



NSW Procurement is a Business Unit of the NSW Department of Finance and Services

Dated: <Insert Date>

The Principal

and

<Insert Contractor name>

[\[Guide Note: Insert name of Agreement\]](#)

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

Other matters should be directed to:

Director Contracts
NSW Procurement
Government Services Division
NSW Department of Finance and Services
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 8953
Fax: (02) 9372 7533

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Instructions for Use – Agency Specific One-Off High (Goods)

Coverage – This template applies to the establishment of a one-off agency-specific procurement arrangement for goods (ie. Deliverables) which is reasonably complex in nature. If the procurement is low in complexity, the Agency-Specific One-Off (Low) should be considered for use.

Typically, Deliverables covered by this template will be unique products manufactured in accordance with the Principal's requirements. There is provision in this template for Progress Payments, Financial Security, a Parent Company Guarantee, approval of the Contractor's Key Personnel Approved Sub-Contractors. If any of these features are not needed in a particular situation, they must be deleted.

smartbuy® requirements have been injected into this template. It will be necessary to check with eBusiness Solutions in each situation if smartbuy® provisions are not required.

Contract Preparation – In order to prepare the contract for execution, all post-tender negotiations which varied the version of the agreement attached to the RFT must be incorporated rather than referred to in a schedule so that the Agreement executed by the Parties reflects the terms and conditions agreed through negotiation.

Execution Requirements – This Agreement can be executed either by the Board, acting as the Principal, or by a NSW government agency.

Clause Changes - Clauses can be changed or deleted in consultation with Legal Services in executable contracts.

Any Definitions in the Interpretation clause which are not required as a result of not being referred to in the Agreement and its Schedules must be deleted when the RFT is being prepared for issue.

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THIS AGREEMENT is made on the _____ day of _____ 20__

BETWEEN

.....(*insert name of Principal*), of (*insert address*) Sydney, in the State of New South Wales ("the Principal").

Guide Note:

1. **If the client agency is to execute the Agreement**

(1) Where the Agency is a statutory body corporate or corporation (and i.e. a separate legal entity):

- (a) *insert the name and address of the client agency as Principal;*
- (b) *insert as Principal's Delegate in Schedule 1 either:*
 - (i) *the client agency's contract administrator, or*
 - (ii) *if the SCCB is requested to perform this role, the SCCB and its nominated officer.*

(2) Where the Agency is a part of the Crown without separate corporate status eg a department:

- (i) *describe the Principal as: "the Crown in right of the State of New South Wales, acting through the <Name of client agency> of McKell Building, 2-24 Rawson Place, Sydney in the State of New South Wales";*
- (ii) *insert the client agency and its contract administrator as Principal's Delegate in Schedule 1.*

2. **If the SCCB is executing the Agreement on behalf of the client agency as the Principal:**

- (a) *insert the name of the SCCB as principal; and*
- (b) *if the SCCB is requested to perform the role of Principal's Delegate, insert the SCCB and its nominated officer. Otherwise, insert the client agency and its contract administrator as Principal's Delegate in Schedule 1.*

AND

[.....name of contractor.....] of [.....address.....] ABN [*insert ABN number*] 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 a tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter into this Agreement for the supply of the Deliverables.

NOW THE PARTIES AGREE:

1 Interpretation

1.1 Definitions

"Acceptance Criteria" means the criteria to be applied in the performance of any Acceptance Test specified in Schedule 2.

"Acceptance Notification Period" means the period specified in Schedule 2 within which acceptance of a Deliverable must be notified by the Principal.

"Acceptance Period" means the period for the performance of any Acceptance Tests for any Deliverable, as specified in the Schedule 2, or such other period as notified by the Principal in writing.

“Acceptance Tests” means any acceptance tests detailed or referred to in Schedule 2.

“Actual Acceptance Date” or **“AAD”** means the date when acceptance is notified in accordance with clause 11.11.

“Administrators” means Personnel of the Contractor who are responsible for managing Authorised Users within its organisation and receiving notices sent by the Board for purposes of complying with the Contractor’s smartbuy® obligations.

“Agreement” means this Agreement including the Schedules and Part E, if applicable.

(Guide Note: insert following definition of ANZ-SME Content where a procurement for goods and services is over \$700,000).

“ANZ-SME Content”: the value added content sourced from Australia or New Zealand based small and medium enterprises. ANZ-SME content includes ANZ value added in supply chains by SMEs where such value addition can be demonstrated. It excludes overseas-based value addition and/or imported content. Goods not manufactured in New Zealand but imported via New Zealand and offered in a tender are not considered ANZ goods.

“Approved Sub-Contractors” means the approved sub-contractors in Schedule 1 item 6.

“Authorised Users” means Personnel who the Contractor authorises to access and use smartbuy® on its behalf and who are given access to do so by the Board.

“Authority” means any statutory, public or other authority and includes government, semi or local government, licensing or civic authority or body.

“Catalogue Information” means details and images and information about the Deliverables and pricing contained in a catalogue placed on smartbuy® by the Contractor or provided by the Contractor to the Board for such placement.

“Change in Control” means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

“Circumstances Beyond the Control of the Contractor” include:

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

“Component” means any constituent part, being material or other matter or thing which forms or is intended to form part of or be incorporated in the Deliverables, or form part of the Deliverables.

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

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

“Consequential Loss” means any loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;

- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

“Contract Material” means New Contract Material and Existing Contract Material.

“Contractor Information” means the information that must be provided by the Contractor in smartbuy® covering its own organisation and that of its Designated and Nominated Subcontractors and includes names, addresses and contact details.

“Contract Price” means the price (which may be a fixed lump sum or a schedule of rates), stated in Schedule 3 (inclusive of any taxes, duties, levies, insurance, delivery) which is payable to the Contractor for the supply of the Deliverables by the Contractor, and adjusted to include any Variations which may be required to be made under the terms of this Agreement.

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

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

“Deliverables” means the goods and their associated services to be executed and supplied by the Contractor and specified in Schedule 2, and includes any Variation to this Agreement in accordance with clause 7.

“Delivery Plan” means the detailed plan regarding the delivery and timing Stages for the Deliverables to be met by the Contractor under this Agreement for the completion of such Stages detailed in Schedule 6.

“Designated Subcontractors” means the comprehensive list of subcontractors, resellers and distributors that the Contractor will use for the purposes of this Agreement and named in smartbuy® as such.

“Documentation” means any document that enables the full use, operation and maintenance of the Deliverables in accordance with the Statement of Requirements. The Documentation must be:

- (a) Of a reasonable standard in terms of its presentation, accuracy, and scope;
- (b) A resource that provides a comprehensive explanation of functions, capacity and operation of the Deliverables;
- (c) The most current and up to date available;
- (d) In English language; and
- (e) Of a form where all the key terms, words and symbols are adequately defined.

“Due Date” means the date for completion of the Deliverables by the Contractor in Schedule 1 item 2.

“Environmental Management Plan” means a plan for managing environmental matters in relation to this Agreement which is based on the NSW Government Environmental Management Systems Guidelines.

“Existing Contract Material” means any material which is existing at the date of this Agreement and which may be incorporated in to the New Contract Material.

“Externally Hosted Catalogue” means Catalogue Information hosted in a system other than smartbuy®'s physical infrastructure which is accessible via smartbuy®.

“Financial Security” means the security in the amount and form specified by the Principal set out in Schedule 1 item 10.

“Industrial Relations Plan” means a plan for managing industrial relations matters in relation to this Agreement which are based on the NSW Government Industrial Relations Systems Guidelines.

“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.

“Key Personnel” means Personnel of the Contractor nominated in Schedule 1 item 12 to perform the specified roles under this Agreement.

“New Contract Material” means any material brought into existence as part of, or for the purpose of providing the Products including records, documents and Information stored by any means.

“Nominated Subcontractors” means a subcontractor nominated by the Board that must be used by the Contractor and indicated in smartbuy® as such.

“Occupational Health & Safety Management Plan” means a plan for managing occupational health & safety matters in relation to this Agreement which is based on the NSW Government Occupational Health & Safety Systems Guidelines.

“Parties” means the Principal and the Contractor.

“Performance Guarantee” refers to the Performance Guarantee in Schedule 7.

“Personal Information” has the same meaning as in Privacy and Personal Information Protection Act 1998 (NSW). *(Guide Note: If Personal Information is within the meaning of the Health Records and Information Privacy Act, then add ‘Health Records and Information Privacy Act 2002 (NSW)’)*

“Personnel” of a Party means;

- (a) the officers, employees, agents and contractors of that Party,
- (b) in the case of the Contractor, includes subcontractors (whether approved or not), and the Key Personnel in Schedule 1 item 12.

“Principal’s Material” means any material, document, or Information supplied by the Principal, to the Contractor by whatever means indicated in Schedule 1 item 8.

“Principal’s Delegate” means the Principal’s employee named in item 11 Schedule 1, responsible for the overall administration of this Agreement on behalf of the Principal.

“Progress Payment” means a payment in accordance with clause 5.2.6.

“Relationship Manager” means the Contractor’s employee named in Schedule 1 item 12.

“Request for Tender” means the request for tender issued by the Principal, consequent to which this Agreement was awarded to the Contractor for supply of the Deliverables.

“Schedule” means a schedule to this Agreement.

“**Site**” means the place or places specified in Schedule 1 item 13 where the Deliverables are to be delivered to the Principal by the Contractor for acceptance in accordance with this Agreement.

“**smartbuy@TRADE**” means an entry level product for organisations new to eProcurement. It delivers a single source, easy to use, electronic product and service ordering system.

“**smartbuy@ CONNECT**” means the electronic document exchange providing the security, connectivity, transformation, and trading partner management services.

(Guide Note: insert the following definition of SME Participation Plan (SMEPP) where a procurement for goods and services is over \$4 million)

“**SME Participation Plan (SMEPP)**”: a plan submitted by tenderers in response to a tender. A SMEPP describes the nature of, or proposed nature of, tenderer’s engagement with ANZ-SMEs. An important aspect of SMEPPs is SME capability development.

“**Stage**” means an individual milestone identified in the Delivery Plan for staged completion by the Contractor of the Deliverables and payment by the Principal.

“**Statement of Requirements**” means the detailed description of the Deliverables to be provided under this Agreement in Schedule 2.

“**Standards**” means Australian Standards, where such exist and are applicable to the Deliverables, and includes international standards in the event of a lack of an applicable Australian Standard.

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

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

“**Substantial Breach**” means:

in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes any breach of the following clauses:

- (a) Clauses 6.3 (failure to provide competent Personnel);
- (b) Clause 10.3 (Compliance with Laws, Standards and NSW Government Requirements),
- (c) clause 10.10 (Minimum Insurance Requirements);
- (d) clause 10.16 (Financial Security);
- (e) clause 10.17 (Performance Guarantee);
- (f) Where a delay continues beyond the extension of time granted under clause 8.3;
- (g) Failing to pass Acceptance Tests which results in rejection of the Deliverables by the Principal under clause 11;
- (h) Clause 16.1 (No Assignment or Novation);
- (i) clause 16.2 (Conflicts of Interests); and
- (ii) Where the Contractor breaches a time of the essence obligation imposed on the Contractor in accordance with clause 8.

“**Supplementary Tests**” means the further Acceptance Tests that are required by the Principal under clause 11.8 to demonstrate that a Deliverable complies with the Statement of Requirements if the initial Acceptance Test fails to demonstrate such compliance.

“**Term**” means the term of this Agreement set out in Schedule 1 item 2 and any extension made under this Agreement by the Principal.

“**Transaction**” means any use of smartbuy® including sale or purchase of Deliverables available through smartbuy®.

“**Transaction Data**” means any data created or generated or derived from the use of smartbuy® by any participant in smartbuy® including any data about the purchase or sale of Deliverables that any participant in smartbuy® makes available or transmits to or through smartbuy® and includes any information which may identify the Customer from the smartbuy® database.

“**Variation**” means any change to the Deliverables including additions, increases, omissions and reductions to and from the Deliverables, (including a change in the quality of any material used in the supply of the Deliverables) which has been directed in writing by the Principal’s Delegate under clause 7.

“**Warranty Period**” means, in relation to particular Deliverables, the period of warranty of those Deliverables specified in Schedule 2.

1.2 Rules for interpreting this Agreement

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

1.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) any thing (including a right, obligation or concept) includes each part of it.

1.2.3 Where:

- (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
- (b) an obligation, representation or warranty made by the Contractor in this Agreement shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in this Agreement.

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

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

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

1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.

1.2.8 In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:

- (a) Schedule 3;
- (b) Part E, Special Conditions to this Agreement, if applicable;
- (c) The terms and conditions of this Agreement;

- (d) Schedule 1 and 2 to this Agreement;
- (e) Any other Schedules to this Agreement.

2 Nature of the Agreement between Principal and Contractor

2.1 The Due Date

- 2.1.1 This Agreement commences on the date in Schedule 1 item 2 (a) and continues until the Due Date specified in Schedule 1 item 2 (b) unless sooner terminated in accordance with this Agreement.
- 2.1.2 The Principal may, at its sole discretion, extend the Due Date.

2.2 smartbuy® requirements

- 2.2.1 The Contractor is required to comply with the smartbuy® requirements in Schedule 9. [\(Guide Note: delete if not applicable\)](#)

2.3 The Contractor's General Obligations

[\(Guide Note: Modify the clauses below as needed\).](#)

- 2.3.1 The Contractor is solely responsible for the execution and delivery of the Deliverables;
 - (a) in accordance with this Agreement and by the Due Date;
 - (b) performing all activities necessary for the execution and delivery of the Deliverables including without limitation, the engagement, supervision and direction of Approved Sub-Contractors and other Personnel of the Contractor, the detailed coordination of all activities and the supply of all necessary equipment and administrative requirements.
 - (c) taking reasonable steps to ensure that the Deliverables are executed to a high professional standard;
 - (d) in accordance with all approvals and requirements of all Authorities relevant to the Deliverables;
 - (e) using materials described in this Agreement, or failing any specific description, then the best quality available and fit for their intended purpose;
 - (f) in accordance with the Contract Price in Schedule 3;
 - (g) in compliance with the Delivery Plan in Schedule 6.
- 2.3.2 The Contractor further agrees that:
 - (a) it has specifically made all of its inspections and observations in light of the Agreement and is satisfied that none of the documents evidencing the Agreement are in conflict (except as expressly brought to the Principal's attention before it executed this Agreement);
 - (b) that the Principal is relying on the Contractor's skill and judgement in the execution of the Deliverables;
 - (c) that it will keep the Principal's Delegate fully and promptly informed of all industrial issues, matters and disputes which affect or are likely to affect the execution and delivery of the Deliverables.

3 The Deliverables

3.1 Statement of Requirements

- 3.1.1 The Deliverables to be supplied by the Contractor under this Agreement are detailed in Schedule 2.

3.2 Delivery Plan

- 3.2.1 The Contractor warrants that:

- (a) the Delivery Plan in Schedule 6 meets the requirements of this Agreement; and
- (b) that the Delivery Plan is fit for its intended purpose.

The Contractor is responsible for ensuring that all of the requirements of the Delivery Plan are complied with at the Contractor's cost.

(Guide Note: There will need to be corresponding requirement for the Contractor to provide a Delivery Plan in Schedule C, based on the Principal's requirements).

3.3 Progression to the Delivery Plan

- 3.3.1 When requested by the Principal's Delegate the Contractor must submit a schedule detailing the dates and times by which each Stage of the Deliverables is due to be completed in a format to be agreed between the Parties in accordance with the Delivery Plan.

4 Contract Price

4.1 Contractor's Obligations

- 4.1.1 The Contractor must supply the Deliverables on the basis of the Contract Price in Schedule 3.

4.2 Calculating the Contract Price

- 4.2.1 The Contract Price in Schedule 3 includes all applicable levies, duties, taxes, insurances, imposts, overheads and profits but is exclusive of GST.

4.3 Goods and Services Tax

- 4.3.1 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.

- 4.3.2 The Contractor must hold an Australian Business Number (ABN) and be registered for GST.
- 4.3.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice or statement. No amount is payable until a valid Tax Invoice or statement for the Price, or any instalment of the Price, is received.
- 4.3.4 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.
- 4.3.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 4.3.4.

5 Payment

5.1 Payment of Contract Price

- 5.1.1 Subject to clause 5.2 and in consideration for the Contractor providing the Deliverables under this Agreement, the Principal shall pay the Contractor the Contract Price in the amounts and in the Stages, if any, set out in Schedule 3 in accordance with this clause 5.

5.1.2 Failure by the Principal to pay the Contract Price at the due time will not be grounds to avoid performance of this Agreement.

5.2 Invoices and Time for Payment

(Guide Note: Clause 5.2.2 can be modified where a different payment period is agreed). Clauses 5.2.7 to 5.2.9 are in accordance with Treasury Circular 11/12.

5.2.1 All claims for payment made by the Contractor must be in the form of a Tax Invoice and the tax invoice must include and be substantiated by documents necessary to evidence acceptance of the Deliverables by the Principal. Such documents must include a statement that shows the value of the work carried out by the Contractor, and any further details reasonably requested by the Principal. The value of work not incorporated into the Deliverables must not be included in the invoice.

5.2.2 Subject to this clause 5.2, the Principal shall make payment within 30 days from the end of the month after receipt of a Correctly Rendered Invoice or Statement and documents necessary to evidence delivery to the Principal.

5.2.3 The Parties agree the making of a payment is not intended to be an acknowledgment that the Deliverables have been supplied in accordance with this Agreement.

5.2.4 If the Principal disputes an invoice amount, the Principal shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with this Agreement.

5.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by the Principal of money becoming due for the supply of the Deliverables.

5.2.6 Where the Deliverables are to be delivered on a staged basis as per the Delivery Plan in Schedule 6, Progress Payments shall be made by the Principal upon completion of each Stage in the Delivery Plan and in accordance with this clause 5.2.

5.2.7 Notwithstanding clauses 5.2.2, the Customer must pay the Contractor within 30 days from date of receipt of a Correctly Rendered Invoice or Statement if the Contractor is a Small Business. For the purposes of this clause 5.2.6, the Contractor will be taken to be a Small Business only if the Contractor has identified itself as a Small Business on making the relevant Correctly Rendered Invoice or Statement and provided the documentation which the Customer, if the Customer considers it necessary, reasonably requests to verify that the Contractor is a Small Business.

5.2.8 Where payment is not made within the period specified in clause 5.2.6, the Customer must pay simple interest on the unpaid amount calculated daily from the day after payment was due up to and including the day that payment is made, where interest exceeds A\$20. The interest rate is determined under section 22 of the *Taxation Administration Act 1996*. The appropriate interest rate is available from the NSW Office of State Revenue website at <http://www.osr.nsw.gov.au/taxes/other/taa/rates/>.

5.2.9 For the purposes of this clause 5.2:

“Correctly Rendered Invoice or Statement” means an invoice or statement which is:

- rendered in accordance with all of the requirements of the approved purchase order and this Agreement;
- for amounts correctly calculated; and
- for goods or services properly supplied in accordance with this Agreement.

“day that payment is made” means the day that funds are transferred into the banking system for payment to the Contractor or a cheque is sent.

“Small Business” means an Australian or New Zealand-based business that has an annual turnover of less than \$2 million in the latest financial year.

5.3 Set-Off/Money Recoverable by Customer

- 5.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Deliverables.
- 5.3.2 Without limiting clause 5.3.1, 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:
- (a) 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; or
 - (b) recovered from the Contractor by the Principal in an appropriate court.

5.4 Suspension of Payments

Should the Contractor refuse or neglect to carry out the instructions or requirements of the Principal in regard to any matter connected with this Agreement, the Principal may suspend all payments to the Contractor until such instructions or requirements have been complied with by the Contractor and in complying with such the Principal shall not be in breach of this Agreement.

6 Personnel

6.1 Principal's Delegate and Principal's Personnel

(Guide Note: Modify this clause based on the circumstances, e.g. if the Principal does not need to deploy Personnel to work with the Contractor).

- 6.1.1 The Principal has nominated the Principal's Delegate in Schedule 1 item 11 to administer this Agreement. The Contractor must comply with all reasonable directions given by the Principal's Delegate in connection with the performance of the Deliverables under this Agreement.
- 6.1.2 The Principal may make available Personnel to work with the Contractor.
- 6.1.3 The Principal must use reasonable efforts to ensure that Personnel made available to work with the Contractor have the requisite competencies, skills, and experience to perform the tasks.

6.2 Relationship Manager

- 6.2.1 For the purpose of ensuring an efficient relationship with the Principal, the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 12. The Relationship Manager must:
- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
 - (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
 - (c) have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement;
 - (d) meet with the Principal's Delegate as required by the Principal to provide information regarding the Contractor's performance under this Agreement; and
 - (e) answer the Principal's queries and work with the Principal to address issues relating to matters deemed urgent by the Principal arising out of this Agreement.
- 6.2.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Principal's Delegate to meet with the

Principal's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement.

- 6.2.3 The Principal's Delegate must be supported by the Key Personnel in Schedule 1 item 12.

6.3 The Contractor's Personnel

- 6.3.1 The Contractor warrants that all personnel engaged in the provision of the Deliverables are appropriately qualified, competent and experienced including the Relationship Manager and the Key Personnel.

- 6.3.2 The Contractor must:

- (a) employ only such persons as are careful, skilled and experienced in the provision of the Deliverables or similar Deliverables; and
- (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.

- 6.3.3 The Principal may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour. Such named personnel so removed may not be re-employed by the Contractor under this Agreement.

- 6.3.4 Any replacement Key Personnel provided by the Contractor must be approved by the Principal.

6.4 Restriction on Engaging Personnel of the Other Party

- 6.4.1 During the Term of this Agreement, Principal and the Contractor agree that neither Party may, without the prior written agreement of the other Party, engage, employ, or induce or cause a third party to induce the other Party's Personnel engaged in the performance of this Agreement to enter into a contract for service or a contract of employment with it.

- 6.4.2 A general solicitation for employment such as a newspaper advertisement shall not constitute a breach of clause 6.4.

7 Variations

7.1 Changes to the Statement of Requirements during the Term

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

- 7.1.2 The Principal's Delegate may direct the Contractor in writing and signed by the Principal's Delegate, to carry out a Variation at any time prior to the Actual Acceptance Date.

- 7.1.3 Within 7 days (or earlier if requested) of a receipt of notice under clause 7.1.2, the Contractor must advise the Principal's Delegate in writing:

- (a) whether the proposed Variation can be effected; and if so
- (b) the effect which the Contractor anticipates that the proposed Variations will have on, the Due Date and the Contract Price, and must supply a variation impact statement.

- 7.1.4 For the purposes of clause 7.1.4(b), a variation impact statement must consist of the Contractor's estimates of the direct labour, material and equipment costs associated with the proposed variation including an itemised breakdown of the following:

- (a) quantities of materials;
- (b) unit cost of materials;
- (c) total labour hours for each classification of labour and applicable hourly rates;

- (d) equipment costs including rental costs;
 - (e) programming and timing information;
 - (f) the total cost to the Principal.
- 7.1.5 The Contractor must receive a written directive from the Principal's Delegate to proceed with a Variation (subject to a notice under clause 7.1.2), in accordance with the Contractor's variation impact statement or as otherwise agreed in writing between the Contractor and the Principal's Delegate before commencing work on Deliverables subject to the proposed Variation. The Contractor will not be entitled to payment in respect of a direction for Variation unless the provisions of this clause 7.1.5 are complied with.
- 7.1.6 The value of the Variation will be determined by the Principal's Delegate. If the Contractor disagrees with the value of the Variation as determined by the Principal's Delegate, the matter will be dealt with in accordance with clause 14, Conduct and Dispute Management, but only after the Variation has been executed by the Contractor and the Principal has paid the Contractor for the Variation.

8 Time

8.1 Time of Essence

- 8.1.1 The Contractor acknowledges that time is of the essence in completing its obligations under this Agreement in accordance with the Due Date and the Delivery Plan.

8.2 Risk of Delay

- 8.2.1 The Contractor's entitlement to extensions of time are set out in clause 8.3, but apart from that entitlement, the Contractor accepts the risk and liability for the completion of the Deliverables in accordance with clause 8.1.

8.3 Extension of Time

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

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

- 8.3.2 The Principal may consent to a request for extension of time under this clause 8.3 provided that:

- (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
- (b) where appropriate, the Contractor provides the Principal with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.

- 8.3.3 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay unless a delay has occurred because of the Principal's failure to perform its obligations in accordance with this Agreement.

8.4 Delay Costs

- 8.4.1 The Contractor is not entitled to any costs for any delay in the completion of the Deliverables or of disruption in the progress of the Deliverables unless:

- (a) an extension of time has been made, or should properly have been allowed under clause 8.3 as a result of a delay caused by a Variation, or by the breach of the provisions of this Agreement by the Principal;

- (b) the Contractor has within 7 days after the commencement of such cause of delay given notice in writing to the Principal's Delegate that the Contractor's opinion it is entitled to costs in respect of such delay or disruption; and
- (c) the Contractor further submits within a further 7 days, a notice in writing to the Principal's Delegate containing:
 - (i) a time impact analysis in a form reasonably required by the Principal's Delegate; and
 - (ii) sufficiently detailed particulars to enable the Principal's Delegate to make an informed decision thereon.

8.4.2 If the Contractor has an entitlement to delay costs under this clause 8.4, such delay costs will be assessed, calculated, and certified by the Principal's Delegate. The Contractor's entitlement is to be calculated by the following formula:

$R \times N$

Where:

R = the appropriate delay rate per day stated in Schedule 1 item 4.

N = the lesser of number of the days extension of time to which the Contractor is entitled to for causes in clause 8.3.1(a).

8.5 Liquidated Damages

8.5.1 Excluding a delay caused:

- (a) by Circumstance Beyond the Control of the Contractor;
- (b) by the Principal, or
- (c) in relation to which an extension of time has been granted under clause 8.3,

where the Contractor has not completed obligations by the Due Date (or other dates for progressive delivery indicated in the Delivery Plan), the Contractor must, if notified by the Principal, pay the Principal liquidated damages.

8.5.2 Liquidated damages must be calculated in accordance with the amounts set out in Schedule 1 item 5. Each party acknowledges that the liquidated damages are a genuine pre-estimate of the loss and damage that the Principal will suffer as a result of a delay in meeting the Due Date.

8.5.3 The Contractor must pay the liquidated damages from the Due Date until:

- (a) the Contractor successfully completes the obligations in relation to which liquidated damages have been applied; or
- (b) the Principal terminates this Agreement;

Whichever occurs first, but subject always to the maximum number of days specified in Schedule 1 item 5.

(Guide Note: Consider if a cap on liquidated damages is needed and modify clause. Liquidated damages can be made payable until the conforming Deliverables have been delivered, or the termination of the Agreement by the Principal.)

8.5.4 Liquidated damages paid under this clause 8.5

- (a) will be the Principal's sole remedy for any liability arising out of any delay in respect of which liquidated damages were paid; but
- (b) will not relieve the Contractor from any other liability or from meeting any other obligation under this Agreement.

9 Intellectual Property

9.1 Ownership

(Guide Note: Modify this clause where the Deliverables are of a unique nature and the Principal considers it necessary to own the intellectual property. Note that ownership may entail greater costs to the Principal than the irrevocable licence below, including use and modification).

- 9.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Contractor upon their creation.
- 9.1.2 The Contractor irrevocably grants to the Principal an exclusive royalty free licence to use and modify the Intellectual Property in the New Contract Material for so long as the Principal may require.
- 9.1.3 The Contractor acknowledges and agrees that the Principal or, where applicable, particular third parties, are the sole owners of the Intellectual Property rights in or in relation to the Existing Contract Material.
- 9.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Deliverables.
- 9.1.5 Upon completion of the Agreement, or at such other time as the Agreement or the Principal may require, the Contractor must fully and promptly disclose to the Principal all New Contract Material created or developed under or in connection with this Agreement.

10 Contractor's Specific Obligations

10.1 Licences and Approvals

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

10.2 Sub Contracting

(Guide Note: If the Principal does not need to approve the sub-contractors, this clause as well as all references to Approved Sub-Contractors can be deleted).

- 10.2.1 The Contractor may sub-contract specified Deliverables under this Agreement to an Approved Sub-Contractor identified in Schedule 1 item 6 on the terms of this clause.
- 10.2.2 The Contractor:
- (a) must make the Approved Sub-Contractor aware of the terms and conditions of this Agreement and must provide any information reasonably required by the Principal to demonstrate compliance with this obligation;
 - (b) shall not be relieved of its liabilities and obligations arising out of this Agreement by sub-contacting any Deliverables and shall be responsible for all the Approved Sub-Contractor's acts or omissions; and
 - (c) must ensure it has the right to terminate any sub-contract in accordance with the provisions of clause 15.

10.3 Compliance with Laws, Standards and NSW Government Requirements

- 10.3.1 The Contractor must, in carrying out this Agreement, comply with and ensure that any subcontractor or agent it engages in carrying out this Agreement complies with:
- (a) all applicable Statutory Requirements;
 - (b) the obligations imposed on the Principal by the Privacy and Personal Information Protection Act 1998 (NSW) in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with the Contract. The Contractor must, and

must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Principal by the Privacy and Personal Information Protection Act as though the Contractor were, as far as reasonably practicable, the Principal in relation to any such Personal Information. The Contractor will comply with any request of the Principal in relation to Personal Information and will not do anything that would cause the Principal to be in breach of its obligations under the Privacy and Personal Information Protection Act. *(Guide Note: If Personal Information is within the meaning of the Health Records and Information Privacy Act, then add 'Health Records and Information Privacy Act 2002 (NSW)' after Privacy and Personal Information Protection Act 1998 (NSW)').*

- (c) the NSW Government codes, policies, guidelines and Standards listed in Schedule 1 item 7 of or any other codes, policies, guidelines and Standards specified in writing by the Principal to the Contractor; and
- (d) Where a particular Standard has been agreed between the Contractor and the Principal, and that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time.

10.3.2 The Contractor must ensure that the Deliverables have not been produced using the 'worst forms of child labour' as defined in the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182).

10.4 Project Management by the Contractor

10.4.1 At least 14 days before commencing work on the Deliverables under this Agreement, the Contractor must document, submit, and implement the following which complies with applicable legislation and Schedules 2 of this Agreement:

- (a) An Industrial Relations Plan;
- (b) An Environmental Management Plan;
- (c) An Occupational Health & Safety Management Plan.

10.4.2 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting its obligations under this clause.

10.5 Material Safety Data Sheets (MSDSs)

(Guide Note: Use this clause where chemicals and materials used by the Contractor must be made known to the Principal for occupational health & safety reasons.

10.5.1 The chemicals and other material used by the Contractor under this Agreement must comply with Schedules 2. Any revised MSDSs must be submitted to the Principal's Delegate for review and approval.

10.6 Support Centre

(Guide Note: Use this 24/7 clause in high risk situations. In other situations a 0700 – 1700 hrs staffed help desk may suffice, Monday to Friday).

10.6.1 The Contractor is required to maintain a staffed support centre to provide a support service under this Agreement, to be available on a 24 hour 7 day basis in order to answer any queries raised by the Principal.

10.7 Notification to the Principal's Delegate

10.7.1 The Contractor must immediately inform the Principal's Delegate in writing of any problems or issues which prevent, may prevent, or have an impact on the delivery of the Deliverables under this Agreement which may include matters pertaining to industrial relations, occupational health & safety, and environmental management.

10.8 Contractor's Obligations in Relation to the Principal's Materials

10.8.1 The Contractor must;

- (a) not use any of the Principal's Materials other than for the purposes of this Agreement without the prior written consent of the Principal;

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- (b) not part with possession of any of the Principal's Materials unless the Principal has provided its prior written consent, nor create or allow the creation of any lien, charge or mortgage over any of the Principal's Materials;
 - (c) take all reasonable care of all the Principal's Materials including accounting for, preserving, installing or handling of the Principal's Materials;
 - (d) pay the costs, if any, set out in Schedule 1 item 8 for the Principal's Materials;
 - (e) not modify the Principal's Materials without the prior written consent of the Principal;
 - (f) promptly inform the Principal of any loss, destruction or damage to any of the Principal's Materials; and
 - (g) comply with any instruction of the Principal for preserving, forwarding, or disposal of any damaged Principal's Materials.
- 10.8.2 The Contractor shall indemnify the Principal for any loss or destruction of, or damage to any of the Principal's Materials caused by a breach of this Agreement or by any unlawful or negligent act or omission of the Contractor.
- 10.8.3 If no longer required for the purposes of this Agreement, the Principal's Materials must be returned to the Principal as soon as practicable unless other arrangements are agreed by the Parties.
- 10.9 Contractor's Obligations in Relation to Principal's Personnel**
- 10.9.1 The Contractor must ensure a safe system of work for any Personnel made available by the Principal who perform work under the control and direction of the Contractor.
- 10.10 Minimum Insurance Requirements**
- 10.10.1 Before commencing work under this Agreement, the Contractor must hold and maintain, and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances until at least the Due Date, or for such other period as may be specifically required by the Principal under this Agreement:
- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in item 9(a) of Schedule 1 in respect of each claim; and
 - (b) products liability insurance for at least the amount specified in item 9(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover; and
 - (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
 - (d) such other insurances as are specified in Schedule 1 item 9 of the Agreement Details.
- 10.10.2 All policies of insurance must be effected with an insurer rated A or better by AM Best or an equivalent rating organisation.
- 10.10.3 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 10.10.4 The Contractor must, when requested in writing by the Principal, supply proof that all insurance policies required by this Agreement are current.
- (a) The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Certificate of Currency of Insurances Obtained".
- 10.10.5 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.

10.10.6 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

10.11 General Indemnity

10.11.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:

- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its Personnel, its agents or their employees) in the performance of this Agreement.
- (b) any breach of this Agreement or the confidentiality deeds required by this Agreement.

10.11.2 The Contractor's liability in respect of, and indemnity given in, clause 10.11.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

10.12 Contractor's Warranties for Deliverables

10.12.1 The Contractor warrants that the Deliverables:

- (a) will be supplied in accordance with the requirements of this Agreement and all relevant Standards, applicable legislation, and industry codes;
- (b) will be free from any charge or liability;
- (c) will be new, free from defects in design, workmanship and materials;
- (d) will conform to the description, and sample (if any) approved by the Principal in Schedule 2 (except that if a sample is inconsistent with the Statement of Requirements, that latter must prevail) ;
- (e) will be of good merchantable quality and fit for use by the Principal;
- (f) If specified in the Statement of Requirements that they are required, the Contractor has established quality assurance arrangements for the provision of the Deliverables and will comply with and maintain those quality assurance arrangements up to and including the Due Date; and
- (g) The Contractor will not enter into any arrangement that impedes or is likely to hinder its provision of the Deliverables in a manner, and to a standard, that is not satisfactory to the Principal without obtaining the Principal's prior written consent.

10.13 Contractor's Warranties (General)

10.13.1 The Contractor warrants that the Deliverables do not infringe the Intellectual Property rights of a third party.

10.14 Warranty Period

10.14.1 The Contractor shall remedy any error or defect in warranted Deliverables that has been notified to it by the Principal during the Warranty Period in Schedule 2 at the Contractor's cost and expense.

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

10.15 Third Party Warranties

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

10.15.2 The Parties agree that the 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.

10.16 Financial Security

10.16.1 If requested by the Principal, the Contractor must provide Financial Security within 7 days of such request for the amount specified in Schedule 1 item 10. The Financial Security must be substantially in the form set out in Schedule 5 and must be issued by a financial institution acceptable to the Principal. The Principal will hold the Security as security for the due and proper performance of all the obligations of the Contractor under this Agreement.

10.16.2 If the Financial 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 in any appropriate court.

10.16.3 The Contractor agrees that the Principal will have no liability to the Contractor for any loss or damage suffered or incurred by the Contractor where the Principal exercises its rights under this clause in good faith.

10.16.4 The Contractor must not take any action to injunct or otherwise prevent the Principal from making a claim or receiving a payment under the Financial 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 Financial Security.

10.16.5 The Principal must release the Financial Security to the Contractor (or to whom the Contractor directs) if in the reasonable opinion of the Principal:

- (a) there is no prospect that money or damages will become owing (whether actually or contingent) by the Principal; and
- (b) 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.

10.17 Performance Guarantee

10.17.1 If requested by the Principal on reasonable grounds, the Contractor must arrange for a guarantor approved in writing by the Principal to enter into an agreement with the Principal, substantially in the form of the agreement set out in Schedule 7.

10.18 Mistakes in Information

10.18.1 The Contractor must pay for the extra costs (if any) incurred by the Principal 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.

10.19 Notification of Change in Control or Transfer of Ownership

10.19.1 During the Term, the Contractor must immediately notify the Principal in writing of any Change in Control or other action to reconstruct or amalgamate itself.

10.20 Notification of Contractor's Insolvency

10.20.1 The Contractor must immediately notify the Principal in writing of to Contractor's Insolvency and disclose the details of any action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement.

11 Delivery and Acceptance

(Guide Note: Modify this clause where Acceptance does not require Acceptance Testing)

11.1 Delivery

11.1.1 The Contractor must deliver the Deliverables in accordance with Schedule 2 and Schedule 6 and must obtain an acknowledgement of their delivery:

- (a) in the required nature and volume;

- (b) the Due Date/s for delivery of the Deliverables and or dates for progressive delivery as indicated in Schedule & Delivery Plan; and
- (c) the Site for that delivery specified in item 13 Schedule 1.

11.1.2 Delivery and receipt of the Deliverables shall not be taken to be an acceptance by the Principal.

11.2 Expenses of Delivery

11.2.1 The Contractor must pay for all costs associated with the delivery of the Deliverables to the Principal including freight, insurance and other charges, and the return of Deliverables wrongly supplied except where it is expressly provided in this Agreement.

11.3 Acceptance Testing

11.3.1 If specified in Schedule 2, Acceptance Tests must be conducted in relation to the Deliverables in accordance with the Acceptance Test Plan and the Acceptance Criteria specified in Schedule 2. The costs of the Acceptance Testing must be borne by the Principal, except as provided in clause 11.9.1 (b) and (d) of this Agreement.

11.4 Maintenance of the Deliverables during Acceptance Testing

11.4.1 Unless otherwise provided in the Acceptance Test Plan, maintenance of the Deliverables during Acceptance Testing shall be the responsibility of the Contractor.

11.5 Principal's Availability

11.5.1 The Principal's Delegate must be available between the hours 9.00 am and 4 pm on a business day to give any instruction necessary for prompt commencement of any Acceptance Test.

11.6 Acceptance Participation

11.6.1 Each Party shall provide reasonable cooperation and assistance to enable the performance of any Acceptance Test.

11.6.2 The Parties shall be entitled to observe, and to the extent reasonable, participate in the performance of any Acceptance Test.

11.7 Acceptance Test Completion

11.7.1 Upon completion of the Acceptance Test, the Principal must provide a written test notification specifying:

- (a) a written summary of that Acceptance Test; and
- (b) the results achieved from that Acceptance Test.

11.8 Supplementary Tests

11.8.1 The Principal may at any time during the Acceptance Period require the Contractor to carry out Supplementary Tests.

11.9 Failure

11.9.1 Where a Deliverable fails an Acceptance Test or part thereof, the Principal may:

- (a) waive the requirement for the Acceptance Test to be satisfactorily completed;
- (b) require that further reasonable Acceptance Tests be conducted at the Contractor's expense, such tests to be satisfactorily completed in accordance with this clause 11.9.1 within the period directed by the Principal;
- (c) conditionally accept the Deliverable, subject to the Contractor agreeing at its own cost to deliver a work-around or to otherwise rectify any outstanding deficiency, acceptable to the Principal; or
- (d) subject to the Principal having provided at least one opportunity to the Contractor conduct further Acceptance Tests at the Contractor's cost, the Principal may without limiting any other remedy, reject and require the removal of the Deliverable or any materials associated with the rejected Deliverable.

11.10 Acceptance

- 11.10.1 The Principal shall be treated as having accepted any Deliverables in the event that the Principal:
- (a) original delivery – notifies the Contractor that the Principal has accepted the Deliverables;
 - (b) replacement delivery – notifies the Contractor that the Principal has accepted any previously rejected Deliverables following replacement, modification and/or redelivery by the Contractor in compliance with any instruction by the Principal;
 - (c) test failure – fails to perform any Acceptance Test within the Acceptance Test Period for any reason, except for any delay resulting from any action of the Contractor unless otherwise agreed by the Parties;
 - (d) notification of failure – fails to notify to the Contractor of delivery rejection if the Deliverables are provided within the Acceptance Notification Period; or
 - (e) use prior to acceptance – uses the Deliverable for its business purposes without notification to the Contractor.

11.11 Rejection and Actual Acceptance Date

- 11.11.1 The Principal may reject the Deliverables in the event that the Deliverables:
- (a) are defective or are not in good order and condition, or
 - (b) do not comply with or perform in accordance with Schedule 2; or
 - (c) fail any Acceptance Tests.
- 11.11.2 The Actual Acceptance Date (AAD) occurs:
- (a) where Acceptance Tests are not required, five business days or such other period that is specified in Schedule 2 following the delivery of a Deliverable in accordance with this Agreement; or
 - (b) where Acceptance Tests are required, on the date the Principal issues a certificate of acceptance within the Acceptance Notification Period.
- 11.11.3 The AAD for a Deliverable will occur, in all cases than those specified in clause 11.11.2 on the date acceptance is deemed to have occurred in clause 11.10.1.

11.12 Rejection Notification

- 11.12.1 The Principal may in any rejection notice provide instructions, which may include a reduction in Contract Price, to the Contractor relating to the removal, replacement, modification, rectification and/or redelivery of any rejected Deliverables.

11.13 Documentation

- 11.13.1 The Contractor must provide, at no additional cost to the Principal, at least one copy of the Documentation and such Documentation as the Contractor usually makes available free to its other customers, upon supply of the Deliverables to the Principal.
- 11.13.2 Additional copies of the Documentation must, if requested by the Principal, be provided by the Contractor at the Contract Price specified in Schedule 3, or if not specified, free of charge.
- 11.13.3 The Contractor must amend inaccurate Documentation and must promptly supply to the Principal a duly amended version of the Documentation at no additional cost to the Principal.
- 11.13.4 The Principal may use the Documentation for any training purpose associated with the Deliverables.

11.14 Risk and Title

- 11.14.1 Title in the Deliverables shall pass to the Principal on satisfactory delivery to the Principal, as evidenced by the signature on the delivery docket of a duly authorised representative of the Principal. Notwithstanding that the Principal has taken delivery, the

Contractor will remain liable for any loss or damage to the Deliverables and/or their Components, which may have occurred prior to delivery, and for any non-compliance of the Deliverables with the Statement of Requirements.

12 Confidentiality

12.1 Obligations of Parties

- 12.1.1 Except to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information, neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement, unless the other Party gives its prior written consent:
- 12.1.2 Each Party may disclose Confidential Information to its officers, employees and sub-contractors where such disclosure is essential to carrying out their duties or in accordance with this Agreement.
- 12.1.3 Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement.
- 12.1.4 The Principal may at any time require the Contractor to arrange for its Personnel engaged in the performance of this Agreement to execute without delay a Deed of Confidentiality, substantially in the form of Schedule 4.
- 12.1.5 This clause will survive the termination of this Agreement.

13 Principal's Obligations

13.1 Principal to Provide Information

- 13.1.1 The Principal must provide the Contractor with its Statement of Requirements.
- 13.1.2 The Principal must when required under this Agreement or as otherwise reasonably required by the Contractor, as soon as possible:
 - (a) make available to the Contractor all relevant instructions, information, data, documents, specifications, plans, drawings, and other materials; and
 - (b) answer queries made by the Contractor relating to the Principal's requirements in connection with this Agreement.

13.2 Principal's Materials

- 13.2.1 The Principal must provide the Principal's Materials specified in Schedule 1 item 8.
- 13.2.2 The Principal's Materials must comply with Schedule 2.
- 13.2.3 Provided the Contractor complies with its obligations under clause 10.8, the Principal must repair or replace the Principal's Materials within a reasonable time of becoming aware that the Principal's Materials do not comply with the Schedule 2.

13.3 Principal's Personnel

- 13.3.1 The Principal may make available personnel to work with the Contractor and the Parties will identify such personnel and their roles in Schedule 1 item 12.
- 13.3.2 The Principal must use reasonable efforts to ensure that personnel made available to work with the Contractor have the requisite competencies, skills, and experience to perform the tasks.

14 Conduct and Dispute Management

14.1 Co-operation

- 14.1.1 The Parties must do all they reasonably can to co-operate in matters relating to this Agreement, but their rights and responsibilities under this Agreement remain unchanged unless the Parties agree in writing to vary them.

14.2 Duty not to Hinder Performance

14.2.1 Each Party must do all it reasonably can to avoid hindering the performance of the other under this Agreement.

14.3 General

14.3.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed:

- (a) Amicable Resolution (clause 14.4);
- (b) Expert Determination (clause 14.5)

14.4 Amicable Resolution

14.4.1 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 this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.

14.4.2 The Party submitting the Issue Notice must submit it to the other Party’s authorised representative which in the case of the Principal is the Principal’s Delegate, and in the case of the Contractor is the Relationship Manager.

14.4.3 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.

14.4.4 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.

14.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.

14.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided (“the Referral Notice”).

14.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.

14.4.8 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.

14.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

14.5 Expert Determination

14.5.1 If a Referral Notice is given under clause 14.4, 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.

14.5.2 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 been unable to agree on.

14.5.3 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 determination set out in Schedule 8;
 - (d) any other matter which is relevant to the engagement.
- 14.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 14.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Schedule 1 item 14 (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.
- 14.5.6 Unless a party has a right to commence litigation under clause 14.5.5:
- (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.

15 Termination by the Principal

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 response to the Principal's Request for Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;
 - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
 - (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
 - (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
 - (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement except 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 this Agreement.

15.2 Effect of Termination of Agreement for Cause

- 15.2.1 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 or Components in the possession or control of the Contractor as at the date of termination;
 - (b) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due to the Contractor and/or from the Security (if any); and
 - (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

15.3 Termination for the Principal's Convenience

- 15.3.1 The Principal may terminate this Agreement in whole or in part for its convenience by giving 14 days' written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.
- 15.3.2 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:
 - (a) must be supported by written evidence of the costs claimed;
 - (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.
- 15.3.3 The Principal shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Principal.

16 General

16.1 No Assignment or Novation

- 16.1.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal, which consent may be withheld at their absolute discretion.
- 16.1.2 The Contractor acknowledges that the Principal may make financial checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

16.2 Conflicts of Interest

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

16.3 Records and Access to Records

- 16.3.1 The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice and in accordance with Schedule 2.
- 16.3.2 The Contractor must, within a reasonable time of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that the Principal reasonably requires.

16.4 Waiver

- 16.4.1 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.

16.5 Severability

- 16.5.1 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.

16.6 Notices

- 16.6.1 Notices must be sent to the other Party at the address shown in Schedule 1 item 15, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 16.6.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 16.6.3 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.

16.7 Counterparts

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

16.8 Applicable Law

- 16.8.1 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.

16.9 No agency/no employment/no partnership

- 16.9.1 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.

16.10 Exchange of Information Between Government Agencies

- 16.10.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 16.10.2 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.
- 16.10.3 The Principal regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 16.10.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

16.11 Pricing Information

The Contractor agrees that, subject to clause 12 (Confidentiality), product pricing information (including discounts, commissions and rebates as appropriate) may be disclosed to any person by the Board at its sole discretion in the form of a User Guide or in any medium of communication it deems appropriate.

16.12 Government Information (Public Access)

- 16.12.1 The parties acknowledge that information relating to this Agreement including information provided by the Contractor to the Board may be disclosed in accordance with the Government Information (Public Access) Act ("GIPA Act").

16.13 Performance Monitoring

Guide Note: Use clause only if response to SME participation questions or a SMEPP is required to be completed by the tenderer in the tender response. Agencies are to ensure that the responses to SME participation questions or SMEPP prepared by the

successful tenderer form part of the contract with the agency on the basis of impact on jobs, investments, skills development and technology transfer

- 16.13.1 The Contractor acknowledges that it is aware that reliance was placed by the Principal on the responses to the SME participation questions or SMEPP in the evaluation of the tender submitted by the Contractor and in the Principal entering into this agreement with the Contractor. The Contractor agrees to comply with the requirements and commitments provided for in the responses to the SME participation questions or SMEPP tendered by the Contractor (copy at Schedule 10 of this agreement) and to take all steps reasonably required to enable the Principal to monitor compliance by the Contractor with the SMEPP.
- 16.13.2 The Contractor and the Principal agree that the Principal may establish mechanisms to monitor compliance by the Contractor with the requirements and its commitments under the responses to the SME participation questions or SMEPP. The Contractor and the Principal agree that non-compliance by the Contractor of its responses to the SME participation questions or SMEPP commitments will constitute a breach of contract and entitle the Principal to terminate the contract for cause. Further, the Contractor agrees that the Principal may take into consideration non-compliance by the Contractor with the tendered responses to the SME participation questions or tendered SMEPP when evaluating tenders submitted by the Contractor in the future for other agreements.

Schedule 1 Agreement Details

Item 1	Contractor's Name
Item 2 (a) Item 2 (b)	Commencement Date (clause 2.1.1) Due Date (clause 2.1.1)
Item 4	Delay Costs (clause 8.4)
Item 5	Liquidated Damages per day (clause 8.5.2) Maximum number of days for liquidated damages (clause 8.5.3)
Item 6	List of approved Sub-Contractors (Clause 10.2) <i>(Guide note: List name and particulars of Approved Sub-Contractors).</i>
Item 7	Codes and Standards (clause 10.3) <i>(Guide Note: standard codes and guidelines have been inserted here. Insert any other codes, policies, guidelines, and standards which the Contractor must comply with).</i> a) Code of Practice for NSW Government Procurement. b) Implementation Guidelines for NSW Government Procurement. c) Occupational Health & Safety Procurement Guidelines. d) Environmental Management Procurement Guidelines. e) Industrial Relations Systems Guidelines. f) Code of Behaviour for the Protection of Children and Other Vulnerable People (available at http://www.nswprocurement.com.au/PDF/Tenders/Child-Protection-Code-of-Behaviour-for-the-Protect.aspx) <i>(Guide Note: Delete reference to Code of Behaviour for the Protection of Children and Other Vulnerable People if not applicable)</i> g) Local Jobs First Plan
Item 8	Principal's Materials (clause 10.8 and clause 13.2) a) Specify Principal's Materials b) Specify costs for Principal's Materials.
Item 9	Insurances (clause 10.10) a) Public Liability Insurance Limit of Indemnity: \$AUS_M b) Products Liability Insurance Limit of Indemnity: \$AUS_M <i>(Guide Note: List any other insurances here)</i>
Item 10	Financial Security (clause 10.16): <i>(Guide Note: If clause 10.16 (Financial Security), is NOT USED, retain the heading of this Item and write the words NOT USED next to the words "Amount" and "Form" below).</i> Amount: Form:
Item 11	Principal's Delegate (clause 6.1)

Agency Specific Part D one off high - Goods

<p>Item 12</p>	<p>Personnel</p> <p>Principal's Personnel (clause 13.3) <i><u>(Guide Note: list names, designations and roles)</u></i></p> <p>Key Personnel (clause 13.3)</p> <p>Relationship Manager (clause 6.2)</p> <p>Name:</p> <p>Address:</p> <p>Position:</p> <p>Telephone: Facsimile</p>
<p>Item 13</p>	<p>Site for Delivery (clause 11.1.1.(c))</p>
<p>Item 14</p>	<p>Expert Determination Amount (clause 14.5.5): <i><u>Guide Note: If this Agreement is worth more than \$50M annually, the Expert Determination Amount should be \$1.0M. If it is worth less than this, the Expert Determination Amount should be \$100,000.</u></i></p> <p>AUD:</p>
<p>Item 15</p>	<p>Notices to: (clause 16.6)</p> <p>The Contractor's contact name and address:</p> <p>Name:</p> <p>Address:</p> <p>Position:</p> <p>Telephone: Facsimile:</p> <p>The Principal's contact name and address:</p> <p>Name:</p> <p>Address: Telephone: Facsimile:</p>

Schedule 2 Statement of Requirements

Schedule 3 Pricing

Schedule 4 Deed of Confidentiality

THIS DEED DATED THE _____ day of _____ 200__

BETWEEN [Name and address of Principal] ("the Principal")

AND [Name and address of Contractor] ("the Contractor ")

RECITALS:

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

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

"Confidential Information" means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Principal as confidential; or
 - (c) the Contractor knows or ought to know is confidential;
- and includes 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 [*insert name of Contractor*]

"Contract Material" means:

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

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

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

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

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

2.2 General

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

- 2.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
 - (d) anything (including a right, obligation or concept) includes each part of it.
- 2.2.3 If this Agreement 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

- 3.1.1 The Contractor must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.1.2 The Principal may grant or withhold its consent in its discretion.
- 3.1.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Contractor procure the execution of a Deed in these terms by the person to whom the Contractor proposes to disclose the Confidential Information.
- 3.1.4 If the Principal grants consent subject to conditions, the Contractor must comply with those conditions.
- 3.1.5 Despite cl.3.1.1, the Contractor 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 Contractor or in accordance with this Deed.
- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Contractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the expressed prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.

- 3.1.8 The Disclosing Party may at any time require the Contractor to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.
- 3.1.9 If any person being any director, officer, contractor or employee of the Contractor, who has had access to the Confidential Information in accordance with this clause leaves the service or employ of the Contractor then the Contractor will ensure that that person does not do or permit to be done anything which, if done or permitted to be done by the Contractor, would be a breach of the obligations of the Contractor under this Deed.
- 3.1.10 The requirements of this Deed do not affect the obligation of the Contractor to disclose any Confidential Information where it is required to be disclosed at law.

4. Restriction on use

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

5. Survival

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

6. Rights of the Disclosing Party

6.1 Production of Documents

- 6.1.1 The Disclosing Party may demand the delivery up to the Disclosing Party of all documents in the possession or control of the Contractor containing the Confidential Information.
- 6.1.2 The Contractor must immediately comply with a demand under this Clause 6.

6.1.3 If the Principal makes a demand under this clause 6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Contractor 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 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

The Principal may take legal proceeding against the Contractor 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 Contractor 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 Contractor or the permitted recipients other than in accordance with this Deed.

8. No exclusion of law or equity

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

9. Waiver

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

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

10. Remedies Cumulative

10.1 Cumulative

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

10.2 Other Instruments

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

11. Variations and amendments

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

12. Applicable law

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

13. Notices

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

Executed as a Deed

SIGNED, SEALED AND DELIVERED)
)
by [*name and position of person signing*]) _____
for and on behalf of the Principal)
for and on behalf of the Crown in right of)
the State of New South Wales but not so)
as to incur any personal liability in the)
presence of:)

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

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

Schedule 5 Financial Security

Guide Note: It is recommended that the Principal only accepts Financial Security from financial institutions supervised by the Australian Prudential Regulation Authority (APRA). For approved financial institutions, please visit the APRA website: <http://www.apra.gov.au/adi/ADIList.cfm>. The list of Authorized Deposit-Taking Institutions indicates acceptable institutions. If you receive an Undertaking from an organization not on the list, please bring it to your Unit Manager's attention.

THIS DEED is made the day of20...

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

For the benefit of [insert name of Principal] for and on behalf of the Crown in the right of the State of New South Wales (“**Beneficiary**”)

IT IS AGREED

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

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

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

This deed is governed by and must be construed in accordance with the laws of insert applicable State or Territory.

EXECUTED AS A DEED

Guide Note: For the Form of Undertaking to be effective, it must be executed as a deed by the financial institution providing the undertaking.

Financial Institution/Company

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

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

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

<Director/Secretary>

Director

Print Name

Print Name

Schedule 6 Delivery Plan

Schedule 7 Performance Guarantee

Schedule 8 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.

Role of Expert

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

Schedule 9 Deed - smartbuy® Requirements

(Guide Note: This tri-partite deed must be executed between the Board, the Principal, and the Contractor where the Deliverables supplied by the Contractor are hosted on smartbuy®. Where the Agreement is between the Board and the Contractor, this deed may be made bi-partite). If the Deed – smartbuy Requirements Agreement is bipartite (i.e. between the Board and the Contractor, then delete number 2). Also include the term ("or Principal") after the Board in number 1.

This Deed made the _____ day of _____ 20__ between

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

Address: _____

Telephone: _____

Background

- A. The Contractor has tendered to supply goods and/or services ("Deliverables") to[\[Insert name of Principal under the Agreement\]](#) ("the Principal") pursuant to and upon terms and conditions set out in Contract No..... [[insert contract no.](#)] ("the Agreement").
- B. It is a condition of the Agreement that the Contractor will use smartbuy® for certain specific purposes connected with this Agreement including hosting its Deliverables catalogue and [\(Guide note \)](#).

Agreement

1. smartbuy® Licence

- 1.1 The Board has granted to the Contractor a non-exclusive, non-transferable, revocable licence to use smartbuy® for the performance of its obligations under this Agreement.

2. Authorised User

- 2.1 The Board may approve a person nominated by the Contractor and allow such person to access or use smartbuy® and become an Authorised User or an Administrator.
- 2.2 The Board may in its discretion decline to accept a person nominated by the Contractor as an Authorised User or an Administrator, without stating its reasons.

3. Contractor Obligations

- 3.1 The Contractor must provide any information that is reasonably required by the Board for use by smartbuy® including Contractor Information. The Contractor must ensure that all information provided to the Board (including maintaining information in the smartbuy® system) is current, correct, and complete at all times. The Contractor must immediately notify the Board of any changes required to the Contractor Information.

- 3.2 The Contractor agrees that Contractor Information will be published on smartbuy® by the Board. Contractors are responsible to ensure that all subcontractors are aware that their information will be published by the Board on smartbuy® as part of Contractor Information.
- 3.3 The Contractor must:
- a) conform to the Board's current password policies;
 - b) comply with all directions given by the Board in relation to the Contractor's access and/or use of smartbuy®; and
 - c) ensure that Transactions are only made for and on behalf of the Contractor and in accordance with this Agreement
 - d) provide the Board with an appropriate number of dedicated personnel to ensure the appropriate use of smartbuy®.

4. Catalogues

- 4.1 The Board requires the Contractor (unless otherwise specified by the Board) to take responsibility to update and actively maintain Catalogue Information provided by the Contractor on smartbuy®, or its Externally Hosted Catalogue.
- 4.2 The Contractor is responsible for the accuracy and completeness of Catalogue Information including any images supplied by the Contractor.
- 4.3 The Contractor is required to provide Catalogue Information to an acceptable data standard, approved by the Board. Catalogue Information must include all required item attributes including United Nations Standards Products & Services Codes (UNSPSC). The Contractor may either provide developed Catalogue Information to the Board or may request the Board to provide it with assistance, at a fee.
- 4.4 The Board may transform data provided by the Contractor in order to load it into smartbuy® however the values and meaning of the data will not be modified without the prior agreement of the Contractor.
- 4.5 If the Board produces formatted Catalogue Information for the Contractor, then the Contractor must ensure that the formatted Catalogue Information is current, correct, and complies with its obligations under this Agreement.
- 4.6 The Board may review any Catalogue Information and require the Contractor from time to time to update or take off-line its existing Catalogue Information, add new Catalogue Information and/or verify that the Catalogue Information is accurate, current and in accordance with its obligations under this Agreement or applicable Codes and Standards.
- 4.7 The Board reserves the right to audit the Contractor's Externally Hosted Catalogue Information from time to time for compliance with this Agreement.
- 4.8 The Contractor may only make available information or data, including any Catalogue Information in an Externally Hosted Catalogue to NSW agencies with the Board's prior written consent. Where such approval is given the Contractor will provide the Board with administrator access to it's Externally Hosted Catalogue to enable the Board to conduct audits as required.
- 4.9 When approved to connect an Externally Hosted Catalogue, the Contractor must set up accounts for Eligible Customers within two working days from receipt of lodgement of a completed request and ensure that the Principal can access Catalogue Information.
- 4.10 Externally Hosted Catalogues shall not provide functionality that allows the Principal to directly place orders for Deliverables. The Contractor agrees that, after the Principal has finished its browse activities, the order for the Deliverables in Externally Hosted Catalogues must be transmitted via smartbuy®.
- 4.11 The Contractor's Externally Hosted Catalogue(s) should be available 7 days a week excluding any scheduled maintenance. Contractors must, in relation to their Externally Hosted Catalogues, give the Board reasonable prior notice of any scheduled maintenance and the time it will occur. The Contractor agrees to monitor the

performance of its system and notify the Board immediately of any outage of its Externally Hosted Catalogue, except for any scheduled maintenance that the Contractor has notified the Board about.

- 4.12 The Contractor agrees to nominate in writing to the Board within 2 days of entry into this Agreement a person who can be contacted between 9am and 5pm during normal business days to receive and respond to enquiries relating to its Externally Hosted Catalogues.
- 4.13 The Contractor agrees to include on its webpage a customised error message confirming that the error is with the Externally Hosted Catalogue and not with smartbuy®.

5. Provision and Updating of Catalogue Information

- 5.1 The Contractor is required to provide electronic Catalogue Information in an electronic format acceptable to the Board no later than 30 days from the commencement of this Agreement, inclusive of Catalogue Information specific to particular Eligible Customers.
- 5.2 All Catalogue Information must be updated in strict accordance with the frequency and conditions outlined in this document from the date on which the Catalogue Information is initially hosted on smartbuy® as per clause 4 above.

6. Availability

- 6.1 The Board may in its discretion limit or suspend the Contractor's access or use of smartbuy® during the Term of this Agreement.
- 6.2 Unless otherwise notified by the Board, smartbuy® will be accessible 7 days a week except during any necessary scheduled maintenance, unscheduled maintenance or unavailability caused by a circumstance beyond the reasonable control of the Board or its third party suppliers.
- 6.3 The Board will endeavour where reasonably practicable to notify the Contractor of any:
- a) changes or upgrades to smartbuy®'s functionality that materially affect the Contractor's use of smartbuy®;
 - b) changes in equipment or configuration requirements of smartbuy® that materially affects the Contractor's ability to access and use smartbuy®.
- 6.4 The Board agrees to make available the NSW Procurement Client Support Centre to assist the Contractor in relation to any defects it experiences in the operation or functionality of smartbuy®. The Contractor agrees to report any issues or defects to the Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@services.nsw.gov.au. Unless the Contractor is otherwise notified by the Board, the Client Support Centre will be available from 8.30 am to 5.00 pm Monday to Friday, excluding public holidays. The Board may change the times during which the Client Support Centre is available from time to time.

7. smartbuy® Security

- 7.1 smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy®.
- 7.2 Key elements of the security regime include:
- a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
 - b) Robust firewalls;
 - c) Multi level system design;
 - d) Virus protection;
 - e) Password protection and restricted access permissions;
 - f) Intrusion detection systems;
 - g) Audit trails of user activities;
 - h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;

- i) Programme of system upgrades to ensure security compliance.

7.3 The Contractor must:

- a) have in place procedures to prevent any unauthorised use of smartbuy® by any person on its behalf (including Administrators, Authorised Users or an unauthorised third party) and these procedures must include provision to ensure its Administrators and Authorised Users are prevented from accessing or using smartbuy® upon them ceasing to be authorised to do so;
- b) make all reasonable efforts to ensure that any information (including documents) that it transmits via smartbuy® will be free from viruses, worms or trojan horses or any other malicious program that is capable of causing damage to smartbuy® or smartbuy®'s users;
- c) make all reasonable efforts to ensure that its systems are secure and are kept up to date with adequate anti-virus software;
- d) notify the Board immediately of any significant security breaches that it suffers or threats that it is aware of.

7.4 The Contractor acknowledges that user logins and passwords used to access smartbuy® are transmitted using HTTPS protocol. Delivery of business documents (such as purchase orders and/or Invoices) is done through the following mechanisms, depending on the election of the Contractor:

- a) Facsimile;
- b) Unencrypted emails;
- c) SFTP: File Transfer Protocol over Secure Sockets Layer (SSL) (Secure Shell (SSH) available on request);
- d) HTTPS protocol: Hypertext Transport Protocol over Secure Sockets Layer (SSL).

7.5 While the Board will make reasonable endeavours at all times to make smartbuy® secure, the Board does not guarantee:

- a) the security of smartbuy®, the internet, and any other system, including the system used by the Board to access or use smartbuy®;
- b) that the delivery of business documents will be uninterrupted or secure;
- c) that smartbuy® will be uninterrupted, timely, secure or error-free;
- d) that smartbuy®, the internet, and any other system, including the system used by the Contractor, will be free of viruses or errors.

The Contractor must immediately notify the Board if it suspects, becomes aware, or has knowledge of any unauthorised use of smartbuy® by another person.

7.6 The Board may provide access and password details ("Passwords"):

- a) to Administrators to be supplied to Authorised Users; and/or
- b) directly to the e-mail addresses of Authorised Users who are acceptable to the Board.

7.7 The Contractor must take all reasonable steps to protect and keep secret any Passwords that the Board provides to it as per clause 7.6. The Contractor acknowledges and agrees that Board will rely on their use of a Password as conclusive evidence of their identity and authority, without further investigation. The Contractor must immediately notify the Board if it suspects, knows about or has knowledge that a Password has become compromised or known to another person and/or of any unauthorised use of a Password by another person has occurred, as per clause 7.5.

8. Minimum Configuration

8.1 To access and use smartbuy® TRADE the Contractor must have the following minimum configuration and the Contractor warrants that it has:

- a) Windows 95, 98, 2000 or XP, IE 5.5 or later, a recommended video resolution of 1024X768; and
 - b) will configure its web browser to use SSL3.0 and ensure that the auto-complete or similar function is switched off for "Contractor name and passwords on forms".
- 8.2 These configurations may be varied by the Board due to changes or upgrades to smartbuy® from time to time. The Board will, wherever practicable, notify the Contractor of any variations to the configurations. The Contractor acknowledges that any access speed to smartbuy® and the performance of smartbuy® is limited by the Contractor's Internet service or other infrastructure and equipment.
- 8.3 If the Contractor has any queries in relation to these configuration requirements it may contact the Client Support Centre .

9. Improper Use of smartbuy®

- 9.1 The Contractor must not intentionally, recklessly or negligently interfere with any other parties' use of smartbuy®. The Contractor must not use smartbuy® or any service provided by the Board to post or transmit any information or provide a link to any third party website that:
- a) defames, threatens or menaces any person;
 - b) breaches any law or regulation or infringes a third party's rights;
 - c) is indecent, pornographic or obscene;
 - d) knowingly transmits any virus, computer programme, code, device, product, components or other disabling feature that prevents, inhibits or impairs the performance of smartbuy®;
 - e) is an unsolicited commercial electronic message promoting the supply of goods or services.
- 9.2 The Contractor must ensure that its employees, officers and agents view or access any material published or made available on smartbuy® TRADE and/or smartbuy® CONNECT in accordance with this Agreement.
- 9.3 The Contractor must not use smartbuy® to sell, buy or dispose of, or attempt to sell, buy or dispose of any goods or services that are not specified by the Board under this contract, are unlawful or unauthorised.

10. Disclaimer

- 10.1 The Board makes no warranties in relation to the condition, fitness, merchantability, quality and title of the Deliverables purchased by the Principal using smartbuy®. To the extent permitted by law, the Board expressly excludes all conditions, warranties and terms whether express, implied, or statutory, which would otherwise be implied by law, conduct or otherwise into this Agreement.

11. Privacy

- 11.1 The Contractor warrants, in respect of any personal information provided in connection with the use of smartbuy®, that the information is accurate, up to date and complete, and that individuals to which the personal information refers authorise its collection and are aware:
- a) that personal information is being collected, and will be held by the Board at the address shown in smartbuy® or by its third party suppliers;
 - b) that the information is being collected for the purpose of managing smartbuy®, and the administration of this Agreement, and may be made available to the Principal for those purposes;
 - c) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and
 - d) of the existence of any right of access to, and correction of, the information.

11.2 The Contractor acknowledges that its use of smartbuy® indicates its knowledge and acceptance of the privacy policy displayed on smartbuy®. smartbuy® may contain links to other websites. The Board is not responsible for the privacy practices or the content of such sites. The Board requires the Contractor to read the privacy statements in these linked sites, as their privacy policies may differ from those of the Board.

12. Integration with smartbuy® CONNECT

12.1 All electronic documents transmitted through smartbuy® TRADE are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Eligible Customers and Contractors, without passing through the smartbuy® TRADE.

12.2 The following Transmission Types and Document Types are supported by smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

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

12.3 smartbuy® CONNECT supports the following business documents via the Trading Channels outlined above.

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

12.4 Contractors must adhere to the smartbuy® Transmission specifications and smartbuy® Document specifications for the Trading Channel selected (specifications available on request. If you require more information contact the NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@services.nsw.gov.au). For all documents implemented, Contractors must be capable of reading and actioning all mandatory and optional fields as defined in the document specifications.

12.5 The Board may assist in the development of an estimate of the costs of any integration to smartbuy® CONNECT. Firm pricing cannot be determined until the conclusion of a specific implementation planning study. Costs will vary depending upon the level of integration and their capability. Any integration of their systems with smartbuy®, including any Externally Hosted Catalogues may only take place with the Board's prior consent. The Contractor acknowledges that they will support and fund the establishment, maintenance and regular content update costs associated with integrating their systems with smartbuy® CONNECT. The Contractor is responsible and liable for any damage or claim that the Board suffers or incurs resulting from or in connection with the integration or interoperation of their systems with smartbuy®.

13 Invoices

- 13.1 It is a requirement that the Contractor provides electronic invoices to smartbuy® for all purchases by all NSW Government agencies against this Agreement - irrespective of how the purchase order is received (for example, via fax, telephone, mail, vendor online ordering system, etc). Contractors must send invoices via one of three channels:
- a). Via the HTTPS/xCBL3.0 Trading Channel adhering to the smartbuy® HTTPS Channel Specification and the smartbuy® xCBL3.0 Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.
 - b). Via the SFTP/CSV Trading Channel adhering to the smartbuy® SFTP Channel Specification and the smartbuy® CSV Invoice Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.
 - c). Via a hosted web-portal provided by smartbuy® that allows Contractors to enter invoices online.

14 Externally Hosted Catalogues

- 14.1 Where Contractors are required to provide an Externally Hosted Catalogue the catalogue must utilise the OCI v3.0 protocol over HTTPS for both inbound and outbound requests.

**Schedule 10 Response to SME Participation Questions or
SMEPP**

Guide Note: Insert here, if applicable, the successful tenderer's response to SME questions or the tendered SMEPP

EXECUTED AS AN AGREEMENT

Guide Note: If the SCCB is executing the Agreement on behalf of the client agency as the Principal, please select the signatory box for the SCCB.

..... If Agency is executing the Agreement, please select the signatory box for Agency..

..... then select from the Library options the relevant contractor (Company or Individual) that will sign the Agreement.

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

Witness

Signatory

Print Name

Print Name

Position

For Government Agency

SIGNED AND DELIVERED by the)
signatory for and on behalf of <insert name)
of Principal> for and on behalf of the)
Crown in right of the State of New South
Wales but not so as to incur any personal
liability in the presence of:

Witness

Signatory

Print Name

Print Name

Position

Option 1. Company

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

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

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

<Director/Secretary>

Director

Print Name

Print Name

Option 2. Company

Please use this clause when the sole director is also the sole secretary.

SIGNED AND DELIVERED by <insert name of company>, ABN <insert ABN number> in accordance with section 127 of the Corporations Act and in the presence of :

Witness

Signatory

Print Name

Print Name

Option 3. Individual

Agency Specific Part D one off high - Goods

SIGNED by <name of individual> in the)
presence of:)
)

Witness

Signatory

Print Name

Print Name