------------------------|
| |) | |
| Signed by..... |) | |
| |) | |
| [insert name of Contractor] |) | |
| |) | (signature of Contractor) |
| |) | |
| at..... |) | |
| [insert name of City/Town] |) | |
| |) | |
| in the State of |) | |
| [insert name of State Territory] |) | |
| |) | |
| in the presence of..... |) | |
| |) | (signature of witness) |
| |) | |
| [insert name of witness not a party to the Agreement] |) | |

Execution where Contractor is a partnership

| | | |
|--|---|------------------------|
| SIGNED BY |) | |
| |) | |
| |) | |
| |) | |
| [insert name of partner authorised to sign on behalf |) | |
| of partnership] |) | |
| |) | |
| for and on behalf of the firm |) | |
| |) | |
| |) | |
| |) | |
| [insert registered business name and number of |) | |
| partnership] |) | |
| |) | |
| at..... |) | |
| [insert name of City/Town] |) | |
| |) | (signature of Partner) |
| |) | |
| in the State of |) | |
| [insert name of State/Territory] |) | |
| |) | |
| |) | |
| in the presence of..... |) | |
| |) | |
| |) | (signature of witness) |
| |) | |
| [insert name of witness not a party to the |) | |
| Agreement] |) | |

Schedule 1

Agreement Details

| | |
|---------------|--|
| Item 1 | Request for Tender No.date submitted..... |
| Item 2 | Contractor's Name |
| Item 3 | Specified Personnel (if any): |
| Item 4 | <p>Term (3 Years): Commencement Date: 1 May 2008 (instructions required) Date of Commencement of Supply: 1 July 2008 Expiry Date: 30 June 2011</p> <p>Period of extended term : (i) Commencement Date: 1 July 2011 Expiry Date: 30 June 2012</p> <p>ii) Commencement Date: 1 July 2012 Expiry Date: 30 June 2013</p> |
| Item 5 | <p>Supply of Deliverables</p> <p>Supply items are FIS in NSW</p> |
| Item 6 | <p>Insurance</p> <p>(a) Public liability insurance Amount: \$20 million in respect of each claim</p> <p>(b) Products liability insurance Amount: \$20 million in respect of each claim</p> |
| Item 7 | <p>Codes</p> <ol style="list-style-type: none"> 1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement. 3. Outworkers Code |

| | |
|----------------|---|
| Item 8 | Expert Determination Amount: \$100,000: . |
| Item 9 | Security Amount: Nil |
| Item 10 | Notices to: The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile: The Principal's contact name and address: Name: Position: Address: Telephone: Facsimile: |
| Item 11 | Principal's Delegate |

Schedule 2

The Tender and documents evidencing agreed variations to the Tender

Schedule 3

Documents notifying the Principal's acceptance

Schedule 4

Expert Determination Procedure

4 Questions to be determined by the Expert

- 4.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
- 4.1.1 Is there an event, act or omission which gives the claimant:
- a. a right to compensation under this Agreement
 - b. for damages for breach of this Agreement, or
 - c. otherwise in law?
- 4.1.1 If so:
- a. what is the event, act or omission?
 - b. on what date did the event, act or omission occur?
 - c. what is the legal right which gives rise to the liability to compensation?
 - d. is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- 4.1.1 In the light of the answers to the above clauses 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?
- 4.1 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

4 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 ("Referring Party") must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in the issue resolution clause of the Agreement.
- 2.3 The other party ("Responding Party") must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Referring Party 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 Responding 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 this clause 2 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 that 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
- 4.1.1 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
- 4.1.1 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 above.
- 4.1.1 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 5

Statutory Declaration for Sub-Contractors

Oaths Act 1900 (NSW), Ninth Schedule

I

(1) _____

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

1. *[Insert full sub-contractor company name and its ACN]* ("the sub-contractor") has been selected as a sub-contractor to *[Insert name of the Contractor]* ("the Contractor") for the performance of a contract with *[Insert name of the Principal]* ("Principal") for the supply of certain Deliverables ("the Agreement").
2. The sub-contractor is aware of the relevant contractual terms and conditions of the Agreement and will be entering into a sub-contract with the Contractor in the near future on terms that will not be inconsistent with the Agreement for *[Insert short description of the sub-contract]* ("the Sub-Contract").
3. There are no reasons of which I am aware that would prevent the Sub-Contract from being signed and performed in a manner that would allow the satisfactory and timely performance of the Agreement and the Sub-Contract.

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

.

(2) _____

Declared at _____

the _____ day of _____ 2001 _____

Before me, (3) _____

(4) _____

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

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

Schedule 6

Deed of Confidentiality

BY THIS DEED DATED THE _____ day of _____ 200..

BETWEEN [Insert the name and address of the Principal.

AND [Insert name and address of Confidant] ("the Confidant ")

RECITALS:

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

OPERATIVE PROVISIONS:

1. Recitals

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

2. Interpretation

2.1 Definitions

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

"Agreement" means the Agreement between the Principal and the Contractor dated [Insert date] for the supply of the deliverables as defined in the Agreement.

"Confidential Information" means information that:

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

and includes but is in no way limited to:

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

"Contractor" means the person named as Contractor under the Agreement.

"Contract Material" means:

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

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

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

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

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

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

2.2 General

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

3. Non disclosure

- 3.1 The Confidant must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.2 The Principal may grant or withhold its consent in its discretion.
- 3.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Confidant procure the execution of a Deed in these terms by the person to whom the Confidant proposes to disclose the Confidential Information.
- 3.4 If the Principal grants consent subject to conditions, the Confidant must comply with those conditions.
- 3.5 Despite this clause, the Confidant may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Confidant or in accordance with this Deed.
- 3.6 Before disclosing the Confidential Information to a permitted recipient, the Confidant will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from

disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.

- 3.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Principal, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.8 The Principal may at any time require the Confidant to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.9 If any person being any director, officer, contractor or employee of the Confidant, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Confidant then the Confidant will procure that that person does not do or permit to be done anything which, if done or permitted to be done by the Confidant, would be a breach of the obligations of the Confidant under this Deed.
- 3.10 The requirements of this Deed do not affect the obligation of the Confidant to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

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

5. Survival

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

6. Rights of the Principal

6.1 Production of Documents

- 6.1.1 The Principal may demand the delivery up to the Principal of all documents in the possession or control of the Confidant containing the Confidential Information.
- 6.1.2 The Confidant must immediately comply with a demand under this clause .
- 6.1.3 If the Principal makes a demand under this clause , and the Confidant has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Confidant must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose the Principal or control they lie.
- 6.1.4 In this clause, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

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

7. Indemnity and release

- 7.1 The Confidant is liable for and agrees to indemnify and keep indemnified the Principal in respect of any claim, damage, loss, liability, cost, expense, or payment which the Principal suffers or incurs as a result of:
 - (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
 - (b) the disclosure or use of the Confidential Information by the Confidant or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

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

9. Waiver

- 9.1 No waiver by the Principal of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of any other obligation or provision of this Deed.
- 9.2 None of the provisions of this Deed will be taken to have been varied waived discharged or released by the Principal unless by its express consent in writing.

10. Remedies Cumulative

10.1 Cumulative

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

10.2 Other Instruments

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

11. Variations and amendments

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

12. Applicable law

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

13. Notices

- 13.1 Notices must be sent to the other party at the address shown in this Deed, or the address last notified to the other party in writing, or in the case of the Confidant, at the Confidant's registered office.
- 13.2 All notices must be in writing and signed by the relevant party and must be given either by hand delivery, post or facsimile transmission.
- 13.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

Executed as a Deed thisday of.....20....

SIGNED, SEALED AND DELIVERED

)

)

)

by)

[insert name and position of person signing]) (signature of authorised officer for the

) Principal)

for and on behalf of)

)

.....)

[Insert name of the Principal under the)

Agreement])

)

In the presence of:)

)

)

.....)

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

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

- **END OF SCHEDULE 6 –**

Schedule 7

Undertaking

THIS DEED is made the day of20...

BETWEEN

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

AND [\[Insert name of the Principal under the Agreement.\]](#) (“**Beneficiary**”)

IT IS AGREED

At the request of [\[Guide Note: Insert name of the Contractor\]](#) (“**Customer**”) and in consideration of, among other things, the Beneficiary accepting this undertaking in connection with [\[Guide Note: describe contract\]](#), the Provider unconditionally undertakes to pay to the Beneficiary on demand in writing any sum or sums from time to time up to a maximum aggregate sum of [\[Guide Note: amount in words\]](#) (\$[]) (“**Sum**”). The Provider unconditionally and irrevocably agrees to pay such moneys to the Beneficiary immediately.

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

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

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

Executed as a deed this day of20....

SIGNED, SEALED AND DELIVERED

for and on behalf of

[Insert name of the beneficiary]

by

[insert name of beneficiary's authorised officer]

In the presence of:

[insert name of Witness]

.....
(signature of authorised officer of
beneficiary)

.....
(signature of Witness)

THE COMMON SEAL of

[insert name of Provider]

ABN:.....

[insert Provider ABN]

was duly affixed hereto at.....

.....in the State of

[insert name of City / Town]

.....[insert name of State
or Territory]

in the presence of

[insert name of Secretary or other permanent
officer]

.....
(Corporate seal)

.....
(signature of Director)

.....
(signature of Secretary or other
permanent officer)

- End of Schedule 7 -

Schedule 8

Outworkers Code Declaration (Must be printed, completed and signed)

Statutory Declaration Oaths Act, 1900 Ninth Schedule

The wording in this Statutory Declaration must not be altered in any way or form.

| | |
|---|---|
| I/We the undersigned (1) Of (2) In the State of New South Wales (3) do hereby solemnly declare and affirm that; (4) 1 (5) Of (6)has a Contract in respect of (7)(Contract) | (1) insert full name (2) insert business address (3) insert occupation (4) the facts to be stated according to the Declarant's knowledge, belief or information, severally (5) insert name of Contractor (6) insert business address of Contractor (7) insert name and identifying number of Contract |
| 2 I make this statutory declaration in my following official capacity with the Contractor (8) | (8) insert official relationship with Contractor |
| 3 My authority to make this declaration on behalf of the Contractor is (9) | (9) insert details of authority to make this declaration |
| 4 I am personally aware of the business activities of the Contractor from (10) | (10) insert details to demonstrate knowledge of business of Contractor |
| 5 I have read the Contract and I understand the obligations of a Contractor particularly with regard to the NSW Government Code of Practice on Employment and Outwork Obligations for Textile Clothing and Footwear Suppliers (Code). | |

| | |
|---|---|
| <p>6 I am aware that the Contractor has complied with the Code in the following manner (11)</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>7 I am aware that the Contractor, subcontractors and suppliers have Complied with the Code in the following manner: (12)</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>And I/We make this solemn declaration, as to the matter aforesaid, according to the law in this behalf made, and subject to the punishment by law provided for any wilfully false statement in any such declaration.</p> <p>TAKEN and declared atin the said State</p> <p>thisday of200 ... before</p> <p>me/us:</p> | <p>(11)</p> <p>(i) insert full details of Compliance with the Code Including name of relevant Federal or State Awards</p> <p>(ii) attach relevant 3 monthly report of all records and work list returns required to be maintained in relation to contract work or outwork</p> <p>(12) statements of Compliance with the Code should be supported by Annex Documents</p> |
|---|---|

Schedule 9

Contractor Information

Schedule 10

Management Fee Deed

This Deed made the _____ day of _____ 20__ between

1. State Contracts Control Board ("the Board") for and on behalf of the Crown in right of the State of New South Wales; and
2. _____
Full name of company/sole trader or partners, including "trading as", if applicable ("the Contractor")

Address: _____

Telephone: _____

Background

- A. The Contractor has tendered to supply goods and/or services ("Deliverables") to[\[Insert name of Principal under the Agreement\]](#) ("the Principal") pursuant to and upon terms and conditions set out in Contract No..... [\[insert contract no.\]](#) ("the Agreement").
- B. It is a condition of the Agreement that the Contractor will provide certain information and pay a monthly Management Fee to the Board.

Agreement

1. (a) The Contractor must pay to the Board a Management Fee in accordance with this Deed.

(b) The Contractor shall act in good faith in respect of all its obligations under this deed and shall use its best endeavours to ensure that the obligations imposed on it in relation to management fee are met.
2. The Management Fee is the GST-exclusive value of the total price payable under the Agreement (excluding the value of any On Request Items), multiplied by 1% per cent (the Management Fee Rate), plus the GST payable on this amount.
3. The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice under the Agreement.
4. The Contractor agrees that the Management Fee payable has been allowed for in the prices specified in the Agreement together with all costs associated with the calculation and proving payment of the Management Fee.
5. The Board will issue to the Contractor a tax invoice for the Management Fee at the end of each Payment Period and the Contractor must pay the Management Fee to the Board within 30 days of the date of that invoice.

6. For the purpose of this Deed, "Payment Period" means a monthly payment period or where the Agreement expires or is terminated before the conclusion of one such period the period up to and including the date of expiration or termination
7. The Board's tax invoice will set out the Management Fee payable to the Board and the GST payable on the Management Fee. Payment shall be made by bank cheque in favour of NSW Department of Commerce, NSW Procurement – Contracting Services at Level 10, 2-24 Rawson Place, Sydney or otherwise as the Board directs. The Contractor shall then forward payment to the Board within sixty days of the conclusion of the Payment Period
8. In the event the Contractor does not provide payment within sixty days the Contractor shall be liable to pay the Board the cost to the Board of ensuring the compliance by the Contractor with its obligations under this clause an amount set below (see administration fee) calculated from the date the payment was first due to be made. The statement by the Board 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 debt due to the Board.

AND/OR

In the event that the Contractor does not provide payment within sixty days the Contractor shall be liable to pay to the Board a Late Payment Fee.

Administration Fee

Hourly rate by number of hours for staff of the Board involved in administering these clauses.

Hourly rate in accordance with applicable award rates.
Number of Hours as assessed by the Principal.

OR

Late Payment of Management Fee

Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Board in accordance with the period specified in clause 7 and 8. Interest of 5% per annum will also be payable on any accrued Late Payment Fees. The Late Payment Fee will be calculated monthly on the minimum monthly balance of Management Fee arrears and accrued Late Payment Fees.

9. The Board may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the term of the Agreement.
10. 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 Board and the parties may agree on the amount of any adjustment.
11. 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 the Principal during the Payment Period.

12. The Contractor must set up and maintain a system which:
- (a) enables monitoring by the Board of the Orders placed with and invoices issued by the Contractor or its approved dealers or distributors 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 Board shall constitute a breach of this Agreement and the Contract Authority may, in its discretion terminate the Agreement.
13. (a) The Board 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 Board by the Contractor and the Contractor agrees to cooperate with the Board (including any auditor appointed by the Board).
- (b) If the Board appoints an auditor, the Board will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with the auditor appointed by the Board including providing access within 10 working days of the written notification from the Board that an audit will take place, to information about all sales of Deliverables made to the Principal (whether pursuant to an Order or otherwise), copies of all orders and invoices between the Contractor and the Principal. The Contractor agrees to provide the Auditor appointed by the Board access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form to be provided by the Board
14. If the measures taken in clause 13 verify that the Contractor has not paid the Management Fee that is actually due to the Board, the Contractor must:
- (a) remit the difference between the Management Fee paid to the Board and the Management Fee actually due to the Board within 30 days of a direction from the Board; and
 - (b) at the discretion of the Board, reimburse the Board's costs and expenses of the measures taken (including any auditor's fees) under clause 6.11.14 to the Principal in accordance with the sliding scale set out below:
- Difference between management fee paid and payable
- (a) 99% or more of management fee was paid
 - (b) 90-98% of management fee paid
 - (c) 75-89% of management fee paid
 - (d) 50-74% of management fee paid
 - (e) less than 50% of payable management fee paid
- Portion of Audit costs to be borne
- (a) \$0
 - (b) 25% of audit and other costs
 - (c) 50% of audit and other costs
 - (d) 75% of audit and other costs

(e) 100% of audit and other costs.

15. 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.
16. A breach of this clause (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 13 shall be a substantial breach which will entitle the Board to terminate the Agreement pursuant to clause 1 without prejudice however to the right of the Board to recover from the Contractor any sums payable to the Board under this agreement or otherwise, or the right of the Board to deduct those sums from any money that may be or become payable by the Board to the Contractor on any other account.
17. The Contractor acknowledges that the Management Fee payable has been allowed for in the tendered price, as are all costs associated with calculation proving and payment of the Management Fee, and agrees that the amount of the Fee will not under any circumstances be shown as a separate charge in any quotations or invoices issued under the Agreement.
18. For the purposes of this Deed the expressions "GST", "taxable supply" and "tax invoice" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
19. This Deed shall be dated and come into effect if and when the Contractor's tender for the Agreement is accepted by the Principal.

Executed by the parties as a Deed

SIGNED SEALED AND DELIVERED)
STATE CONTRACTS CONTROL BOARD by its)
 Delegate.....)
)
 in the presence of:)
)
)
 Witness signature) (Delegate signature)

Execution where Contractor is a corporation:

THE COMMON SEAL of)
)
)
 [insert name of Contractor])
)
ABN:)
 [insert Contractor ABN]) (Corporate Seal)
)
)
 was duly affixed hereto at)
 [insert name of City/Town/Territory]) (signature of Director)
)
)
 in the State of.....)
 [insert name of State or Territory])
)
)
 In the presence of)
) (signature of Secretary or other
) permanent officer)
 [insert name of Secretary or other permanent)
 officer])

Execution where Contractor is a natural person:

Signed by.....)
)
 [insert name of Contractor]) (signature of Contractor)
)
 at.....)
 [insert name of City/Town])
)
 in the State of)
 [insert name of State Territory])
)
 in the presence of.....)
) (signature of witness)
 [insert name of witness not a party to the Deed]

Execution where Contractor is a partnership

SIGNED SEALED AND DELIVERED BY)
)
 [insert name of partner authorised to sign on behalf)
 of partnership])
)
 for and on behalf of the firm)
)
 [insert registered business name and number of)
 partnership])
)
 at.....)
 [insert name of City/Town]) (signature of Partner)
)
 in the State of)
 [insert name of State/Territory])
)
 in the presence of.....)
) (signature of witness)
 [insert name of witness not a party to the Deed]

Note 1 - A.C.N. Number must be shown.

Note 2 - Unless the Articles of Association say otherwise,
the signatories must be a Director and Company secretary.

Schedule 12

Sample Confirmation of Insurances Obtained form

Confirmation of Insurances

Insurance Body:

Insured:

Re: Agreement for the provision of < Contract Officer to insert Contract title> between the Insured and the Principal

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 |
|-------------------|-------|
| _____ | _____ |
| _____ | _____ |

- 1. The interest of the Principal, the State, and any subcontractor is noted in the insurance policy/ies.
- 2. The Insurance Policies contain a cross-liability clause in which the insurer agrees to waive any rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured or otherwise entitled to the benefit of the policy.
- 3. The insurer will notify all named insured of any variation or cancellation of the policy and the insurer will accept that a notice of claim given to the insurer by the Principal, the Contractor or the sub-contractor will be accepted by the insurer as a notice of claim given by all of 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 13

Sample Transition-Out Plan to be provided by the Contractor (Clause 6.19.1.6)

The Contractor will be directed in writing to provide to the Principal a Transition-Out Plan to provide details of the arrangements made by the Contractor in preparation for the early termination or expiry of the Contract.

The Contractor has made and will implement the following arrangements in relation to:

| Stage | Details | Date to be implemented | Approved by Principal |
|---|---|------------------------|-----------------------|
| Transition supply period (clause 6.19.1.5) | <i>(Arrangements the Contractor will implement for the purpose of continuing supply during the additional transition supply period including cooperation with Successor)</i> | | |
| Maintenance of supply | <i>(Arrangements the Contractor will implement to ensure maintenance of supply until end of contract period, including any transition supply period in clause 6.19.15)</i> | | |
| Stock levels | <i>(Arrangements the Contractor will implement to ensure stock levels are sufficient to permit continued supply until end of contract period with reference to previous supply volume, unfilled orders, proposed run-down of stock levels)</i> | | |
| Handover of Agreement to Successor | <i>(Arrangements the Contractor will implement to ensure the orderly handover of the Agreement to a Successor including but not limited to:</i> <ul style="list-style-type: none"> <i>• Provision of unfilled orders</i> <i>• Arrangements for transfer of Deliverables (if applicable)</i> | | |

| | | | |
|--|---|--|--|
| Communication with customers | <i>(Arrangements the Contractor will implement to inform customers of the details of conclusion of supply under the Agreement)</i> | | |
| Stock disposal | <i>(Arrangements the Contractor intends to implement for disposal Deliverables at conclusion of supply, including but not limited to</i> <ul style="list-style-type: none"> <i>• Date on which Deliverables become available for disposal :</i> <i>• Purchase by Successor</i> <i>• Removal of identification</i> <i>• Retrieval of stock/removal of identification from stock held by subcontractors (if applicable)</i> | | |
| Cooperation with Principal for purpose of preparation of subsequent Request for Tender for supply- Provision of sample range of Deliverables (Clause 6.19.1.10) | <i>(Including a list of each item supplied, date on which it was supplied, and location to which it was supplied)</i> | | |
| Cooperation with Principal for purpose of preparation of subsequent Request for Tender for supply- Provision of Components of Deliverables (Clause 6.19.1.10) | <i>(Including a list of each item supplied, date on which it was supplied, and location to which it was supplied)</i> | | |
| Reporting to the Principal | <i>(The Contractor to report on usage, including but not limited to:</i> <ul style="list-style-type: none"> <i>• Items supplied during previous 12-month period</i> <i>• Current stock levels for each item</i> <i>• Current unfilled orders</i> | | |

| | | | |
|--|---|--|--|
| | <ul style="list-style-type: none">• <i>Supply volumes for each item for previous 12-month period</i>• <i>Items out of stock or reasonably expected to be out of stock before supply ceases</i> | | |
|--|---|--|--|