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

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

Request for Tender RFT 0702221 Customer Satisfaction Surveys of NSW Government Services for the NSW Department of Premier and Cabinet

Tender Issue Date: 17 December 2007

Closing Date: Thursday 10 January 2008

Closing Time: 9:30 am Sydney Time

Note: Tenderers are required to lodge their Tender electronically through the NSW Department of Commerce eTendering website at <https://tenders.nsw.gov.au/commerce>.

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

Other matters should be directed to:

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

Customer Satisfaction Surveys of NSW Government Services for the NSW Department of Premier and Cabinet

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PART A Tender Conditions - The Requirement and General Information

1. Outline Description of the Requirement

1.1 Introduction

- 1.1.1 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.
- 1.1.2 The Board is responsible for the conduct of the tender process, assisted by NSW Procurement – Contracting Services.

1.2 Outline of the Requirement

- 1.2.1 The NSW Department of Premier and Cabinet is responsible for leading service delivery improvement initiatives across the NSW public sector. Consistent with the NSW Government's State Plan, the Department is facilitating a whole-of-government approach to measure, report and improve customer satisfaction with Government services. As part of this initiative, the Department wishes to commission market research to document customers' experiences with the delivery of NSW Government services and to identify the factors that influence the level of satisfaction with these services.
- 1.2.2 In 2008, the NSW Department of Premier and Cabinet will commission market research into customer satisfaction with a sample of NSW Government services. Two surveys will be implemented that year at six monthly intervals. Further annual surveys may be implemented in 2009 and 2010; however, this will be determined after a review of the outcomes of the surveys that are carried out in 2008.
- 1.2.3 A summary of the services to be supplied by the successful tenderer for each survey is as follows:
 - (a) Develop the survey instrument;
 - (b) Select the sample as specified;
 - (c) Manage the fieldwork process;
 - (d) Administer the survey questionnaire;
 - (e) Clean the data; and
 - (f) Provide the following to the Department:
 - o A fieldwork report.
 - o Unedited and cleaned data sets.
 - o Coded and verbatim responses for open-ended questions.
 - o Frequency counts for all variables.
 - o Verbal presentations of top-line and complete findings.
 - o Written analysis of methodology and complete findings.
- 1.2.4 The detailed Specification for the Deliverables is provided in Annexure 1 to Part C1.

1.3 Procurement Objective

- 1.3.1 The procurement objective is to appoint a quality market research agency to develop, implement and report on two State-wide customer satisfaction surveys in 2008, with possible contract extensions for further market research work in 2009 and 2010, in accordance with the Specification.

1.4 Timetable

- 1.4.1 The following timetable is proposed for the tender process:

Close Tenders	10 January 2008
Notification of Tenderer Interviews (if required)	16 January 2008
Tenderer Interviews (if required)	18 January 2008
Contract Award	25 January 2008
Contract Execution	30 January 2008

- 1.4.2 If interviews are required it is likely that tenderers will be asked to limit the number of attendees to three, of which one should be the proposed Project Manager for the contract.
- 1.4.3 The Board will do everything possible to achieve the timeframe above but does not make any guarantee that it will be achieved.

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 RFT is made up of four Parts as follows:

Tender Conditions

- Part A: The Requirement and General Information
Part B: The Tender Process

Tender Response

- Part C: Tender Response to be completed by the Tenderer

Conditions of Contract

- Part D: Agreement

Part C and other information submitted by the tenderer, 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: Mark Van Epen
Phone: 02 9372 7530
Fax: 02 9372 7799
E-mail: mark.vanepen@commerce.nsw.gov.au

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

2.4 Nature and Duration of Agreement

- 2.4.1 The Requirement is to be met by an agreement between the Principal and the successful tenderer on the conditions contained in Part D.
- 2.4.2 The agreement will be for a term from date of acceptance to 31 December 2008 with options to extend for a further two (2) x one (1) year periods.

2.5 Eligibility to Tender

- 2.5.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. Department of Premier and Cabinet will only contract with the relevant legal entity or entities.
- 2.5.2 The Board may submit any financial information provided by the tenderer for independent financial assessment of the tenderer's business.
- 2.5.3 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.
- 2.5.4 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial assets.
- 2.5.5 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.
- 2.5.6 The Board reserves the right to conduct an on site capability audit of the tenderer or its sub-contractors.
- 2.5.7 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.

<http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm#commerce>
- 2.5.8 The Board will consider any disclosure and Department of Premier and Cabinet will only enter into an agreement with tenderers that do not have improper conflict of interests. If the Board or Department of Premier and Cabinet become aware of improper conflict of interests by a successful tenderer at the time an agreement has already been entered into the Principal reserves the right to terminate the agreement.

2.6 Other Eligibility Requirements

- 2.6.1 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.
- 2.6.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender.

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 Time.
- 3.1.2 A Tender must be lodged to the **electronic tender box** 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 0702221**, and follow the instructions, to lodge the Tender through the blue LODGE A RESPONSE link.

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 80% of the total evaluation score. The selection criteria for this RFT that relate to price will account for 20% 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.

4.2 Selection Criteria

- (a) Experience, skills and qualifications of nominated personnel and any nominated sub-contractors.
- (b) Experience in providing similar research services, particularly to government, and comments from referees.
- (c) Quality and creativity of the proposed methodology.
- (d) Capacity to meet the timetable including demonstrated adequate staffing.
- (e) Processes to assure quality and performance.
- (f) Extent and substance of value added services.
- (g) Commercial viability and financial stability of tenderer.
- (h) Compliance with the proposed conditions of the agreement, as stated in Part D.
- (i) Compliance with NSW Government procurement policy and other applicable NSW Government policies.
- (j) Price.

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 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the agreement;
- (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; and
- (d) include all costs associated with the preparation and submission of the Tender.

5.3 Price Variation

5.3.1 The Tender Price cannot be exceeded during the term (including any extension of the term) of the agreement unless price variation is provided for in this RFT.

5.3.2 The tenderer may determine the Tender Price on the basis of the price variation clause shown in clause 5.6 of Part D.

5.4 GST Free or Input Taxed Supplies

5.4.1 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 three (3) 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
- Ongoing contract administration and management,

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

“Claims” includes all manner of actions, suits, causes of action, arbitrations, debts, dues, interest, costs, expenses, claims, demands, verdicts and in any state or country howsoever arising.

“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.

“Department” means the NSW Department of Premier and Cabinet.

“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. All dollar references in this agreement are \$A, exclusive of GST, unless stated otherwise.

“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.

“Month” means calendar month, comprising of the actual amount of days for that month.

“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” means, in respect of each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable which may be expressed as a lump sum or a rate per unit of quantity, calculated in accordance with cl.5.2.

“Price Schedule” means the list of Deliverables offered by the tenderer, together with the corresponding pricing information, at Part C1 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 of Part C1.

“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” has the same meaning as Price.

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 cannot be effectively evaluated because the file is not in the required format, or is not prepared using the required software, or has become corrupt, may be excluded from the tender process without further consideration at the Board’s discretion.

- 7.1.3 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. Tenderers may, if they choose, submit an Alternative Tender provided the Alternative Tender meets the scope and functional intent expressed in the RFT. Where such an Alternative Tender is proposed, a detailed description of the alternative must be submitted, stating clearly the manner in which it does not conform to the requirements of the RFT. Tenderers submitting an Alternative Tender are strongly advised to also submit a Conforming Tender, if possible.
- 7.1.4 An Alternative Tender must be clearly marked "Alternative Tender".
- 7.1.5 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, which meets the scope and functional intent expressed in the RFT; 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 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 lodgment of Tender.
- 7.3.5 Tenderers must ensure that all Excel or Word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to lodgment of the 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 the Closing Date and Time than at other times.
 - 2) It is recommended that a Tender be lodged well in advance of the Closing Date and Time.
- (b) The NSW Department of Commerce *eTendering* system may experience difficulties in accepting a large Tender. A Tender 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.
 - (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 the Closing Date and 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 If you submit a Conforming Tender and an Alternative Tender the latter must be attached to the former at Part C of this RFT.

7.4.4 If a tenderer provides multiple lodgements, the latest complete Tender received 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 open 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 clause 6 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 A tenderer is required to lodge its Tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. Electronic Tenders will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).
- 8.2 A tenderer, by lodging a Tender, is taken to have accepted conditions shown in the Conditions of Tendering and rules on the NSW Department of Commerce *eTendering* website.
- 8.3 To lodge a Tender the files that represent the Tender Response must be uploaded through the NSW Department of Commerce *eTendering* website. To do so go to the RFT on the website and click on the blue “Lodge a Response” link on the web page and then follow the steps and instructions provided, including any specific instructions which may have been supplied with the RFT.
- 8.4 A tenderer must observe the following format for lodgements:
- (a) The 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
- 8.5 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.
- 8.6 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.

- 8.7 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.
- 8.8 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 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) or (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 sub-contractor 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*;

- (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>

the Board may, in its discretion, invite the 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 negotiate 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 On receipt of Tenders lodged to the NSW Department of Commerce eTendering website, Tenders are encrypted and stored in a secure "electronic tender box."
- 10.4.2 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 Time.
- 10.4.3 The e-mail receipt that is sent to the tenderer after successfully up-loading 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

- 10.7.1 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 Principal 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 Principal 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/eucuz2722gdb54776cyhk7ntoj4cpw5iga5ztwvtvjethi2xjujwd4zrgsfte4cye7lgoqtlf4wxywdioutedaph/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 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; location of the tender call documents; and 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 short listed 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 short listing.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 10.10.1, Part B, 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; (f) A description of any provisions under which the amount payable to the contractor may be varied; (g) A description of any provisions with respect to the renegotiation of the contract; (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	Routine public disclosure within 60 days after the contract becomes effective.

	tenders were assessed; and (i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.	
Class 2 contracts Class 1 contracts (i.e. government contracts with estimated value \$150,000 or above) which also: <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. 	The information required for class 1 contracts and <ul style="list-style-type: none"> (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; (b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer; (c) The results of any cost-benefit analysis of the contract conducted by the agency; (d) The components and quantum of the public sector comparator if used; (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); (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; (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 (h) Particulars of any other key elements of the contract. 	Routine public disclosure within 60 days after the contract becomes effective.
Class 3 contracts Class 2 contracts where the estimated value of the government contract is \$5 million or more.	The information for class 1 and 2 contracts and the complete contract, less confidential information. Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose: <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 contract have been disclosed, a general description of the types of provisions that have not been published. 	Routine public disclosure within 60 days after the contract becomes effective.

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.



**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**

PART C

TENDER RESPONSE

RFT 0702221

**Customer Satisfaction Surveys of NSW
Government Services for the NSW Department of
Premier and Cabinet**

**CLOSING DATE: 9.30 AM (SYDNEY TIME)
THURSDAY, 10 JANUARY 2008**

Your Company's Legal Entity: _____

Your Company's Trading Name: _____

Your Company's ABN number: _____

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

Contact Phone: _____

Note: The tenderer must submit the Tender electronically to the Department of Commerce eTendering website at <https://tenders.nsw.gov.au/commerce>. Refer Part AB for lodgment requirements.

Customer Satisfaction Surveys of NSW Government Services for the NSW
Department of Premier and Cabinet

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PART C TENDER RESPONSE

PART C1 INFORMATION SUPPLIED IN RESPONSE TO PARTS A and B

1. INTRODUCTION

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

2. PRICING AND RELATED FACTORS

2.1 Price Schedule

- 2.1.1 Tenderers should complete the Price Schedule by providing prices for all elements of the survey, both GST exclusive and GST inclusive. Tenderers should note that the prices submitted are to apply to all surveys ordered under the resultant contract.
- 2.1.2 Tenderers must tender for the complete scope of services required. Tenders for part of the work will not be considered.

PRICE SCHEDULE

Item Number and Description	Quantity	Tendered Price		
		Excluding GST	GST Component	Total Including GST
1. Development of quantitative survey instrument	One off cost per survey	\$_____ per survey	\$_____	\$_____ per survey
2. Focus groups, including all development costs, facilitator fee, venues and incentives, and reporting	Tenderer to provide recommended number here ____	\$_____ per group	\$_____	\$_____ per group
3. Telephone interviews based on the following sample quantities	2,000	\$_____ per interview	\$_____	\$_____ per interview
	1,500	\$_____ per interview	\$_____	\$_____ per interview
	As recommended by tenderer if different to above quantity – insert recommended number here _____	\$_____ per interview	\$_____	\$_____ per interview
4. Analysis and reporting	One off cost per survey	\$_____ per survey	\$_____	\$_____ per survey
5. Consultation with government agencies	One off cost per survey	\$_____ per survey	\$_____	\$_____ per survey
6. (a) Client liaison including meetings and presentations	3	\$_____ total for 3	\$_____	\$_____ total for 3
(b) Additional meetings and presentations	As required	\$_____ per meeting or presentation	\$_____	\$_____ per meeting or presentation

PRICE SCHEDULE cont.

Item Number and Description	Quantity	Tendered Price		
		Excluding GST	GST Component	Total Including GST
7. On Request Item Additional research advice	As required	\$ _____ per hour	\$ _____	\$ _____ per hour
8. Additional cost items, if any, not listed above – tenderer to provide details including prices and quantities per survey				

2.2 Settlement Discounts

2.3.1 The tendered prices are subject to a settlement discount of:-

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

(N.B.: If this condition is not completed the prices tendered will be taken to be nett)

2.3 Tender Validity Period

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

N.B. A minimum validity period of three (3) months is required.

3. **SELECTION CRITERIA**

Tenderers are required to respond individually to each of the selection criteria outlined in the following spaces. The information provided will be used in the assessment of tenders. For most criteria tenderers have been asked to provide specific information. Tenderers should also provide any other information they deem necessary to demonstrate that they meet each criterion.

(a) Experience, skills and qualifications of nominated personnel and any nominated sub-contractors.

The tenderer is to provide details of experience, qualifications and skills of the personnel who are to be involved in the project, including telephone interview service providers. Where sub-contractors are to be engaged to assist in delivery of the services the tenderer is to provide the type of service to be provided, name, address and ABN of proposed sub-contractor/s, as well as details of their experience and qualifications in the provision of similar services to those in which they will be engaged. The response should clearly identify the project team and the roles of each person and any sub-contractor.

(b) Experience in providing similar research services, particularly to government, and comments from referees.

The tenderer's response should incorporate, amongst other things, the number of years in business, a summary of its previous experience relevant to this project, including any specific experience of conducting similar research for government agencies at Commonwealth or State level, as well as the names and contact details of at least three referees.

(c) Quality and creativity of the proposed methodology.

The tenderer's response should include an outline of the methodological approach to the project including qualitative research, consultations with government agencies, quantitative research, analysis and reporting.

(d) Capacity to meet the timetable including demonstrated adequate staffing.

The tenderer's response should demonstrate its capacity to deliver the project on time and on budget and provide a project timeline. Your response should also include details of your capacity to perform the contract in the context of the current commitments of your organisation and your ability to take on additional work.

(e) Processes to assure quality and performance.

Please provide details of project management, quality control, risk management, client service, reporting and other administrative processes used by the tenderer to assure high quality performance.

(f) Extent and substance of value added services.

(g) Commercial viability and financial stability of tenderer.

Tenderers should provide information which demonstrates their commercial and financial viability. As part of your response it is preferred that you submit copies of audited financial statements for the last three financial years.

(h) Compliance with the proposed conditions of the agreement, as stated in Part D.

Do you comply with the terms and conditions of Part D?

Yes/No

If “**No**”, provide a full statement of all deviations including any re-wording sought.

(i) Compliance with NSW Government procurement policy and other applicable NSW Government policies.

(i) Code of Practice for Procurement

Have you have read the [NSW Government Code of Practice for Procurement](#) and taken it into consideration in preparing and submitting your Tender?

Yes/No

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

Yes/No

Provide any other relevant information below

(ii) Occupational Health Safety & Rehabilitation

Do you currently comply with your OHS&R statutory obligations and will you continue to do so including obligations relating to performance monitoring and Sub-Contractor performance for the duration of any contract awarded?

Yes/No

If “**No**”, provide details below

(iii) Commerce Business Ethics Statement

Do you comply with the requirements of the Commerce Business Ethics Statement referred to in clause 9.2.1 (d) of Part B?

Yes/No

If “**No**”, provide an explanation below

Tenderers are to disclose hereunder details of any potential conflict of interest (including any relevant relationships) as outlined in the Commerce Business Ethics Statement.

4. SPECIFICATION

- 4.1 The Specification for the Deliverables is provided in Annexure 1. Tenderers are to provide, in an attachment to their Tender, a complete statement of compliance to each and every clause of the Specification in accordance with the instructions below. The Specification will form Schedule 4 of the contract agreement (Part D) with the successful tenderer, as modified in line with the successful tenderer’s statement of compliance and criteria responses.

The following terms are appropriate in providing a statement of compliance:

COMPLIES means:

- (a) in the case of a clause which is of an informative nature only, that the clause has been read and understood;
- (b) in the case of a clause which specifies a requirement or performance standard to be met by the service/s to be provided, that the offer is to provide the requirement or standard.

Where appropriate, tenderers should state or describe how the requirement is or is not to be met.

PARTIALLY COMPLIES means, in the case of a clause which specifies a requirement or performance standard, it can only be met subject to certain conditions. Where this is the case and the tenderer is prepared to make good on the condition, requirement or performance standard the tenderer must explain and cost the required change.

DOES NOT COMPLY means that the requirement or performance standard of the clause is not met by the offer. Full details of non-compliance must be stated.

ALTERNATIVE means that the tenderer's method, system or process either does not require the feature or the tenderer's method, system or process fully complies in a manner different to that described. In both cases a description must be provided.

SIGNIFICANTLY EXCEEDS REQUIREMENTS means, in some cases, the services offered may significantly exceed the specified requirements. As this may have a bearing on the evaluation process, full details must be stated.

Any failure by the tenderer to make clear the extent of compliance or non-compliance with any clause or paragraph of the Specification may be interpreted as failure to comply with the requirement concerned when assessing the relative merits of Tenders.

5. OTHER INFORMATION REQUIRED

5.1 Details of Ownership

- 5.1.1 If you are a company, please provide details of your ownership, that is, Australian, overseas, largest shareholder, paid-up capital and other relevant details.
- 5.1.2 If you are a partnership, please provide a list of partners and details of the partnership financial arrangements.
- 5.1.3 Is the tenderer currently offering its business for sale, or is the subject of a merger, takeover or change of ownership. Answer yes or no below. If the answer is yes full details are to be provided.

5.2 Contracting as Agent/Trustee

- 5.2.1 If awarded a contract, do you intend to enter the Contract in your own right or as agent or trustee for some other entity or entities? If the latter, provide full details.

5.3 Current Legal Proceedings

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

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

Yes/No

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

6. ADDENDA TO THIS RFT AFTER ISSUE

- 6.1 If there have been any Addenda by the Board to this RFT after the issue of this RFT, indicate below whether you have read and allowed for the Addenda in your Tender.

YES/NO/THERE HAVE BEEN NO ADDENDA BY THE BOARD

If **NO**, provide reasons below

Annexure 1

SPECIFICATION

1. BACKGROUND

- 1.1 The NSW Department of Premier and Cabinet (the Principal) is responsible for leading service delivery improvement initiatives across the NSW public sector. Consistent with the NSW Government's State Plan, the Department is facilitating a whole-of-government approach to measure, report and improve customer satisfaction with Government services. As part of this initiative, the Principal wishes to commission market research to document customers' experiences with the delivery of NSW Government services and to identify the factors that influence the level of satisfaction with government services.
- 1.2 In 2008, the Principal will commission market research into customer satisfaction with a sample of NSW Government services. Two surveys will be implemented that year at six monthly intervals. Further annual surveys may be implemented in 2009 and 2010; however, this will be determined after a review of the outcomes of the surveys that are carried out in 2008.
- 1.3 The Principal is seeking the services of a market research agency to develop, implement and report on two State wide customer satisfaction surveys in 2008, with a possible contract extension for further market research work in 2009 and 2010 in accordance with the contract agreement detailed in Part D.

2. SPECIFICATION OF WORK

- 2.1 The Contractor will be expected to develop, implement and report on two quantitative surveys in 2008. The surveys may be repeated in 2009 and 2010.
- 2.2 The Contractor will be required to:
- (i) Recommend an appropriate methodology for the first and second surveys.
 - (ii) Develop appropriate questionnaire and sampling strategies.
 - (iii) Implement the survey.
 - (iv) Analyse and report on findings against an agreed analytical framework.

- (v) Report regularly to the Principal's nominated project manager.
- (vi) Provide other research advice, as required.

2.3 The Principal has developed detailed specifications for the project as described below. However, the Principal will consider alternate methodological proposals where tenderers can demonstrate that they meet the requirements of the project and will deliver the desired outcomes.

2.4 Purpose

2.4.1 The purpose of research is to provide a regular, high level, whole of government measure of customer satisfaction with the delivery of government services. The measure will be based on customer experience of a sample of government services to be specified by the Principal.

2.4.2 The sample will not include all government services nor will it include all services of nominated government departments or agencies. The services included in the first survey provide a reasonable cross section of the range of measurable and high volume face to face and transactional services delivered by NSW Government.

2.4.3 The first survey will provide a baseline measure of customer satisfaction against which future research findings will be tracked. Over time, it is intended that data from NSW Government agencies will be aggregated to provide a more detailed and comprehensive measure of customer satisfaction with the delivery of services. The Contractor will be asked to provide advice on the best ways of achieving this outcome.

2.4.4 The second purpose of the research is to develop a survey instrument that can be used in the future by agencies within the NSW public sector to survey levels of customer satisfaction with their services. The survey instrument and the measures of customer satisfaction will therefore also need to be appropriate for use by individual government agencies in their own customer research programs.

2.5 Outcomes

2.5.1 It is expected that the first survey in 2008 will establish:

- (i) A whole of government measure of customer satisfaction with the delivery of government services, based on a sample of services.
- (ii) A top level measure of customer satisfaction with the delivery of approx. 20 specific government services.

- (iii) A measure of customer preferences for channels of service delivery and satisfaction with the channels of service delivery they have experienced in the survey period.
- (iv) A survey instrument that provides valid and reliable measures of the service quality characteristics that customers expect from government services and the relative importance of these characteristics to customers.

2.5.2 The second 2008 survey is intended to track and mark any significant changes in customer satisfaction with the delivery of a mix of NSW Government services.

2.6 Definitions

2.6.1 For the purpose of this specification, the sample of services to be surveyed in the first survey is provided at Attachment 1.

2.6.2 A customer is defined as a person 18 years or older who has used at least one of the services listed in Attachment 1 in the survey period.

2.7 Sample Size and Sampling

2.7.1 Tenderers are required to identify a survey sample in size and composition that is representative of NSW Government customers and will provide statistically valid and reliable data. The Principal requires tenderers to recommend an appropriate sample and to provide the rationale for the recommendation. It is likely that a sample of approx. 2,000 respondents will be appropriate; however, tenderers may make other recommendations based on a relevant rationale.

2.7.2 Sample composition needs to reflect key demographic variables and segments including for example variables of:

- (i) Gender.
- (ii) Age.
- (iii) Residential location (specifically Sydney, Newcastle, Wollongong, regional NSW and rural NSW).
- (iv) Household and/or family make-up.
- (v) Language spoken at home/cultural background.
- (vi) Educational attainment.

2.7.3 Tenderers are also required to indicate how they will access the views of respondents from hard to reach groups, including indigenous Australians, people with disabilities and the aged.

2.7.4 For two services in the sample (Home Care Services and Public Housing Services) the Contractor will be required to work with these agencies to identify an appropriate and representative sample of their customers and in ways that are consistent with privacy requirements.

2.8 Methodology

2.8.1 Tenderers are required to indicate how they will develop and validate the survey instrument and their preferred methodology for administration. Tenderers may also wish to recommend a small program of qualitative research in the developmental phase.

2.8.2 Within one week of the initial meeting with the Principal, the Contractor will be required to provide a detailed implementation plan for the project that describes each item of work, a timeline for completing each item, any critical decision or approval dates and staff allocated to each task.

2.8.3 The Contractor will be required to consult the Principal in the development of the questionnaire and consult with informants in other NSW Government departments and agencies as required.

2.8.4 The questionnaire is to be designed to collect customers' data on their experiences with the delivery of NSW Government services and the factors that influence the level of satisfaction with those services. Tenderers are required to indicate the factors they propose to measure and the reasons for the selection of those factors.

2.8.5 Tenderers are also required to indicate the kind of rating scales they recommend in such surveys.

2.8.6 The NSW Government's experience with previous annual surveys indicates the average interview length is between 5 and 15 minutes. However, tenderers are required to provide their recommendation on length of interview appropriate to their approach and cost their proposals accordingly.

2.8.7 It is also likely that randomised telephone survey will be most appropriate for the research. However, tenderers may wish to recommend an alternate methodology.

2.9 Open Ended Responses

2.9.1 Both coded and verbatim responses are to be supplied to the Principal.

2.10 Analysis and Reporting

- 2.10.1 Tenderers are required to describe the approaches they will use to analyse survey data and how they will report to the Principal on the findings of research.
- 2.10.2 The Contractor will also be required to provide:
- (i) Verbal presentation of top-line findings to the Principal.
 - (ii) Written report on complete findings.
 - (iii) Possible verbal presentation of complete findings to a meeting of the CEOs who are members of the NSW Chief Executive Committee.

2.11 Client Service

- 2.11.1 For each survey, the Contractor's project team will be required to meet with the Principal's staff at the Principal's premises on at least three occasions. The Contractor will also be required to maintain regular contact with the Principal's nominated project manager and to provide regular work in progress reports. In addition, the Contractor must be willing to have the Principal's staff visit its premises to observe and listen to interviews taking place at a mutually convenient time during the fieldwork period.

2.12 Timetable

2.12.1 The timetable for the 2008 research program is as follows:

Activity	Due Date
Survey 1	
Development of methodology and research instruments	January-February 2008
Commence fieldwork	March 2008
Complete fieldwork	March 2008
Supply finalised analysis of findings	Mid-to late April 2008
Survey 2	
Revision of methodology and research instrument as required	August 2008
Commence fieldwork	September 2008
Complete fieldwork	September 2008
Supply finalised analysis of findings	Mid to late October 2008

2.13 Other Deliverables for Each Survey

2.13.1 Other Deliverables for each survey are as follows:

- (i) A fieldwork report documenting:
 - (a) Details of interviewer training.
 - (b) Numbers of interviewers used.
 - (c) Details of data cleaning.
 - (d) An overall and a daily tally of the number of calls, the number of ineligible and the number of refusals that were eligible.
 - (e) The total number of calls, number of ineligible and number of refusals that were eligible, by sampling region.
 - (f) Any issues arising from the data collection process including any problems administering the questionnaire.

- (ii) The original unedited data, and the cleaned data, in SPSS portable data files (or other format acceptable to the Principal).
- (iii) Copies of the verbatim responses for open-ended questions.
- (iv) Frequency counts based on the cleaned data.
- (v) Report on findings by:
 - (a) Individual service.
 - (b) Face-to-face services and transaction services (see Annexure 1).
 - (c) Individual services by customer segments.
 - (d) Face-to-face services and transaction services by customer segments.
 - (e) Aggregated results for all services.

2.14 Other Responsibilities

2.14.1 The Contractor will be required to:

- (i) Co-ordinate and communicate with the Principal on any changes to the interview procedure and provide ongoing feedback on any sampling and administration issues.
- (ii) Take all reasonable measures to ensure that any personal data collected is protected from unauthorised access, modification or disclosure.
- (iii) Take all reasonable measures to protect against data loss or modification.
- (iv) Take all reasonable steps to maximise the number of valid interviews.
- (v) Declare any perceived conflict of interest in accordance with clause 6.15 of Part D.

2.14.2 The Principal will:

- (i) Provide project information and guidance where required.
- (ii) Liaise with the Contractor on all aspects of fieldwork.

- (iii) Review and approve in writing any changes to the questionnaire or data collection procedures.”

2.15 AMSRS Code of Professional Behaviour

- 2.15.1 The Contractor shall conform to the AMSRS Code of Professional Behaviour.

Attachment I to Specification

List of Agencies and Services

Agency	Service
--------	---------

High volume face to face services

- | | | |
|---|--|--|
| 1 | Department of Health | <ul style="list-style-type: none"> Public hospital in-patient services Emergency department services |
| 2 | Department of Education and Training | <ul style="list-style-type: none"> Government primary schools Government secondary schools TAFE |
| 3 | City Rail | <ul style="list-style-type: none"> Metropolitan train services |
| 4 | State Transit | <ul style="list-style-type: none"> Metropolitan bus services |
| 5 | Department of Ageing, Disability and Home Care | <ul style="list-style-type: none"> Home care services |
| 6 | Department of Arts, Sport and Recreation | <ul style="list-style-type: none"> Sports programs (Sport and Recreation Centres, outdoor education programs, Swimsafe program) Visits to State Government galleries and museums |
| 7 | Attorney-General's Department | <ul style="list-style-type: none"> Court administration services |
| 8 | Department of Housing | <ul style="list-style-type: none"> Public housing services |

High volume transaction services

- | | | |
|----|--|---|
| 9 | Roads and Traffic Authority | <ul style="list-style-type: none"> Drivers tests, drivers licences and vehicle registrations |
| 10 | Sydney Water | <ul style="list-style-type: none"> Payment of water or sewerage service bills |
| 11 | Hunter Water | <ul style="list-style-type: none"> Payment of water or sewerage service bills |
| 12 | Department of Lands (Lands and Property Information) | <ul style="list-style-type: none"> Registration and provision of land titles, surveys and valuations |
| 13 | Department of Commerce (Office of Fair Trading) | <ul style="list-style-type: none"> Registration of business names and licences |
| 14 | Office of State Revenue | <ul style="list-style-type: none"> Payments of duties, taxes, and fines and provision of benefits |
| 15 | Department of Arts, Sport and Recreation | <ul style="list-style-type: none"> Licences and permits for liquor, gaming and racing |

PART C2 TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER

1. TENDERER IDENTIFICATION DETAILS

1.1 Name of Tenderer:

Individual: *[Print name]*

Trading Name (if applicable):

or

Company: *[Full name]*

Trading Name (if applicable):

Name and official position of authorised officer
completing tender:

or

Partnership: *[Trading Name of
partnership]*

Name of partner completing tender:

1.2 ABN:

1.3 Address of Tenderer:

*[in the case of a company, state registered office and, if
different, principal place of business]*

1.4 Business Postal Address:

STD Area Code:

Telephone No.:

()

Facsimile No:

()

Email:

Website:

Contact Name for general enquiries:

Telephone No.:

Tenderer's reference number:

2. ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

- 2.1 Lodgement of a Tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Codes; that you will comply with the Codes; and that you agree to report to the Board any breaches of the Codes for the duration of the Contract.
- 2.2 Do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Commerce tenders website is sufficient to verify and affirm that this is your Tender to supply the Service at the prices tendered on the conditions contained in Part A and B, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgment and acceptance, by stating “Yes”, is a necessary prerequisite to consideration of your Tender.

Yes/No

Print Name and Title

Dated: <Insert Date>

The Principal

The NSW Department of Premier and Cabinet

and

**AGREEMENT FOR CUSTOMER SATISFACTION SURVEYS OF NSW
GOVERNMENT SERVICES FOR THE NSW DEPARTMENT OF PREMIER
AND CABINET**

PART D – CONDITIONS OF AGREEMENT

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THIS AGREEMENT is made on the ____ day of _____ 2008.

BETWEEN:

..... **[insert name of Principal]**
of **[insert address]**, 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

"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.

"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
- (d) a serious industrial dispute.

"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.

"Contract Material" means:

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

“**Contract Price**” means in respect of each Deliverable, the price nominated in the Price Schedule at Schedule 3 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 and provided in Schedule 1.

“**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.

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

“**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.

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

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

“**Party**” means the Principal or the Contractor, as applicable.

“**Price Schedule**” means the Price Schedule at 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 Request For Tender 0702221 for the Deliverables issued by the State Contracts Control Board, 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 contained in Schedule 4 which are to be provided under the Agreement, including 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.

“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.

“Survey” means a survey conducted in accordance with the Specification at Schedule 4.

“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.

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. Extension of the Agreement is not to be construed as a commitment to order further Deliverables.

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.
- 4.1.3 Subject to clause 16, during the period up to 31 December 2008, the Principal agrees to order the two Surveys described in the Specification in Schedule 4. The Contractor acknowledges that, if the Agreement is extended in accordance with clause 3.1.2, the Agreement shall then convert to a standing offer arrangement, for the provision of only such Deliverables as may be ordered from time to time by the Principal during the term of the extension, and the Principal shall not be bound expressly or impliedly to order from the Contractor any quantity of Deliverables.

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.

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; and
 - (c) 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 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.
- 5.2.4 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.
- 5.2.5 Unless a certificate of acceptance has been issued, a payment is not an acknowledgement 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 Payment Milestones

- 5.3.1 The Contractor shall be entitled to claim progressive payments for each survey, as follows:
- (a) Production of detailed implementation plan 10%
 - (b) Completion of development work including any qualitative research, consultations with other government departments and approval of final survey instrument 20%
 - (c) Commencement of telephone survey 25%
 - (d) Completion of telephone survey 25%
 - (e) Delivery of (i) customer service survey instrument that can be applied by NSW public sector agencies, and (ii) final report on customer satisfaction findings 20%.

5.4 Set-Off/Money Recoverable by Principal

- 5.4.1 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.

- 5.4.2 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.
- 5.4.3 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.

5.5 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.

5.6 Price Variation

- 5.6.1 Prices shall be firm until 31 December 2008.
- 5.6.2 In the event that the option/s to extend the Term in accordance with clause 3.1.2 of the Agreement is/are exercised, the Contract Prices shall be subject to adjustment by the variation in the Sydney CPI from the September quarter 2007 to that applying in the September quarter of 2009 and 2010, as appropriate, effective on Day 1 of the period of extension.
- 5.6.3 The Contractor must apply in writing to the Principal to vary the Contract Prices in accordance with clause 5.6.2, in accordance with the following mechanism, unless otherwise agreed:
- 5.6.3.1 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.
- 5.6.3.2 The application must be accompanied by all relevant documents in support of the claim.
- 5.6.3.3 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.
- 5.6.4 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.
- 5.6.5 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 Goods and Services Tax

- 5.8.1 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.
- 5.8.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 5.8.3 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.
- 5.8.4 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.
- 5.8.5 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.
- 5.8.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal

5.9 The Contractor's On-costs

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

5.10 Mistakes in Information

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

6. 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.
- 6.1.3 If the Principal is of the reasonable opinion that any of the Contractor's personnel are not providing the services in a satisfactory manner the Principal may require the Contractor to do anything required to rectify that situation including approval by the Principal of a replacement person (such approval will not be unreasonably withheld).
- 6.1.4 Any proposed changes to the Contractor's key personnel, including any changes required under Clause 6.1.3, require the agreement of the Principal.

6.2 Contractor to Establish Necessary Facilities

- 6.2.1 The Contractor must, during the Term establish and maintain appropriate facilities, staff and other resources necessary to perform its obligations pursuant to this Agreement.

6.3 Access to the Contractor's Premises

- 6.3.1 The Contractor must at all times allow the Principal access to the Contractor's premises upon reasonable notice to the Contractor and permit the Principal to inspect such premises and interview the Contractor's personnel in relation to the provision of the services.

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 8 ("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 9.
- 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 significant change in the company details supplied in its Tender.
- 6.6.2 The Contractor must notify the Principal of any significant change in the sub-contractor's details.
- 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 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 sub-contractors 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 Principal, without first obtaining the Principal's consent.

6.8.2 The Contractor also warrants that:

- (a) the Deliverables do not infringe the Intellectual Property rights of a third party;
- (b) the Deliverables shall conform to any legally applicable standards;
- (c) it will not allow or cause any action, or enter into any arrangement 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.

6.9 Defective Services

6.9.1 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.

- 6.9.2 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.
- 6.9.3 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.
- 6.9.4 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.

6.10 Third Party Warranties

- 6.10.1 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.
- 6.10.2 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.

6.11 Security

- 6.11.1 For each Survey ordered under the Agreement, the Contractor must provide the Security to the Principal within 10 working days of the notice to proceed.
- 6.11.2 The Principal will hold the Security as security for the due and proper performance and completion of all the obligations of the Contractor under this Agreement in relation to the Survey ordered.
- 6.11.3 If the Contractor fails to properly perform and complete its obligations under this Agreement and the Principal suffers loss or damage arising from, or in connection with, such failure by the Contractor, the Principal may deduct any or all such loss or damage (as ascertained and certified by the Principal) from the Security.
- 6.11.4 If the Security is not sufficient to meet payment of all the loss or damage suffered by the Principal, the balance remaining will be a debt due and owing from the Contractor to the Principal and may be recovered by the Principal in any appropriate court.
- 6.11.5 If the Contractor fails to deposit the Security as requested by the Principal in accordance with this clause the Principal may terminate this Agreement for substantial breach.
- 6.11.6 The Security must be issued by an Australian domiciled bank, insurance company or other financial institution ("Issuer") acceptable to the Principal in its discretion.
- 6.11.7 The Contractor agrees that the Principal will have no liability to the Contractor of any nature (whether in negligence or otherwise) for any loss or damage suffered or incurred by the Contractor where the Principal exercises its rights under this clause in good faith.
- 6.11.8 The Contractor must not take any action to injunct or otherwise prevent the Principal from making a claim or receiving a payment under the Security. This clause does not prevent the Contractor from

taking action to recover from the Principal any amount invalidly received by the Principal under any such Security.

- 6.11.9 The Principal must release the Security to the Contractor (or to whom the Contractor directs) if:
- (a) the Contractor has fully performed and discharged all of its obligations under the Survey; and
 - (b) in the reasonable opinion of the Principal:
 - (i) there is no prospect that money or damages will become owing (whether actually or contingently) by the Contractor to the Principal; and
 - (ii) no payment by the Contractor or the provider of the Security is likely to be void, voidable or refundable under any law, including without limitation any law relating to insolvency.

6.12 Performance Monitoring

- 6.12.1 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.
- 6.12.2 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.
- 6.12.3 The Principal may also elect, in its discretion, to monitor performance of any sub-contracts under this Agreement.
- 6.12.4 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.
- 6.12.5 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.
- 6.12.6 At the conclusion of this Agreement the Principal will complete a performance report and pass this report to NSW Procurement – Contracting Services.
- 6.12.7 NSW Procurement – Contracting Services 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).
- 6.12.8 NSW Procurement – Contracting Services will give the Contractor (and any sub-contractor) the opportunity to seek an independent review of each such report by an officer of NSW Procurement – Contracting Services if required.
- 6.12.9 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 cost to the Principal.

6.13 Keeping of Records and Access to Records

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

- 6.13.2 During the Term, the Contractor must, within seven (7) days of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Contract, and any financial information, that the Principal reasonably requires.
- 6.13.3 During the Term the Contractor shall at all times during usual working hours permit or arrange for all officers authorised by the Principal to enter upon the premises of the Contractor or premises in which the Contractor is carrying out services for the purposes of inspecting work performed pursuant to the Agreement and to be given access to all documents or information necessary for the same purposes.

6.14 Exchange of Information Between Government Agencies

- 6.14.1 The Contractor authorises the Principal, including the Principal's Delegate and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and/or the Principal's Delegate and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 6.14.2 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.
- 6.14.3 The Principal regards 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).
- 6.14.4 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.

6.15 Conflict of Interest

- 6.15.1 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.
- 6.15.2 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.

- 6.15.3 The Principal may terminate the Agreement in accordance with clause 15.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

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 The Principal may at its sole discretion and at any time require the Contractor to promptly execute and arrange for its employees, agents or sub-contractors engaged in the performance of this Agreement, to execute a Statutory Declaration and/or a Deed of Confidentiality substantially in the form appearing in Schedule 5.
- 7.6 This clause will survive the termination of this Agreement.

8. Intellectual Property

- 8.1 The Contractor warrants that any Intellectual Property embodied in or used by the Contractor in connection with this Agreement is the sole property of the Contractor or the Contractor is legally entitled to use such Intellectual Property for the provision of the Deliverables stipulated under this Contract.
- 8.2 All Intellectual Property created in the performance of the Agreement shall vest in the Principal.

9. General Indemnity

- 9.1 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 sub-contractors or their employees) in the performance of this Agreement; or
 - (b) any breach of this Agreement or any confidentiality deeds required by this Agreement.

- 9.2 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.

10. Minimum Insurance Requirements

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

- (a) a broad form liability policy of insurance which includes public liability insurance to the value of at least the amount specified in Schedule 1 in respect of each claim; and
- (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- (c) professional indemnity insurance to the value of the amount specified in Schedule 1.

The professional indemnity insurance:

- i) must be maintained by the Contractor for 2 years after the conclusion of this Agreement for an amount sufficient to indemnify the Contractor in respect of all liabilities arising out of this Agreement; and
- ii) must cover the Contractor's liability to the Principal in respect of the services and any products supplied ancillary to the services;
- iii) must include one automatic reinstatement provision; and
- iv) must include a description of the risk covered by the policy.

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

- 10.3 All policies, apart from workers compensation and professional indemnity insurance, must:

- (a) note the interest of the Principal, the State and any sub-contractor;
- (b) 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; and
- (c) require the insurer to notify all named insured of any variation or cancellation of the policy, provided 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.

- 10.4 The Contractor must, and must ensure that sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 10.5 During the Term, the Contractor must when requested in writing by the Principal:
- (a) supply proof that all insurance policies required by this Agreement are current; and
 - (b) if required, arrange for its insurer to complete and sign a "Confirmation of Insurances Obtained Form" substantially in the form of Schedule 7, and on-send this to the Principal within 30 days of the request. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.
- 10.6 If the Contractor fails to comply with clauses 10.1, 10.3, 10.4 and 10.5, the Principal
- (a) may effect and maintain that insurance and pay the necessary premiums; and
 - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 10.7 Where the Contractor is insured under a foreign company's or holding company's insurance policy, that insurance policy must clearly indicate that it applies to and extends coverage to the Contractor.
- 10.8 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

11. Compliance with Legal Requirements

11.1 Compliance with Laws

- 11.1.1 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.

11.2 Licences and Approvals

- 11.2.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement.

11.3 Payment of Wages and Allowances

- 11.3.1 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, judgement, order or industrial agreement.
- 11.3.2 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.

12. Variations

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

13. No Assignment or Novation

- 13.1 The Contractor must not assign or novate this Agreement without first obtaining the written consent of the Principal.
- 13.2 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.

14 Completion of the Agreement by the Principal

- 14.1 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 with sub-contractors; 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.
- 14.2 The Contractor must continue to carry out obligations under this Agreement in full until termination of the Agreement.

15. Termination

15.1 Termination for Cause

15.1.1 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;
- (f) in the case of the Contractor's Insolvency; or
- (g) if in the Principal's view a conflict of interest exists for the Contractor, which prevents the proper performance of the Agreement.

15.1.2 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.

15.2 Termination for Convenience

- 15.2.1 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.

15.2.2 Effect of Termination for Convenience

- 15.2.2.1 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.

- 15.2.2.2 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.

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

- 15.2.2.4 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.

16. Issue Resolution

16.1 General

- 16.1.2 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.

16.2 Amicable Resolution

- 16.2.1 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.
- 16.2.2 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.

- 16.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.
- 16.2.4 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.
- 16.2.5 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.
- 16.2.6 A Party is not entitled to refer an issue to expert determination until 21 days after the giving of the Issue Notice.
- 16.2.7 A Party may only refer an issue to expert determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 16.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 16.2.9 If the Party giving the Referral Notice is the Principal it must give the Referral Notice to the Contractor.
- 16.2.10 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).

16.3 Expert Determination

- 16.3.1 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.
- 16.3.2 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.
- 16.3.3 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 at Schedule 6 to this Agreement); and
 - (d) any other matter which is relevant to the engagement.
- 16.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.

- 16.3.5 The procedure for expert determination is attached at Schedule 6 to this Agreement.
- 16.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 16.3.7 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.
- 16.3.8 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.

16.4 Performance of Agreement During Issue Resolution

- 16.4.1 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.

17. General

17.1 Waiver

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

17.2 Severability

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

17.3 Notices

- 17.3.1 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post, email or facsimile transmission.
- 17.3.2 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.
- (d) if sent by email - to the last known email address of the Party to be served and shall be deemed to have been duly served at the time the e-mail message is first received by the other Party in a complete, accessible and legible form.

17.3.3 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.

17.4 Counterparts

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

17.5 Applicable Law

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

17.6 Rights Cumulative

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

17.7 No Agency/No Employment/No Partnership

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

17.8 Survival Clause

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

17.9 Entire Agreement

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

EXECUTED AS AN AGREEMENT THISDAY OF.....2008.

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 0702221 - date submitted.....
Item 2	Contractor's Name
Item 3	Specified Personnel (if any):
Item 4	Term: Commencement Date: Date of Acceptance Expiry Date: 31 December 2008 Period of optional extended term: Option 1 Commencement Date: 1 January 2009 Expiry Date: 31 December 2009 Option 2 Commencement Date: 1 January 2010 Expiry Date: 31 December 2010
Item 5	Supply of Deliverables As detailed in the Specification in Schedule 4
Item 6	Insurance (a) Public liability insurance Amount: \$20,000,000 (b) Professional indemnity insurance Amount: \$2,000,000
Item 7	Codes 1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement. 3. AMSRS Code of Professional Behaviour
Item 8	Expert Determination Amount: \$A:100,000 .
Item 9	Security Amount: Equal to 20% of the total value per survey of items 1 to 6 inclusive and 8 of the Price Schedule Form: Bank guarantee or equivalent
Item 10	Notices to: The Contractor's Contact Name and Address: Name: Address:

	Position: Telephone: Facsimile: The Principal's Contact Name and Address: Name: Don Munro Position: Principal Project Officer Address: Level 13, Bligh House, 4-6 Bligh Street, Sydney NSW 2000 Telephone: 0408 118 923 Facsimile: (02) 9228 3015
Item 11	Contractor's Delegate
Item 12	Principal's Delegate Don Munro Principal Project Officer Refer contact details above

Schedule 2

Documents Notifying the Principal's Acceptance

Documentation notifying the Contractor of its acceptance will be inserted here.

Schedule 3

Price Schedule

Deliverables

On Request Items

Details to be included when contract is formalised.

Schedule 4**Specification**

The Specification shall be detailed here in line with that specified in Part C, as modified and agreed to by the Principal.

Schedule 5

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.

“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.

2.2.4 A singular word includes the plural, and vice versa.

2.2.5 A word which suggests one gender includes the other genders.

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

3. Non Disclosure

3.1 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

- 5.1 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 possession 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

8.1 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

11.1 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.

Schedule 6

Expert Determination Procedure

1. Questions to be Determined by the Expert

- 1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - 1.1.1 Is there an event, act or omission which gives the claimant:
 - a. a right to compensation under this Agreement
 - b. for damages for breach of this Agreement, or
 - c. otherwise in law?
 - 1.1.2 If so:
 - a. what is the event, act or omission?
 - b. on what date did the event, act or omission occur?
 - c. what is the legal right which gives rise to the liability to compensation?
 - d. is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - 1.1.3 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?
- 1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

2. Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to Expert Determination ("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 7

Sample Confirmation of Insurances Obtained Form

Confirmation of Insurances

Insurance Body:

Insured:

Re: Agreement for the provision of customer satisfaction surveys of NSW Government services 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) Professional Indemnity Insurance to the value of \$AUD_____, Expiry ___/___/20__
- (d) Other insurances, if required:

Type of insurance	Value
_____	_____
_____	_____

- 1. The interest of the Principal, the State, and any sub-contractor 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 8**List of Approved Sub-Contractors**

Item	A. List of Approved Sub-Contractors (Clause 6.5) <u>Name and particulars of approved sub-contractors to be inserted here</u>
-------------	--

Schedule 9

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 _____ 200...

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.