



**Transport
for NSW**

Invitation To Tender

Professional Services (PSC-1890)

**Engineering and Cost Estimation Services for the
Casino to Murwillumbah Rail Line Study**

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Tender Schedules

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Annexures

Annexure 1 – Services Brief

Annexure 2 – Professional Services Contract

1 GENERAL

1.1 INTRODUCTION

Transport for NSW (TfNSW) is seeking Tenders from experienced and suitably qualified organisations for the provision of the Engineering and Cost Estimation Services for the Casino to Murwillumbah Rail Line Study as set out in Annexure 1, Services Brief.

This Invitation to Tender (ITT) outlines the details to be provided by Tenderers and sets out the requirements and conditions for the Tender. This ITT includes the documents which will form the basis of the contract under which the successful Tenderer will be engaged.

TfNSW envisages the award of the contract for the Engineering and Cost Estimation Services for the Casino to Murwillumbah Rail Line Study by February 2012.

Any reference to a clause is a reference to clause of this ITT, unless otherwise indicated.

1.2 MINIMUM REQUIREMENTS

The Tenderer must demonstrate as a minimum:

- that the Tenderer or the Tenderer's Team has successfully undertaken rail infrastructure condition surveys including relevant testing and investigations within an operational railway with an engagement value of greater than \$200,000.
- that the Tenderer or the Tenderer's Team has successfully managed and delivered public transport feasibility studies involving either heavy rail, light rail or similar transport system; with an engagement value of \$200,000. These studies must include rail corridor investigation, environmental risk assessment and constructability.
- that the Tenderer or the Tenderer's Team has undertaken engineering and cost estimation services, on rail infrastructure engagements with a total value of at least \$500,000, within the last 3 years. The engagements must include technical disciplines such as civil, structural, track, signalling, communication and control systems.
- that the Tenderer or the Tenderer's Team has experience in preparing Asset Management Plans required for a safe and efficient operation of a railway line.

1.3 CONTACT OFFICER

Refer all requests for information or advice regarding the tender process and the ITT Documents to the Contact Officer:

Name: Chris Menin

Email: Chris.Menin@transport.nsw.gov.au

All requests must be in writing.

1.4 PROBITY ADVISOR

A Probity Advisor will oversee probity aspects of the tender process. The Probity Advisor will be Dermot Thompson of Everything Infrastructure. Tenderers who have concerns about the conduct or probity of the tender process may contact Dermot Thompson as follows:

Mobile: 0416 258 098

Email: dermot@eig.com.au

1.5 TfNSW STATEMENT OF BUSINESS ETHICS

All Tenderers must comply with TfNSW's Statement of Business Ethics, a copy of which is available at <http://www.transport.nsw.gov.au/>.

Lodgement of a Tender will itself be an acknowledgement and representation by the Tenderer that it has read, and will comply with, TfNSW's Statement of Business Ethics.

1.6 GLOSSARY

In the ITT Documents, all words and expressions will (unless the context otherwise requires) have the meanings assigned to them in the Professional Services Contract included in Annexure 2 to this ITT or the meanings assigned below.

“Closing Date and Time” means the date and time specified in Clause 3.1.1 of this ITT, or such later date and time notified in writing to the Tenderers by TfNSW.

“Codes” means the *Code of Practice for Procurement* and the *Tendering Guidelines*.

"Competence Records" means, with respect to any Rail Safety Worker engaged in connection with the Services (including those engaged by subcontractors), the following information:

- (a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken,
- (b) the qualifications of the Rail Safety Worker, including (if applicable):
 - (i) the units of competence undertaken to achieve the qualification;
 - (ii) the level of qualification attained;
 - (iii) if, and when, a re-assessment of competence is to be conducted
 - (iv) if, and when, any re-training is due and was undertaken; and
 - (v) the name of any organisation conducting training or re-training;
- (c) the name and qualifications of any person who assessed the competence of the worker; and
- (d) any further information requested by the Principal with respect to the competence of the Rail Safety Worker.

“Contact Officer” means the person specified in Clause 1.3.

“Contract” means the proposed contract for the Services which appears in Attachment 2 to this ITT.

“**eTendering website**” means the NSW Government eTendering website
(<https://tenders.nsw.gov.au>)

“**Evaluation Team**” mean the persons appointed by TfNSW to evaluate Tenders or any substitutes nominated by TfNSW.

“**Financial Assessor**” means a private sector consultant engaged by TfNSW to financially assess Tenderers.

“**ITT**” means this Invitation to Tender comprising:

- (a) Clauses 1 to 5;
- (b) Tender Schedules; and
- (c) Annexure 1 and 2.

“**ITT Documents**” means:

- (a) this ITT; and
- (b) Addendum or Addenda issued under Clause 5.5.

“**Probity Advisor**” means the person appointed by TfNSW to independently monitor and report on the integrity and fairness of the tender process, or that person’s representative.

“**Rail Safety Work**” has the meaning given in section 7 of the *Rail Safety Act 2008* (NSW).

“**Rail Safety Worker**” has the meaning given in section 4 of the *Rail Safety Act 2008* (NSW).

“**Recipient**” means a person or entity that has been issued with a copy of this ITT by TfNSW.

“**Services Brief**” means the document titled “Services Brief” which is included in Annexure 1 to this ITT.

“**TfNSW**” means Transport for New South Wales (ABN 18 804 239 602), a NSW Government Agency constituted under the Transport Legislation Amendment Act 2011 (NSW).

“**Tender**” means the offer, including documents required by this ITT to be duly completed and executed by or on behalf of the Tenderer and lodged with TfNSW in accordance with the ITT Documents.

“**Tenderer**” means a party submitting to TfNSW a Tender for the contract.

“**Tenderer’s Team**” means the people, including subcontractors, that the Tenderer proposes to deploy in order to deliver the Services.

2 CONTRACT INFORMATION

2.1 CONTRACT

This ITT includes the following documents which will form part of the contract:

- (a) the Professional Services Contract contained in Annexure 2 to this ITT; and
- (b) the Services Brief contained in Annexure 1 to this ITT, which details the scope of the Services.

The Principal under the Professional Services Contract will be TfNSW.

2.2 FEE

TfNSW is seeking a fee proposal for performing the Services consisting of a schedule of rates with an upper limiting fee.

The agreed schedule of rates and upper limiting fee, based on Tender Schedule 9 for the successful Tenderer, will be appended to the contract. The Professional Services Contractor will not be permitted to exceed the upper limiting fee without the written approval of the Principal.

TfNSW may consider alternative proposals on fee structures proposed by the Tenderer.

2.3 INSURANCE

The Professional Services Contractor must arrange all insurance covers applicable for the contract and pay all premiums applicable.

2.4 STATUTORY DECLARATIONS

The contract requires the Professional Services Contractor to provide the Principal with approved statutory declarations regarding payments to employees, subcontractors and suppliers with all submitted claims for payment as well as at any other times when requested by the Principal, and to obtain equivalent statutory declarations from the Professional Services Contractor's subcontractors.

Failure to do so may result in the Principal not being required to make payments otherwise due to the Professional Services Contractor.

2.5 ACCEPTABLE LEGAL ENTITIES

The Principal will only contract with recognised and acceptable legal entities that have appropriate financial assets. Tenders submitted by an unincorporated business such as a sole trader, partnership, or business name must identify the legal entity that proposes to enter any contract.

The Principal does not contract with trusts or with entities under any form of external administration. The Principal will not award a contract to a Tenderer that is a trustee.

Tenderers may be required to provide evidence of their legal entity either by giving a copy of an official document such as company registration and names of office bearers issued by the Australian Securities and Investment Commission or a statement confirming the legal entity signed by a practicing Solicitor. If so requested, submit the information within three working days after receipt of such a request.

2.6 RAIL SAFETY WORKERS

The Principal anticipates that the Services will include work that is deemed "rail safety work" by the Rail Safety Act 2008 (NSW). All "rail safety work" must be carried out by appropriately qualified "rail safety workers".

The Contractor should note the requirements of clauses 3(l) to 3(p) of the Professional Services Contract, in particular, the requirement to provide the Principal with details of the training undertaken by each "rail safety worker" prior to that "rail safety worker" carrying out any "rail safety work".

3 TENDER REQUIREMENTS

3.1 LODGEMENT OF TENDER

3.1.1 Lodgement Date and Time

Tender submissions must be lodged before 2:00pm on Monday 23 January 2012.

3.1.2 Form of Lodgement

Tenders must be lodged electronically via the eTendering website. The Tender must include the completed Tender Schedules and all information required by each Tender Schedule, divided into two files (Non-Commercial Schedules and Commercial Schedules).

3.2 ELECTRONIC LODGEMENT OF TENDERS

Tenders must be lodged in accordance with the instructions provided to the Tenderer by TfNSW. Further any tender that is lodged electronically and is not in conformance with TfNSW's instructions for electronic lodgement may not be considered by TfNSW.

A Tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the conditions and rules on the NSW Department of Finance and Services website (<https://tenders.nsw.gov.au>).

To lodge a tender electronically, the files containing the Tenderer's response must be uploaded through the eTendering via the "Lodge a Response" link on the web page where the ITT documents are available.

Tenders must not contain any macros, applets or executable code or executable files (including files compressed by WinZip or other means), unless expressly required by this ITT. Tenderers must ensure that all electronically transmitted files are free from viruses by checking the files with an up-to-date virus checking program before lodgement.

Electronically lodged tenders must be in a file format that can be read, formatted, displayed and printed by current editions of Microsoft Office System®, or Adobe Acrobat®, or any other format specified by TfNSW.

File attachments to any tender lodged electronically are to be no greater than 10MB each.

Tenders lodged electronically will be treated in accordance with the *Electronic Transactions Act 2000 (NSW)*, and given no lesser level of confidentiality, probity and attention than tenders submitted by other means.

Signatures are not required for an electronic tender. Tenderers must ensure that electronically lodged tenders are authorised in accordance with the *Electronic Transactions Act 2000 (NSW)* by the person or persons who may do so on behalf of the Tenderer, and appropriately identify the person and indicate the person's approval of the information communicated.

4 EVALUATION OF TENDERS

4.1 EVALUATION PROCESS

Tenders submitted will be assessed by an Evaluation Team convened by TfNSW, using a two-stage evaluation process as described in Clauses 4.2 and 4.3.

Tenders will be assessed on the basis of the information provided by Tenderers in their submissions along with such other knowledge or information as TfNSW may have or obtain to assist its evaluation.

TfNSW may treat any required detail in a Tender that is left out, illegible or unintelligible as failing to fulfil the relevant requirement. TfNSW may assess, score or rate any detail in a Tender that is left out, illegible or unintelligible in the way least favourable to the Tenderer, or in some other way at TfNSW's absolute discretion.

Should no Tenders be acceptable (or conforming), TfNSW may conduct negotiations with any Tenderer in accordance with the New South Wales Government Code of Practice for Procurement.

4.2 SATISFACTION OF MINIMUM REQUIREMENTS

Tenders will be required to satisfy the Minimum Requirements as listed in Clause 1.2. Tenders that are assessed as not satisfying the Minimum Requirements (Tender Schedule 3) will be excluded from further consideration.

4.3 COMPARATIVE EVALUATION CRITERIA

Only those Tenders that are assessed as satisfying the Minimum Requirements will be given a comparative evaluation against all evaluation criteria including both non-priced criteria and price. The criteria for comparative evaluation are:

- (a) Tenderer's demonstrated understanding of the Project and Services and the Proposed Methodology and Program (Tender Schedule 7)
- (b) Tenderer's project organisation structure and relevance of expertise and experience of key personnel (Tender Schedule 8)
- (c) Fee proposal (Tender Schedule 9)

The criteria are not listed in any special order, are not exhaustive and may not be accorded equal weight.

5 TERMS AND CONDITIONS

5.1 GENERAL

The Tenderer is required to submit a Tender in accordance with the requirements of the ITT Documents.

Tenders that fail to fully meet all of the tender requirements that are specified in the ITT Documents may be regarded as non-conforming and may be excluded from consideration.

TfNSW may, in its absolute discretion, and without having any obligation to do so, take into account and accept any non-conforming Tender.

5.2 NSW GOVERNMENT CODE OF PRACTICE FOR PROCUREMENT

5.2.1 Compliance

All Tenderers must comply with the principles in the *Code of Practice for Procurement* and the *Tendering Guidelines*. A copy of the *Code of Practice for Procurement* and the *Tendering Guidelines* is available at: <http://www.nswprocurement.com.au/>. The ability of a Tenderer to demonstrate compliance with these Codes is an essential condition.

Lodgement of a Tender will itself be an acknowledgement and representation by the Tenderer that it is aware of the requirements of the Codes, that the Tenderer will comply with the Codes and that the Tenderer agrees to provide periodic evidence of compliance with the Codes and access to all relevant information to demonstrate compliance for the duration of any Contract that may be awarded.

If a Tenderer has failed to comply with the Codes, this failure will be taken into account by TfNSW when considering its Tender or any subsequent tender and may result in this or any subsequent tender being passed over without prejudice to any other rights of action or remedies available to TfNSW.

5.2.2 Complaints and Reports

Complaints alleging breaches of the Codes will be investigated and acted upon where substantiated. Forms to facilitate reporting alleged breaches of the Codes are also obtainable from the above Internet address.

Reports of alleged breaches or other complaints may be submitted to the Contact Officer or the Principal's Representative.

If a Tenderer believes they have been unnecessarily precluded from tendering or would be penalised unduly by the proposed contract terms, any complaint or representation should be raised with the Contact Officer in the first instance.

5.3 INTERVIEWS

TfNSW may invite one or more Tenderers to interviews, but is not obliged to invite any Tenderer to an interview. TfNSW may seek to discuss their Tenders (including without limitation in relation to the terms of the proposed contract).

If requested by TfNSW, the Tenderer must make key personnel available for interviews during the evaluation process.

5.4 REQUESTS FOR CLARIFICATION

If the Tenderer wishes to clarify any matter concerning the ITT Documents or the tender process other than during any briefing session, interview or meeting, the Tenderer must notify the Contact Officer of its request in writing (by email), no later than 7 days prior to the Closing Date and Time.

Answers to any such request may be issued by TfNSW in the form of an Addendum or Addenda that will be issued to all Tenderers.

If a Tenderer believes that a request is confidential, it may identify the request as confidential in its notice to the Contact Officer. A determination will be made by TfNSW, acting reasonably and, where appropriate, after obtaining advice from the Probity Advisor, whether or not the request is confidential.

If TfNSW determines that the enquiry is not confidential TfNSW will notify the Tenderer of this determination and the Tenderer may withdraw the enquiry within 2 days of such notification. Otherwise such an enquiry may be dealt with by an Addendum or Addenda that TfNSW will issue to all Tenderers.

If TfNSW determines that the enquiry is confidential, the answer to the enquiry, if any, will not be issued by TfNSW to other Tenderers.

5.5 AMENDMENTS

This ITT and the other documents relating to this ITT may be varied before the Closing Date and Time. Any amendment(s) to this ITT will be issued in the form of an Addendum or Addenda and will be issued to Tenderers via the eTendering website. The eTendering website should notify Tenderers who have registered on the eTendering website of any addendum. Addenda issued via the eTendering website will be the only recognised explanations of, or amendments to, the ITT Documents.

The Tenderer must acknowledge that its submission incorporates any such amendments.

5.6 OPENING OF TENDERS

Opening of Tenders will be carried out by TfNSW. Opening of Tenders will not be open to the public or any of the Tenderers.

5.7 LATE TENDERS

A Tender lodged after the Closing Date and Time is a late Tender.

In accordance with the NSW Government Code of Practice for Procurement, late Tenders will not be accepted, except when the client accepting the Tender is satisfied that the integrity and competitiveness of the tender process will not be compromised.

The tests of integrity and competitiveness to be used will include the following, and late Tenders may be considered when:

- (a) a Tender is received before the completion of the tender opening and recording process;
- (b) it is judged by TfNSW that information from other Tenders could not have assisted in framing the late Tender and the extent of the lateness does not give a significant advantage to that Tenderer;
- (c) a late Tender is the only Tender.

5.8 ADDITIONAL INFORMATION

If required, the Tenderer must submit additional information, by the stipulated date and time, to allow further consideration of the Tender before any Tender is accepted. Failure to meet this requirement may result in the Tender being passed over.

5.9 TENDERER TO INFORM ITSELF

The Tenderer must:

- (a) examine the ITT Documents and any other information made available in writing or otherwise by TfNSW, or any other person on TfNSW's behalf, to the Tenderer for the purpose of tendering;
- (b) examine all information relevant to the risk, contingencies and other circumstances having an effect on its Tender and which is obtainable by the making of reasonable enquiries;
- (c) satisfy itself as to the correctness and sufficiency of its Tender and that its Tender price covers the costs of complying with all the obligations of the proposed contract and of all matters and things necessary for the due and proper performance of the Services;
- (d) arrange access in accordance with TfNSW's protocols to any part of the Site it requires to carry out investigation and testing; and
- (e) take such professional advice as is appropriate for a project of this type.

5.10 DISCREPANCIES, ERRORS OR OMISSIONS

If the Tenderer finds any discrepancy, error or omission in the ITT Documents, it must promptly notify the Contact Officer of the discrepancy, error or omission, in writing.

5.11 ASSUMPTIONS AND EXCLUSIONS

The Tenderer is required to nominate any assumptions and exclusions in relation to the ITT Documents, including the Services Brief and the proposed Professional Services Contract.

5.12 NO IMPLIED TERMS

The Tenderer acknowledges and agrees that no term or condition will be implied into the ITT Documents.

5.13 No OBLIGATIONS

5.13.1 No Obligation to Proceed

Without limiting Clause 5.13.5, nothing in the ITT Documents will oblige TfNSW or the NSW Government to proceed with the Project and/or Services as contemplated by this ITT or at all.

This ITT is not an offer by TfNSW. It is merely an invitation to Tenderers to submit an offer to TfNSW on the terms of the ITT Documents.

5.13.2 Decision to Proceed or Not

Without limiting Clause 5.13.5, TfNSW or the NSW Government may, in their absolute discretion, at any time elect:

- (a) not to proceed with the tender process, Project and/or Services, or
- (b) to proceed with the Project and/or Services in any way, whether or not contemplated by the ITT Documents.

5.13.3 No Contract

By submitting a Tender the Tenderer acknowledges that:

- (a) subject only to the obligation under Clause 5.25 on the Tenderer to ensure that its Tender remains valid for the period specified in Clause 5.25, the submission of a Tender does not create a contract between the Tenderer and TfNSW or impose any other obligations at law upon TfNSW whether as a result of the tender process or otherwise in respect of the Tender or the evaluation of the Tender by TfNSW; and
- (b) TfNSW will not be under any obligation to act in any particular manner or refrain from acting in any particular manner in evaluating a Tender.

5.13.4 No Liability

Without limiting any other part of this Clause 5.13, by submitting a Tender each Tenderer acknowledges and agrees that neither TfNSW nor the NSW Government will be liable upon any claim by any Tenderer arising out of, or in any way in connection with:

- (a) TfNSW or the NSW Government exercising, or failing to exercise, any of their rights under this Clause 5.13; or
- (b) anything that TfNSW does or fails to do as part of the tender process, including in the evaluation of Tenders.

5.13.5 TfNSW's Rights

TfNSW reserves the right in its absolute discretion and without limiting any other right which TfNSW may have whether under this ITT or otherwise, to do any one or more of the following at any time without giving reasons:

- (a) reject or refuse to consider or evaluate any Tender or all Tenders;
- (b) amend the ITT Documents;
- (c) withdraw the ITT Documents;

- (d) terminate the tender process;
- (e) readvertise for new Tenders;
- (f) terminate further participation in the process by any Tenderer;
- (g) request additional information or further offers from any Tenderer; and
- (h) alter or vary any process or procedure regarding the consideration or the evaluation of any Tender or all Tenders.

TfNSW may also give consideration to and may exclude parties on the basis of their performance or the performance of related parties on recent contracts with TfNSW or other government bodies. To assist with this process, TfNSW may make reference to contractor performance reports prepared either by TfNSW or other government agencies.

TfNSW may take into account the relationship between Tenderers and their constituent members and the existence of related companies and common directors. Should a Tenderer (or a member of the Tenderer) be a related company of another Tenderer (or a member of the other Tenderer), or should common directors be identified across Tenderers (or members of Tenderers), TfNSW may require the Tenderer to enter into specific undertakings to address any resultant probity issues as a condition of this Tender.

5.14 ACCEPTANCE OF TENDER

TfNSW may accept Tenders that do not conform strictly to all the requirements of the ITT Documents. TfNSW is not bound to accept the lowest priced or any Tender.

No Tender, or qualification or departure from a contract condition or specification will be accepted unless TfNSW gives an acceptance or formal agreement in writing.

A Tender is not accepted unless and until the contract is executed by TfNSW and the successful Tenderer.

5.15 ACKNOWLEDGEMENTS BY THE TENDERER

Each Recipient acknowledges and agrees that:

- (a) TfNSW and the NSW Government are not responsible for, and make no representation or warranty in respect of, the contents of the ITT Documents, including (without limitation) the accuracy, adequacy, suitability or completeness of any information contained or referred to in the ITT Documents or of any other information provided to or received by the Recipient from any person in connection with the tender process;
- (b) neither TfNSW nor the NSW Government accept or owe a duty of care to Recipients with respect to the ITT Documents or the tender process;
- (c) it will make its own independent investigations and evaluations and will conduct its own due diligence of the information contained or referred to in the ITT Documents or other information provided to or received by the Recipient from any person, including (without limitation) the obtaining of appropriate legal, financial and other expert advice in relation to such information; and
- (d) neither TfNSW nor the NSW Government will be liable to any Recipient upon any claim arising out of, or in any way connected with, any errors in or omissions from

this Invitation or other information provided to or received by the Recipient from any person in connection with the tender process.

5.16 COLLUSIVE ARRANGEMENTS

The Tenderer represents and warrants and, in consideration of being permitted to tender, promises as a fundamental condition, that:

- (a) it has no knowledge of the tender price of any other Tenderer for the services under the contract;
- (b) except as disclosed in the Tender, it has not entered into any contract, arrangement or understanding to pay or allow any money directly or indirectly to a trade or industry association (above the published standard membership fee) or to or on behalf of any other Tenderer in relation to this tender process or any contract to be entered into consequent thereon, nor paid or allowed any money on that account, nor will the Tenderer pay or allow any money on that account;
- (c) it has not entered into any contract, arrangement or understanding to receive any money directly or indirectly from or on behalf of any other Tenderer nor received any money or allowance from or on behalf of any other Tenderer in relation to this tender process or any contract to be entered into consequent thereon, nor will the Tenderer receive any money as aforesaid;
- (d) in the event of the Tenderer receiving any money or allowance from or on behalf of another Tenderer in relation to this tender process, the Tenderer will immediately give TfNSW written notice of such an event and such money or the value of any allowance will be held on trust for and become immediately payable to TfNSW; and
- (e) in the event of the Tenderer paying or allowing to or on behalf of a trade or industry association or another Tenderer any money in breach of these conditions, the Tenderer will immediately give TfNSW written notice of such an event and TfNSW will be entitled to withhold from any payment due to the Tenderer on any account an equivalent sum as liquidated damages.

5.17 EXCHANGE OF INFORMATION BETWEEN GOVERNMENT AGENCIES

By tendering for the proposed contract, the Tenderer authorises TfNSW and its employees and agents to make available to other NSW Government departments or agencies or local government authorities information including, but not limited to, any information provided by the Tenderer to TfNSW and information relating to the Tenderer's performance or financial position.

The Tenderer acknowledges that any information about the Tenderer, from any source including but not limited to substantiated reports of unsatisfactory performance may be taken into account by TfNSW and NSW Government departments and agencies in considering whether to offer the Tenderer opportunities for NSW Government work including, but not limited, to assessment of suitability for registration, pre-qualification, selective tender lists or the award of a contract.

TfNSW regards the provision of information about the Tenderer to any NSW Government department or agency or local government authority as privileged under Section 30 of the *Defamation Act 2005 (NSW)*. TfNSW and the NSW Government will reject claims in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the Tenderer arising out of the communication.

5.18 COSTS OF TENDERING

No payment will be made by TfNSW to the Tenderer for any costs, expenses, losses or damages suffered or incurred by the Tenderer arising out of, or in any way in connection with, the tender process including any costs or expenses in preparing its Tender or in respect of any discussions, negotiations, enquiries or site inspections or any services performed by the Tenderer after its Tender is submitted. This Clause applies whether or not TfNSW accepts a Tender or rejects all Tenders for the Services, or withdraws the ITT Documents, or terminates the tender process.

5.19 CONFIDENTIALITY

A Tenderer must not disclose or provide to any person, other than to persons engaged in the preparation of its Tender, any particulars concerning its Tender or any other information with which it has been provided by TfNSW or any other person on behalf of TfNSW, without the prior consent in writing of TfNSW.

5.20 FINANCIAL ASSESSMENT

By tendering the Tenderer agrees that TfNSW may engage a Financial Assessor(s) to financially assess Tenderers. The Financial Assessor(s) may obtain the financial details of Tenderers for assessment. The Financial Assessor(s) will have a contract with TfNSW to safeguard the financial details obtained. The Financial Assessor(s) must not disclose such details, either in whole or in part to any party other than NSW Government departments or agencies without the express written permission of the Tenderer.

The Tenderer is required to provide TfNSW or the Financial Assessor(s) with relevant, recent corporate financial details, if requested after the Closing Date and Time.

5.21 REFEREES

The Tenderer must provide details of referees for its proposed personnel and project experience. By submission of a Tender, the Tenderer authorises TfNSW to contact these referees directly in relation to any matter concerning the Tender.

5.22 RETENTION OF DOCUMENTS

Despite any intellectual property or other ownership rights which may apply to any Tender, TfNSW is entitled to retain all Tenders, including all copies.

5.23 TENDERER'S TEAM

The Tenderer must not change or add to the members of the Tenderer's Team after the date of lodgement of its Tender without the prior written approval of TfNSW.

TfNSW expects that the personnel proposed will be listed as Key People in the Contract Particulars of the Professional Services Contract.

5.24 GOODS AND SERVICES TAX

Prices and rates in the Tender must not include Goods and Services Tax (GST). The Tender must identify and state the amount of GST payable and the value of any GST Free or Input Taxed Supplies to be made under the contract.

A Tenderer that states an ABN in its Tender will be treated as registered for GST unless the Tenderer otherwise advises. A Tenderer that will not be registered for GST when the contract is entered into must say so in its Tender.

5.25 VALIDITY PERIOD

The Tender must remain valid for at least twelve weeks after the Closing Date and Time. The Tenderer may not withdraw its Tender during this period.

5.26 PROTECTION OF PRIVACY

The Tenderer warrants, in respect of any personal information provided for this tender process or any contract arising from this tender process, that the information is accurate, up to date and complete, and that individuals to which the personal information refers have authorised its collection and are aware:

- (a) that the information is being collected, and will be held by TfNSW at the address shown in the Tender Schedule 1;
- (b) that the information is being collected for the purpose of evaluating Tenders and commercial proposals, and the administration of any contracts arising from those Tenders or proposals, and may be made available to other NSW Government departments or agencies or local government authorities for those purposes;
- (c) when the supply of the information by the individual is required by law or is voluntary, and of 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.

5.27 DISCLOSURE OF CONTRACT INFORMATION

- (a) TfNSW will publicly disclose information about a contract awarded following this tender process in accordance with the requirements of the *Government Information (Public Access) Act 2009 (NSW)*.
- (b) Tenderers may request that TfNSW does not publicly disclose particular information included in their Tender, and must give reasons for this request for non-disclosure subject to clause 5.27(c) (ii). TfNSW will advise the Tenderer what information TfNSW agrees not to disclose. If TfNSW and a Tenderer cannot reach agreement about what is to be disclosed, TfNSW must seek the advice of the Chair of the State Contracts Control Board. However, TfNSW's decision on what will be disclosed is final and binding and is at TfNSW's absolute discretion. Neither a decision by TfNSW, nor any advice from, or recommendation by, the Chair of the State Contracts Control Board under this clause may be disputed under the Professional Services Contract.
- (c) TfNSW may publicly disclose the identities of all Tenderers, but will not disclose any other information included in an unsuccessful Tender, unless:

- (i) the unsuccessful Tenderer agrees; or
 - (ii) its release is required or determined under the *Government Information (Public Access) Act 2009 (NSW)* or is otherwise required by law.
- (d) TfNSW will normally make the names of Tenderers available from the Contact Officer when Tenders close, and the other information about the Professional Services Contract specified above will be available from the Contact Officer on request after the Professional Services Contract is executed.
- (e) In addition, and as a separate obligation, TfNSW is required in accordance with Division 5 of Part 3 of the GIPA Act to keep a publicly available register of government contracts and to include certain information (specified in Division 5 of Part 3 of the GIPA Act) on that register. However, the GIPA Act does not require TfNSW to include information in its register of government contracts if that information, among other things, contains the commercial-in-confidence provisions of a contract, diminishes the competitive commercial value of any information contained in the Tender, prejudices any Tenderer's legitimate business, commercial, professional or financial interests or where there is an overriding public interest against disclosure.

To assist TfNSW:

- (i) in determining whether, in the circumstances of any particular application for access to all or part of the Tender or the Contract, there is an overriding public interest against disclosure; and
- (ii) in *considering* and compiling information to be disclosed on its publically available register of government contracts,

Tenderers must complete the Tender Schedule "Disclosure of Contract Information" relating to the Disclosure of Contract Information (under the GIPA Act) including by identifying information (if any) contained within their Tender (or the Contract) which they consider the disclosure of which might have one of the effects stated in paragraphs (b) or (c) (or which they consider may otherwise give rise to a public interest consideration against disclosure in accordance with the GIPA Act).

It is important to note that completing the Tender Schedule relating to the GIPA Act will not necessarily prevent disclosure of the relevant information by TfNSW and any decision to grant access to or disclose information will be determined by TfNSW in accordance with the GIPA Act.

TENDER SCHEDULES

VOLUME 1 – NON-COMMERCIAL SCHEDULES

Tenderers must complete all tender schedules in this volume and provide the details requested.

TENDER SCHEDULE 1 – TENDER FORM

To: **Transport for New South Wales**
ABN 18 804 239 602 (the “Principal”)

Location of Tender Closing Office: Transport for New South Wales,
Level 6, 18 Lee Street,
Chippendale, NSW 2008

Name of Tenderer
(*in block letters*):

ABN:

Address:

hereby tender(s) to perform the work for the:

**Engineering and Cost Estimation Services for the Casino to
Murwillumbah Rail Line Study**

in accordance with the following documents:

Invitation To Tender (ITT)

and Addenda Numbers:

For the amounts as provided on:

- Tender Schedule 9 – Fee Proposal

Date:

Signed for the
Tenderer by:

(*Authorised Officer*)

In the Office
Bearer capacity of:

Name (*in block letters*):

TENDER SCHEDULE 2 – CORPORATE INFORMATION

2A DESCRIPTION AND DETAILS OF THE TENDERER

- (a) Name of Tenderer;
- (b) Members of Tenderer's Team (also refer to Tender Schedule 2B below);
- (c) Nature of Tenderer entity (e.g. listed company, partnership, joint venture, other);
- (d) Tenderer's proposed contracting entity (if different from the above);
- (e) Diagram showing proposed corporate responsibilities and relationships within the Tenderer's Team;
- (f) Name of individual representing the Tenderer; and
- (g) Title and contact details of the Tenderer's proposed representative.

2B DETAILS OF MEMBERS OF TENDERER'S TEAM

Supply the following information for the Tenderer and, if relevant, for each member of the Tenderer's Team (including any subcontractors):

- (a) Member name;
- (b) Nature of member - company, partnership etc;
- (c) If Company - ACN, ABN and Trading Name;
- (d) Year established;
- (e) Registered office and place of incorporation (if relevant);
- (f) Changes of company / partnership name details, major shareholders (unless a public company registered on the Australian Stock Exchange);
- (g) Subsidiary names;
- (h) Main operations / primary source of income;
- (i) Geographical markets (e.g. NSW, Australia, USA);
- (j) Details of any charges over the member's assets or the member itself;
- (k) Parent company / companies (if applicable);
- (l) Description of linkages with and guarantees provided by parent company / companies; and
- (m) Names and occupations of Directors.

TENDER SCHEDULE 3 – MINIMUM REQUIREMENTS

To demonstrate satisfaction of the Minimum Requirements, the Tenderer must provide all the details listed in this Tender Schedule 3.

Minimum Requirement 1

Evidence that the Tenderer or the Tenderer’s Team has successfully undertaken rail infrastructure condition surveys including relevant testing and investigations within an operational railway with an engagement value of greater than \$200,000, must be provided in the format of the following table:

Project:	
Client:	
Role on project:	
Project value:	
Contract value:	
Completion date:	
Client contact (Name and contact details):	

Minimum Requirement 2

Evidence that the Tenderer or the Tenderer’s Team has successfully managed and delivered public transport feasibility studies involving either heavy rail, light rail or similar transport system; with an engagement value of \$200,000. These studies must include rail corridor investigation, environmental risk assessment and constructability must be provided in the format of the following table:

Project:	
Client:	
Role on project:	
Project value:	
Contract value:	
Completion date:	
Client contact (Name and contact details):	

Minimum Requirement 3

Evidence that the Tenderer or the Tenderer’s Team has undertaken engineering and cost estimation services, on rail infrastructure engagements with a total value of at least \$500,000, within the last 3 years. The engagements must include technical disciplines such as civil, structural, track, signalling, communication and control systems, must be provided in the format of the following table:

Project:	
Client:	
Role on project:	
Project value:	
Contract value:	
Completion date:	
Client contact (Name and contact details):	

Minimum Requirement 4

Evidence that the Tenderer or the Tenderer’s Team has experience in preparing Asset Management Plans required for a safe and efficient operation of a railway line, must be provided in the format of the following table:

Project:	
Client:	
Role on project:	
Project value:	
Contract value:	
Completion date:	
Client contact (Name and contact details):	

TENDER SCHEDULE 4 – INSURANCE DETAILS

Provide details of insurances for the Tenderer (or where relevant, for each member of a Tenderer that is a consortium, joint venture or other structure) in accordance with the following form:

Insurance Type	Insurance Company	Policy No.	Extent Of Cover		Expiry Date
			Per Incident \$A	In Aggregate \$A	
Professional Indemnity Insurance					
NSW Workers Compensation Insurance					
Public Liability Insurance					
Motor Vehicle Insurance					
Other insurances					

TENDER SCHEDULE 5 – STATUTORY DECLARATION

I, [insert name] of
[insert address] do solemnly and sincerely declare and affirm in respect of the Tender for the
Engineering and Cost Estimation Services (“Tender”) or any contract arising from the
Tender, that:

1. I hold the position of and am duly authorised
by
..... (“Tenderer”) to make this declaration on
its behalf.
2. *To the best of my knowledge, neither the Tenderer nor any of its employees or
agents have entered into a contract, arrangement or understanding to pay moneys to
a trade association, apart from the normal amount (annual subscription, turnover or
contract fee) imposed by that trade association.
3. *The Tenderer has agreed to pay a special fee to a trade association of
\$..... if it is successful in the Tender.
4. To the best of my knowledge, neither the Tenderer nor any of its employees or
agents had knowledge of the price of another tenderer prior to submitting the Tender.
5. To the best of my knowledge, neither the Tenderer nor any of its employees or
agents has disclosed the Tenderer’s tender price to a rival tenderer.
6. The Tenderer submitted the tender in good faith and has not deliberately set its
tender price above the level of rival tenderers.
7. As at the date of this declaration, the Tenderer intends to carry out the work the
subject of the Tender.
8. To the best of my knowledge, neither the Tenderer nor any of its employees or
agents has entered into a contract, arrangement or understanding having the result
that the tenderer or another person will pay money to an unsuccessful tenderer if the
Tenderer is successful in the Tender (other than for work or services done or
materials supplied under a bona fide contract).

And I make this solemn declaration conscientiously believing the same to be true and by virtue
of the provisions of the *Oaths Act 1900 (NSW)*.

Subscribed and declared at [city or town] on

before me:

Justice of the Peace/Solicitor*

Declarant

* Delete whichever is not applicable.

TENDER SCHEDULE 6 – TENDERER’S EXPERIENCE AND WORKLOAD

TENDERER’S RELEVANT PROJECT EXPERIENCE

The Tenderer shall provide details of no more than 5 projects in the last 5 years to demonstrate relevant experience in fulfilling similar roles. The Tenderer shall list these relevant projects and provide client contact details for each in the form of the table below.

Project Name	Client	Role on Project	Tenderer’s Team	Project Value	Contract Value	Start/ Finish Dates	Client Contact (Name and contact details)

TENDER SCHEDULE 7 – TENDERERS UNDERSTANDING OF THE PROJECT AND THE SERVICES AND METHODOLOGY AND PROGRAM

5A Services and Scope Understanding

The Tenderer shall describe the key issues to be addressed in delivering the Services and demonstrate understanding of the work involved, identify the key challenges, opportunities and risks and as appropriate, refer to lessons learnt from previous experience in project(s) of a similar nature. Respond in a format similar to the table template below in no more than 5 pages.

Table 5A – Services and Scope Understanding

Services and Scope Understanding
1. Describe the key issues to be addressed in the Services:
2. Identify the key challenges, opportunities and risks:
3. As appropriate, refer to lessons learnt from previous projects – including the issues faced, how it was addressed, the outcome of actions taken, and how this learning will benefit the delivery of the Services:

5B Methodology

The Tenderer shall provide an outline description of the important aspects of the Services and the proposed methodology to undertake the Services, responding in a format similar to the table template below in no more than 5 pages.

Table 5B – Methodology

Methodology
a) Outline methodology to deliver the Services identifying critical success factors.
b) Outline the possible use local resources within respective regional offices close to the study area.
c) Outline potential areas where the Tenderer, based on its experience, can add value or be innovative in achieving the deliverables at reduced cost.

5C Program

The Tenderer is to provide an outline program, in Gantt chart format, for the delivery of the Services, consistent with the target dates and staging detailed within the ITT and Services Brief, with an assumed commencement date of 29 February 2012.

TENDER SCHEDULE 8 – PROJECT ORGANISATIONAL STRUCTURE AND RESOURCES

8A PROJECT ORGANISATIONAL STRUCTURE

The Tenderer is to provide a **project specific** organisational chart that shows the positions (and where known, the persons filling those positions) for the entire **project specific** team allocated for the Services.

8B RESOURCES

The Tenderer is to complete the following table for all proposed personnel for the Services. The Tenderer is to nominate the percentage allocation for each nominated position (eg 100% for full-time allocation). The Tenderer is to provide curricula vitae (CV) with a maximum 2 pages per CV. Maximum number of CV to be submitted is 10 for the key positions identified within this table.

Name	Discipline and Role	Employer	CV/Form Attached	Available	% Allocation to Project
	Project Manager	<input type="checkbox"/> In-house <input type="checkbox"/> Subcont.	<input type="checkbox"/> Yes		
	Technical Managers	<input type="checkbox"/> In-house <input type="checkbox"/> Subcont.	<input type="checkbox"/> Yes		
	Cost Manager	<input type="checkbox"/> In-house <input type="checkbox"/> Subcont.	<input type="checkbox"/> Yes		
	Transport Planner	<input type="checkbox"/> In-house <input type="checkbox"/> Subcont.	<input type="checkbox"/> Yes		
	Environmental Manager	<input type="checkbox"/> In-house <input type="checkbox"/> Subcont.	<input type="checkbox"/> Yes		
	Other (Tenderer to specify)	<input type="checkbox"/> In-house <input type="checkbox"/> Subcont.	<input type="checkbox"/> Yes		

Notes:

- Where “Available” means the availability of the individual to commence undertaking the Services. The Tenderer may nominate either an immediate availability pending execution of an Agreement or nominate a date or month when the person is available to commence work.

VOLUME 2 –COMMERCIAL SCHEDULES

Tenderers must complete all tender schedules in this volume and provide the details requested.

TENDER SCHEDULE 9 – FEE PROPOSAL

The Tenderer shall provide a fee proposal for performing the Services. This proposal is to be presented in the form of the template provided in this Tender Schedule.

Tenderers shall ensure that the document contains no summation errors, rounding errors etc.

Schedule of Rates

The Tenderer shall submit the Schedule of Rates for Services generally in accordance with the format presented below. The agreed Schedule of Rates will be appended to the Professional Services Contract and will be used to value any variations to the scope of the Services (whether additions or omissions).

All rates should be quoted excluding GST.

Person's Name	Role	Hourly Rate \$ (excl. GST)
Project Manager		
Technical Managers		
Cost Manager		
Transport Planner		
Environmental Manager		
Other (Tenderer to specify)		

Fees will be paid on an hourly rates basis with a maximum daily fee for each person of 8 hours multiplied by the person's hourly rate.

Upper Limiting Fee

In addition to the Schedule of Rates included in Tender Schedule 9, the Tenderer shall provide an Upper Limiting Fee (excluding GST) for performing the Services generally in accordance with the format presented in the table below.

Tenderers must provide an **electronic copy (in native MS Excel format)** of the Upper Limiting Fee within its Tender.

Note: Work Breakdown Structure can be substituted with Discipline, Stage, Activity, etc. as appropriate

TENDER SCHEDULE 10 - ASSUMPTIONS AND EXCLUSIONS

The Tenderer must nominate in this Tender Schedule 10 any assumptions and exclusions in relation to the ITT upon which its Tender is based.

If this Tender Schedule 10 is left blank, then the Tender will be deemed to have fully complied with the ITT.

TENDER SCHEDULE 11 – PROFESSIONAL SERVICES CONTRACT – PROPOSED MODIFICATIONS

The Tenderer is to review the form of the proposed Professional Services Contract (PSC) contained in Annexure 2 to the ITT and confirm in this Tender Schedule 11 the Tenderer's acceptance of the form of the PSC for entering into a contract.

The Tenderer shall document in this Tender Schedule 11 only exceptional specific concerns or proposals for modifying the form of the PSC for TfNSW's consideration.

The Principal reserves the right to not accept any modifications.

No subsequent request or proposal to modify or amend any aspect of the PSC will be considered.

TENDER SCHEDULE 12 - DISCLOSURE OF CONTRACT INFORMATION

Government Information (Public Access) Act (NSW)

Tenderers' attention is drawn to Clause 5.27 of the Conditions of Tendering.

Tenderers are requested to:

1. complete the table below to identify information (if any) contained within their Tender (or the Contract) which they consider the disclosure of which might have one of the following effects (or which they consider may otherwise give rise to a public interest consideration against disclosure in accordance with the Government Information (Public Access) Act 2009 (NSW)):
 - (a) disclosure of the information could reasonably be expected to reveal commercial-in-confidence provisions of a government contract, being:
 - (i) the contractor's financing arrangements;
 - (ii) the contractor's cost structure or profit margins;
 - (iii) the contractor's full base case financial model;
 - (iv) any intellectual property in which the contractor has an interest; or
 - (v) any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future;
 - (b) disclosure of the information could reasonably be expected to diminish the competitive commercial value of any information to any person;
 - (c) disclosure of the information could reasonably be expected to prejudice any person's legitimate business, commercial, professional or financial interests; or
 - (d) disclosure of the information could reasonably be expected to prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

In completing the table below, Tenderers must also provide a justification as to why they consider disclosure of the relevant information has one of the effects set

out above, and also the period of time in which the relevant justification will apply (after which the information may be disclosed).

Specific information or provision	Justification (including reference to relevant clause above)	Period of time (in months) in which justification will apply
NIL <i>(Tenderer to amend if applicable)</i>	N/A <i>(Tenderer to amend if applicable)</i>	N/A <i>(Tenderer to amend if applicable)</i>

ANNEXURE 1 – SERVICES BRIEF



**Transport
for NSW**

Services Brief

Engineering and Cost Estimation Services for the Casino to Murwillumbah Rail Line Study

Status: Final

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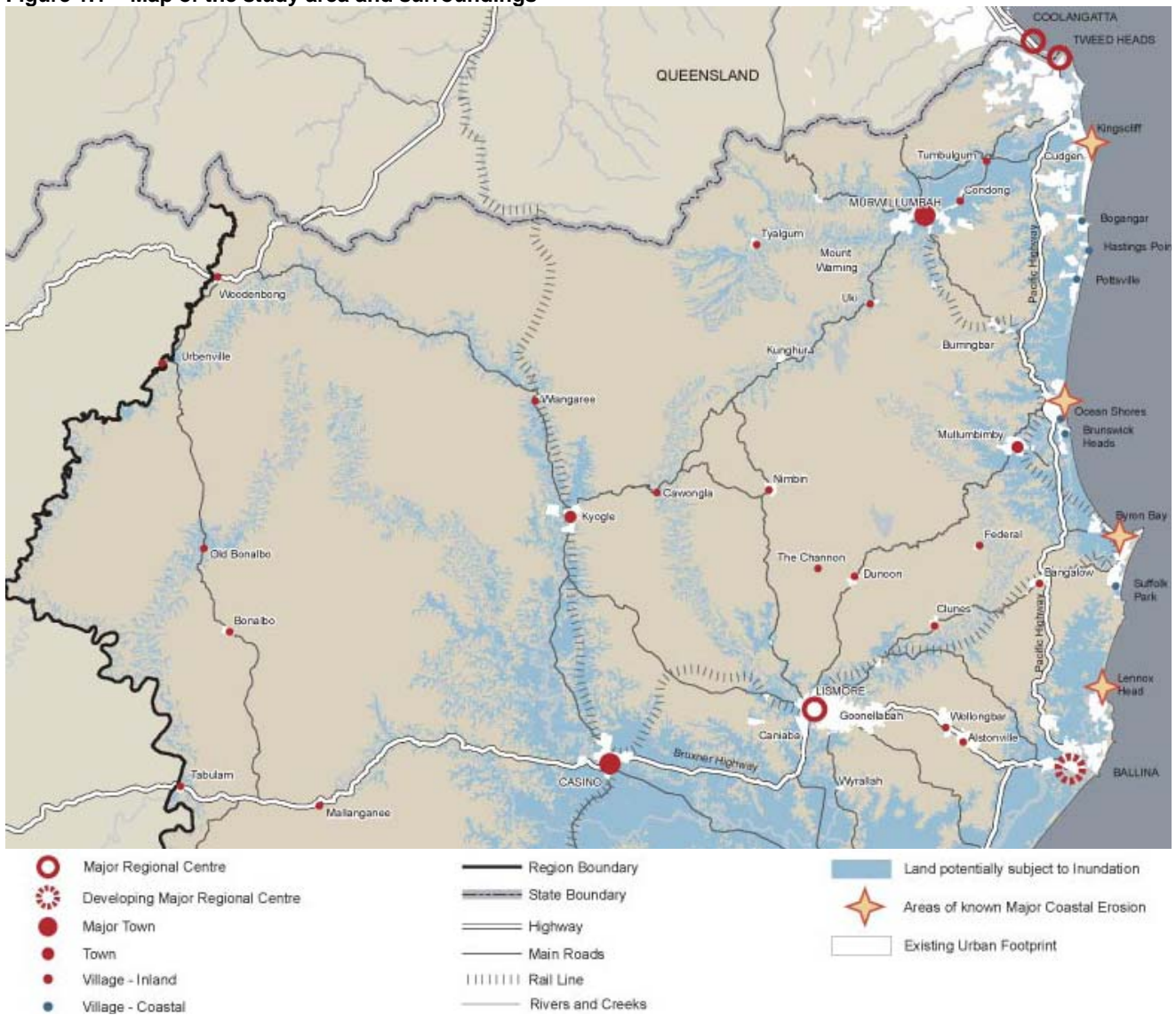
1 Study Description

1.1 Introduction

The Casino to Murwillumbah rail line is a single track Class 2 rail line approximately 130 kilometres long. It runs through the northern rivers region of NSW and forms part of the Country Rail Infrastructure Authority's (CRIA) network. The line branches off the main northern line at Casino, and has railway stations at Lismore, Bangalow, Byron Bay, Mullumbimby, and Murwillumbah. There are approximately 180 underbridges and 103 level crossings (both public road and private crossings) on the rail line.

In 2004, CountryLink XPT services ceased operating on the Casino to Murwillumbah rail line and were replaced by CountryLink coach services. This was due to the ongoing costs of maintaining the line, particularly the significant costs associated with maintaining the timber bridges on the line.

Figure 1.1 – Map of the study area and surroundings



The NSW Government has allocated \$2 million to conduct a study of the North Coast rail services whereby TfNSW will:

- a) undertake a comprehensive feasibility study into the reinstatement of services on the Casino to Murwillumbah rail line to operating condition including potential extension to South East Queensland (SEQ)
- b) evaluate the best suite of transport services to meet the needs of the Northern Rivers community.

This service brief applies to the Engineering and Cost Estimation study to evaluate the costs of reinstating the Casino to Murwillumbah rail line to operating condition including potential extension to SEQ.

1.2 Casino to Murwillumbah engineering and cost estimation study

This study into the cost of restoring the Casino to Murwillumbah rail line will be an input into the Department’s planning processes for the shaping of future transport services for the Northern Rivers region.

Therefore, the objectives of this study are to

- 1. estimate the likely cost of restoring the Casino to Murwillumbah rail line to allow for safe operation of heavy or light rail passenger services
- 2. assess the engineering feasibility in extending the rail line to connect with Coolangatta Airport and Queensland rail.

1.3 Preliminary Program

A preliminary program for the Study has been developed. A schedule of preliminary milestones for the study is provided below.

Preliminary schedule of Study milestones	
Study Milestone	Target Date
Stage 1 – Condition Survey	
1. a draft template for collection of asset data	3 weeks after commencement
2. a draft infrastructure condition report	10 weeks after commencement
3. a final infrastructure condition report	12 weeks after commencement
Stage 2 – Reinstatement of line for heavy rail	
1. a draft preliminary Asset Management Plan	16 weeks after commencement
2. a final preliminary Asset Management Plan	20 weeks after commencement

3. a commissioning strategy and program	20 weeks after commencement
Stage 3 – Reinstatement of line using alternatives to heavy rail 1. a report on alternative transport options 2. a draft preliminary Asset Management Plan 3. a final preliminary Asset Management Plan 4. a commissioning strategy and program	16 weeks after commencement 16 weeks after commencement 20 weeks after commencement 20 weeks after commencement
Stage 4 – Potential linkage to South East Queensland 1. a draft feasibility linkage to SEQ report 2. a final feasibility linkage to SEQ report	29 weeks after commencement 32 weeks after commencement
Stage 5 – Completion of study 1. a complete feasibility study report	36 weeks after engagement

1.4 Related studies

TfNSW will include the findings of the Casino to Murwillumbah rail line feasibility study in its wider planning process to determine the mix of transport services needed going forward into the future in the Northern Rivers region.

It is worth noting that the Commonwealth Government is currently undertaking a High Speed Rail Link study connecting Brisbane to Melbourne. The outcome of this study may have an impact on the likely transport services for the Northern Rivers Region.

1.5 Previous studies and reports

There were a significant number of desktop studies undertaken to date with regards to the Casino to Murwillumbah line. There were also relevant reports generated to date with regards to this line.

These studies and reports will be made available to the successful proponent for information.

1.6 Glossary

In this Services Brief, all words and expressions have (unless the context otherwise requires) the meanings assigned to them in the Professional Services Agreement unless otherwise defined below.

Deliverables means the matters specified in Section 2 that the Service Provider must deliver to the Principal as part of the Services;

NSW Government means the government of New South Wales.

Study means the Casino to Murwillumbah engineering and cost estimation study that the Services Provider will be working on when providing the Services described more particularly in section 1.

Services Brief means this document, including any attachments or appendices.

2 Scope of Services

2.1 Introduction

The Service Provider is responsible for providing an engineering and cost estimate service for restoring the Casino to Murwillumbah rail line, including the deliverables identified below:

The general obligations of the Service Provider include:

- a) providing a high performance and highly skilled team with relevant experience, which will work in a collaborative manner with the client's team, other service providers and key stakeholders to deliver the Services;
- b) undertaking specialist studies, investigations and documentation;
- c) prepare and submit relevant documentation required for site access; and
- d) providing high quality services and documentation.

Details of the general and administrative tasks and deliverables that must be undertaken and provided by the Service Provider are described in section 3 of this Services Brief.

2.2 Stage 1 – Condition Survey

2.2.1 **Scope of Works**

Establish the existing infrastructure condition of the disused Casino to Murwillumbah rail line and associated facilities.

2.2.2 **Task**

Below are the identified tasks, but not limited to:

- review previous studies and available information including geotechnical
- undertake site visits to check and record the conditions of:
 - a. rails and sleepers (including crossovers, sidings)
 - b. drainages
 - c. level crossings
 - d. underbridges and overbridges
 - e. tunnels
 - f. embankments/earthworks
 - g. right of way (vegetations, trees etc)

- h. signalling and communication equipments (including power supply)
 - i. condition of disused stations (including amenities, DDA compliance etc)
 - j. corridor maintenance access (fence, gates etc)
- undertake necessary testings and arrange for any geotechnical investigations subject to agreement with Principal.

2.2.3 ***Deliverables***

The Service Provider must deliver to the Principal:

1. a draft template for collection of asset data
2. a draft infrastructure condition report
3. final infrastructure condition report

2.2.4 ***Timeframe for Stage 1***

1. a draft template for collection of asset data – 3 weeks after commencement
2. a draft infrastructure condition report - 10 weeks after commencement
3. a final infrastructure condition report - 12 weeks after commencement

2.3 **Stage 2 – Reinstatement of line for heavy rail**

2.3.1 ***Scope of Works***

Identify the engineering work required and the cost associated with reinstating the Casino to Murwillumbah Rail Line to allow continued safe operation of rail passenger services (heavy rail with 19 tonne axle load at line speed and permanent speed restriction).

The scope is to be based on achieving an asset condition appropriate for the long-term sustainable operation of the rail line at minimum life-cycle cost. Operating regime is a daily return XPT service.

2.3.2 ***Task***

Below are the identified tasks, but not limited to:

- identify initial infrastructure repairs, replacement and renewal works on the line essential before reopening for service
- estimate the likely cost and timing of the initial infrastructure repairs, replacement and renewal works on the line essential before re-opening for service
- identify infrastructure repair, replacement and renewal works for staged restoration of the rail line following reinstatement of service for 5 year period
- estimate the likely cost and timing for the infrastructure repair, replacement and renewal works for staged restoration of the rail line following reinstatement of service for 5 year period

- develop routine maintenance costs required for a safe and efficient operation of the line. The routine maintenance program is to be based on the infrastructure condition achieved following the infrastructure repairs, replacement and renewal works implemented (Note: TfNSW will assist in confirming the relevant rates for rail maintenance activities provided by the service provider. This information will be available 2 weeks after the draft preliminary Asset Management Plan is submitted. Changes are to be incorporated in the final preliminary Asset Management Plan).
- establish a high level risk assessment following the infrastructure repairs, replacement and renewal works implemented
- establish the costs for procuring rolling stocks under this operating regime
- consider cost savings opportunities

2.3.3 ***Deliverables***

The Service Provider must deliver to the Principal:

1. a draft preliminary Asset Management Plan (AMP) addressing, but not limited to:
 - a. scope (amount and location) of work to be done
 - b. costs
 - c. reasons for work, consequences of deferral
 - d. relative priority of work based on risks/benefits
 - e. assumptions behind scope and costs
 - f. separate lists of work deferred after year 5 and potential consequences of its deferral
 - g. high level risk assessment
 - h. high level capital costs for procuring rolling stocks
2. a final preliminary Asset Management Plan
3. a commissioning strategy and program

2.3.4 ***Timeframe***

1. a draft preliminary Asset Management Plan - 16 weeks after engagement
2. a final preliminary Asset Management Plan – 20 weeks after engagement
3. a final commissioning strategy and program – 20 weeks after engagement

2.4 **Stage 3 – Reinstatement of line using alternatives to heavy rail**

2.4.1 ***Scope of works***

Identify the engineering work required and the cost associated with reinstating the Casino to Murwillumbah Rail Line to allow continued safe operation of passenger light rail or other commuter services.

The scope is to be based on achieving an asset condition appropriate for the long-term sustainable operation of the rail line at minimum life-cycle cost. Operating regime is a daily return service.

2.4.2 **Task**

Below are the identified tasks, but not limited to:

- reevaluate deliverables from Stage 2 to take into account the use of light rail or other services rather than heavy rail.

2.4.3 **Deliverables**

The Service Provider must deliver to the Principal:

1. a report on alternative transport options
2. a draft preliminary Asset Management Plan (AMP) addressing, but not limited to:
 - a. scope (amount and location) of work to be done
 - b. costs
 - c. reasons for work, consequences of deferral
 - d. relative priority of work based on risks/benefits
 - e. assumptions behind scope and costs
 - f. separate lists of work deferred after year 5 and potential consequences of its deferral
 - g. high level risk assessment
 - h. high level capital costs for procuring rolling stocks
3. a final preliminary Asset Management Plan
4. a commissioning strategy and program

2.4.4 **Timeframe**

1. a report on alternative transport options - 16 weeks after engagement
2. a draft preliminary Asset Management Plan - 16 weeks after engagement
3. a final preliminary Asset Management Plan – 20 weeks after engagement
4. a final commissioning strategy and program – 20 weeks after engagement

2.5 Stage 4 – Potential linkage to South East Queensland

2.5.1 **Scope of works**

Assess the feasibility of extending the rail services from Murwillumbah to Coolangatta Airport and Queensland rail

2.5.2 **Task**

Overleaf are the identified tasks, but not limited to:

- identify suitable corridor options connecting Murwillumbah to Coolangatta Airport and Queensland rail with proposed stations
- develop a pre-feasibility design identifying key rail infrastructure including a high level constructability assessment, rail systems and interoperability for each identified option
- estimate the likely strategic cost and timing to construct each identified option using per kilometre rates for key infrastructure
- establish the statutory approvals required from Queensland and New South Wales governments
- develop broad estimate of potential property costs
- undertake a high level environmental risk assessment

2.5.3 **Deliverables**

The Service Provider must deliver to the Principal:

1. a draft feasibility report addressing, but not limited to:
 - a. suitable corridor options (maximum 3) for extending rail services to Coolangatta Airport and Queensland rail
 - b. reasoning for the identified options
 - c. scope of work for each option
 - d. strategic cost assesment for each option
 - e. assumptions, risks and opportunities

2.5.4 **Timeframe**

1. a draft feasibility linkage to SEQ report - 29 weeks after engagement
2. a final feasibility linkage to SEQ report – 32 weeks after engagement

2.6 Stage 5 – Completion of study

2.6.1 **Scope of works**

Assemble findings from Stage 1 to Stage 4

2.6.2 **Task**

- compile and consolidate findings from Stage 1 to Stage 4
- document the study activities, assumptions and a summary of the infrastructure condition report, infrastructure works assessment report, program and cashflow

2.6.3 **Deliverables**

The Service Provider must deliver to the Principal:

1. a complete feasibility study report

2.6.4 **Timeframe**

1. a complete feasibility study report - 36 weeks after engagement

2.7 Out of scope

The following is out of scope for this study:

- Detailed route and link level analysis beyond identifying the appropriate function of the route and any major constraints to the route performing that function
- Urban and architectural design
- Concept design or detailed engineering drawings of possible options for the extension to SEQ
- Strategic transport modelling (this will be done by TfNSW)
- Detailed design
- Funding options
- Ticket prices and fare structures
- Timetabling
- Above rail costs (train running costs, sales, reservation etc)
- Identification of individual property impacted
- Community consultation.

2.8 Agency consultation

Consultation regarding the Study is ongoing with other Government agencies and relevant councils. The Service Provider may have to consult other transport agencies such as ARTC, CRIA, RailCorp etc to obtain relevant informations and prepare relevant documentation to gain site access.

2.9 Related community consultation

The Service Provider will not be undertaking any community consultations. However due to the nature of this Engineering and Cost Estimation study, it is envisaged that the Service Provider will occasionally be approached by the general public or the community during site visits.

As a result, the Principal will provide the Service Provider with a communication protocol during the inception meeting with regards to dealing with the general public during site visits.

2.10 Safety Requirements

The Service Provider is responsible to ensure that the nominated personnel undertaking works within the rail corridor has the required safety training and accreditation.

2.11 Other

The Service Provider to provide a cost estimate to undertake 10 geotech investigations under a separate line item. This costs will be a variation to the contract.

3 Management of Services and general processes

3.1 Working relationship

The Principal recognises that to be successful it will need to work closely and co-operatively with the community, state and local government, contractors, advisors and other key stakeholders. The Principal intends the working relationship with the Service Provider to be a relationship where the parties work together in a mutually supportive way to deliver jointly owned outcomes while respecting each others' distinct but compatible interests.

Other service providers may be engaged to develop the Study. The Service Provider, in collaboration with the Principal and other service providers must deliver the Services using an integrated team management approach in which the study team members work together and where individuals can provide their particular skills to add value to the Study.

In particular, the Service Provider must work co-operatively and cohesively with other service providers in a manner to provide the best outcome for the Study and value for money for Government. There will be interfaces between all service providers and the Service Provider must manage each interface and exchange information to ensure that any interface issues are resolved in an effective and efficient manner.

Currently, there are no other service providers appointed.

3.2 Team establishment

The Service Provider must:

- (a) provide, lead, organise, control and co-ordinate the resources necessary to provide the Services;
- (b) document the roles of all the people and parties involved;
- (c) ensure that all people and parties in the Service Provider's team fully understand and fulfil their role to successfully deliver the Services;
- (d) ensure that the Key People are available so that the Services are provided in a timely manner;
- (e) ensure that inputs required for the delivery of the Services from other Service Providers are provided in the correct format and in a timely manner; and
- (f) ensure that Key People have adequate support and that contingencies are in place in the event that Key People need to be replaced. This is subject to prior agreement with the Principal.

3.3 Key People

The Service Provider must ensure that the Service Provider's Study team includes Key People for the following roles.

3.3.1 Project Manager

The Service Provider must appoint a project manager or lead manager who shall be responsible for the successful delivery of the Services. The project manager or lead manager must have the following skills and experience:

- a) a minimum 10 years transport sector working experience;
- b) proven ability to manage and lead a multidisciplinary team;
- c) professional qualifications and a good working knowledge of best project practices, safety and value management;
- d) proven track record of delivering high quality documents on time; and
- e) good communication skills with clients, team members, stakeholders and the community.

3.3.2 Technical Managers

The Service Provider must provide relevant technical managers to undertake the required engineering works. These technical managers must have the following skills and experience:

- a) a minimum 15 years rail sector working experience;
- b) proven ability to manage and lead a relevant team;
- c) professional qualifications and a good working knowledge of best project practices, safety and value management;
- d) proven track record of delivering high quality documents on time; and
- e) good communication skills with clients, team members, stakeholders and the community.

3.3.3 Cost Manager

The Service Provider must provide a cost manager to undertake the required cost estimation works. The cost manager must have the following skills and experience:

- a) a minimum 15 years rail sector working experience
- b) professional qualifications and a good working knowledge of best project practices, safety and value management;
- c) proven track record of delivering high quality documents on time
- d) good communication skills with clients and team members.

3.3.4 Transport Planner

The Service Provider must provide a transport planner to assist with developing Stage 4. The transport planner must have the following skills and experience:

- a) a minimum 10 years rail sector working experience

- b) professional qualifications and a good working knowledge of best project practices, safety and value management
- c) proven track record of delivering high quality documents on time
- d) good communication skills with clients and team members.

3.3.5 Environmental Manager

The Service Provider must provide an environmental manager to assist with developing Stage 4. The environmental manager must have the following skills and experience:

- a) a minimum 10 years rail sector working experience
- b) professional qualifications and a good working knowledge of best project practices, safety and value management
- c) proven track record of delivering high quality documents on time
- d) good communication skills with clients and team members.

3.4 Services Management Plan

The Service Provider must employ a management system that is consistent with the NSW Government Quality Management Systems Guidelines. The Service Provider must develop and implement a Services Management Plan that sets out the general approach to managing delivery of the Services and is consistent with the principles of AS/NZS ISO 9001 (1994 or 2000) or equivalent.

The Services Management Plan must be submitted within 10 days of the Commencement Date and must contain an initial master program and baseline budget.

3.4.1 Program

The Service Provider must prepare a Study program fully detailing the delivery of the Services including key activities, deliverables, all milestone dates, review periods, interface points etc.

The form of the program and protocols for maintaining the program are to be agreed with the Principal. Changes to the Study program must only be made with the approval of the Principal, however, this program must be updated on a monthly basis to monitor the progress of the execution of the Services.

3.4.2 Cost

The Service Provider must prepare a baseline budget for the provision of the Services. The form of the baseline budget, protocols for maintaining and reporting against the baseline budget and the amount of detail to be provided in the baseline budget are to be agreed with the Principal.

If requested by the Principal, the Service Provider must provide a Fee estimate or a lump sum proposal for a specific component of the Services and/or additional services in a timely manner.

The Service Provider must keep continuous records and shall advise and seek direction from the Principal immediately if the baseline budget or upper limiting fee are likely to be exceeded.

3.5 Progress reports

The Service Provider must prepare a monthly report containing comprehensive information including:

- (a) a narrative for work performed
- (b) details of hours spent by all resources and their rates
- (c) details of any Disbursements payable
- (d) a summary of the Fees and Disbursements incurred by the Service Provider
- (e) identified risks and issues
- (f) monitor and report on delivery of the Services against the program and baseline budget
- (g) advise status of the projected final and stage completion dates.

This report will be used in support of each Payment Claim.

3.6 Document review

The Service Provider must submit all documents progressively to the Principal in accordance with an agreed program prepared in accordance with section 3.4.1. All reports and documents submitted to the Principal must meet the quality requirements specified in section 3.8.

3.7 Document quality

All draft and final documents produced as part of the Services must demonstrate a high quality of drafting. This is an essential requirement of the Services. All draft and final documents issued to the Principal should be such that they do not require substantial “improvement” as a result of poor document design, drafting and editing, or because of the a lack of appropriate senior review by the Service Provider.

The Service Provider must as a minimum:

- (a) Ensure that all draft and final copies of reports are proof read to identify any typographical and grammatical errors, and are written in plain English, before submission to the Principal. Technical words and acronyms should be clearly explained at the first point of reference in the reports and included in an acronyms and definitions table at the front of the document.
- (b) Ensure that all draft and final reports and documents are concise and to the point. Detail that is repeated and/ or does not directly relate to or support the findings and recommendations should be omitted.
- (c) Ensure that the layout of the draft and final reports enables ease of reading, and is not cluttered by long sentences, inadequate or uneven spacing, or poor presentation.
- (d) Ensure that tables, graphs and figures are used to convey information, where possible, rather than lengthy text descriptions. Any tables, graphs and figures must be simple to understand and clearly support the point being made. Titles, scales and legends must be included as appropriate.
- (e) Ensure that all draft and final reports are logically structured so that related findings and/or implications follow on from each other.

- (f) Ensure that draft and final reports not only detail findings, but also identify potential implications of such findings.
- (g) Ensure that draft and final recommendations offered are based on the findings documented in the reports, are outcome focused rather than prescriptive where possible, are cost effective and practical to implement and consider the potential for conflict with other recommendations contained within the document.
- (h) Ensure that every document submitted is signed off by an assigned senior internal reviewer.
- (i) Ensure that appendices, annexures and attached data files are clearly labelled and readily referenced in the body of the document.
- (l) Prepare all graphics, including drawings, diagrams and plans required for the delivery of the Services.
- (m) Format documents for double sided production. Recycled paper must be used for all hard copies provided.
- (n) Any style guide developed by the Principal, and directed for use, is applied.

3.8 Confidentiality agreement

The service provider will enter into a confidentiality agreement with the Principal.

3.9 Probity and Practice

The Service Provider must act in accordance with Government probity and other requirements and other Government practice requirements and guidelines. This includes, in particular, the requirements of the NSW Government *Code of Practice for Procurement*, July 2004 and the related implementation guidelines.

ANNEXURE 2 – PROFESSIONAL SERVICES CONTRACT



**Transport
for NSW**

Transport for NSW

PROFESSIONAL SERVICES CONTRACT

No. PSC-1890

Engineering and Cost Estimation Services

Casino to Murwillumbah Rail Line Study

Between

Transport for NSW

[PRINCIPAL]

ABN 18 804 239 602

and

XX Pty Ltd

[PROFESSIONAL SERVICES CONTRACTOR]

ABN XXX

Transport for NSW
18 Lee Street
Chippendale NSW 2008

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Professional Services Contract

This Agreement is between the Principal and the Professional Services Contractor set out in the Contract Particulars.

1 DEFINITIONS

In this Agreement:

"Agreement" means the contractual relationship between the Principal and the Professional Services Contractor constituted by:

- (a) these Conditions of Contract;
- (b) the Contract Particulars attached to these Conditions of Contract; and
- (c) the other documents (if any) referred to in the Contract Particulars.

"Business Day" means any day other than:

- (a) a Saturday, Sunday or public holiday, or
- (b) 27, 28, 29, 30 or 31 December.

"Commencement Date" means the date stated in the Contract Particulars.

"Confidential Information" includes, but is not limited to, the following:

- (a) the documents specified in the Contract Particulars;
- (b) any material produced by the Professional Services Contractor under this Agreement; and
- (c) any other information or data that the Professional Services Contractor is given or which comes to the Professional Services Contractor's knowledge during the course of the consultancy that:
 - (i) the Professional Services Contractor is told is confidential; or
 - (ii) a reasonable person would expect to be confidential from its nature and content,

but does not include:

- (d) information which, at the time of disclosure, was already in the public domain;
- (e) information which, subsequent to disclosure, enters the public domain except through breach of this Agreement, through breach of the Confidentiality Deed Poll in Schedule 1 by a recipient of disclosed information, or through breach of any other obligation of confidence; or
- (f) information which the Professional Services Contractor or a recipient of disclosed information (who has signed a Confidentiality Deed Poll in Schedule 1) is required to disclose by law or the listing rules of the Australian Stock Exchange.

"Contract Material" means those documents (including, but not limited to, information stored by electronic and other means) and materials created or required to be created under the Agreement by the Professional Services Contractor.

"Event of Insolvency" means if:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Agreement;
- (b) execution is levied against a party by a creditor;

- (c) a party is an individual person or a partnership including an individual person, and if that person:
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) the party enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for the winding-up of the party and not stayed within 14 days;
 - (v) a winding-up order is made in respect of the party;
 - (vi) resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up); or
 - (vii) a mortgagee of any property of the party takes possession of that property.

"Fee" means the fee set out in the Contract Particulars.

"Intellectual Property Right" means any patent, registered design, trademark or name, copyright or other protect right.

"Personal Information" means information or an opinion (including information or an opinion forming part of a database) whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

"Principal's Representative" means the person nominated in the Contract Particulars or any other person appointed from time to time by the Principal under clause 11.2.

"Project" means the project or projects in respect of which the Services are provided.

"Services" means the services described in the Contract Particulars.

"SOP Act" means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

"Statutory Requirements" include:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;
- (b) certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services; and
- (c) relevant Australian Standards applicable to the Services.

2 TERMS OF ENGAGEMENT

The Principal engages the Professional Services Contractor to perform the Services in accordance with this Agreement.

3 PROFESSIONAL SERVICES CONTRACTOR'S OBLIGATIONS

The Professional Services Contractor must:

- (a) perform the Services in accordance with the Agreement in consideration of the payments to be made by the Principal under clause 17;
- (b) perform the Services to that standard of skill, care and diligence to be expected of a professional services contractor who regularly acts in the capacity in which the Professional Services Contractor is engaged and who possesses the knowledge, skill and experience of a professional services contractor qualified to act in that capacity;
- (c) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Services;
- (d) liaise, co-operate and confer with others as directed by the Principal;
- (e) employ the person or persons specified in the Contract Particulars in the performance of the Services ("Key People");
- (f) immediately take steps to replace any Key People specified in the Contract Particulars who are unable to work or are requested by the Principal, acting reasonably, to be removed from the Services with a replacement of equivalent expertise and experience, and obtain the written approval of the Principal, which will not be unreasonably withheld, to the replacement prior to engaging the replacement;
- (g) commence and progress the Services expeditiously, without delay and in accordance with any directions of the Principal and, if a date for completion is included in the Contract Particulars, complete the Services by that date provided that such date will be extended by a reasonable time for any delay to the Services caused by an event which is beyond the reasonable control of the Professional Services Contractor;
- (h) promptly give written notice to the Principal if and to the extent the Professional Services Contractor becomes aware that any document or other information provided by the Principal is ambiguous or inaccurate or is otherwise insufficient to enable the Professional Services Contractor to carry out the Services;
- (i) make reasonable enquiries to ascertain the requirements of the Principal regarding the Services;
- (j) regularly consult the Principal regarding the carrying out of the Services;
- (k) as soon as practicable after becoming aware of any matter or circumstances which may adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to the Principal detailing the matter or circumstances and its anticipated effect on the Services.

4 JOINT AND SEVERAL LIABILITY

If the Professional Services Contractor comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Professional Services Contractor.

5 SUBCONTRACTING AND ASSIGNMENT

The Professional Services Contractor must not assign or subcontract any part of the Services without the prior written approval of the Principal.

An approval given by the Principal permitting the Professional Services Contractor to subcontract any portion of the Services does not relieve the Professional Services Contractor from its obligations and liabilities pursuant to the Agreement and the Professional Services Contractor will be vicariously liable for the acts and omissions of its subcontractors and consultants.

6 CONTRACTOR PERFORMANCE REPORTING

The Professional Services Contractor acknowledges that the Principal has in place processes for assessing the performance of its Professional Services Contractors and that these processes will apply to the Agreement. The Professional Services Contractor agrees to participate in the Principal's Contractor Performance Reporting process.

6.1 Exchange of Information between Government Departments and Agencies

The Professional Services Contractor authorises the Principal, its employees and agents to make information concerning the Professional Services Contractor available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Professional Services Contractor to the Principal and any information relating to the Professional Services Contractor's performance under the Agreement.

The Professional Services Contractor acknowledges that:

- (a) any information about the Professional Services Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Professional Services Contractor future opportunities for NSW government work; and
- (b) the Principal may be required to publish information concerning this Agreement in accordance with Sections 27-35 of the *Government Information (Public Access) Act 2009*. If the Professional Services Contractor reasonably believes that any part of this Agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Professional Services Contractor must immediately advise the Principal in writing, identifying the provisions and providing reasons so that the Principal may consider exempting those provisions from publication.

7 INTELLECTUAL PROPERTY

The Professional Services Contractor shall indemnify the Principal against any action, claim or demand, or loss or damage arising out of or in connection with any infringement or alleged infringement by the Professional Services Contractor of any copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs or other protected right in the performance of the Services.

7.1 Ownership

The Intellectual Property Rights in or relating to the Contract Material will vest in the Principal.

The Principal grants to the Professional Services Contractor an irrevocable licence to use those Intellectual Property Rights for the purpose of carrying out the Services. The Professional Services Contractor will retain the Intellectual Property Rights in any original ideas, equipment processes or systems created outside the terms of the Agreement and used in carrying out the Services.

The Professional Services Contractor must grant or cause to be granted to the Principal an irrevocable royalty-free licence (which includes the right to sublicense third parties) to use such Intellectual Property Rights for any purpose the Services are provided for including, but limited to, any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts) or additions or alterations to, the Project and the copying of any document for such purposes.

7.2 Warranty and Indemnity

The Professional Services Contractor warrants that in providing the Services the Professional Services Contractor owns or is licensed to use the Intellectual Property Rights in the Contract Material and the Professional Services Contractor must indemnify the Principal against any liability, loss or damage arising out of or in connection with the use of the Contract Material infringing or allegedly infringing the Intellectual Property Rights of a third party.

The Principal warrants that documents and materials provided by the Principal to the Professional Services Contractor for the Services will not infringe the Intellectual Property Rights of a third party.

7.3 Moral Rights

If the Professional Services Contractor in performing the Services includes or makes use of any work or other subject matter in which copyright subsists, the Professional Services Contractor must procure from every person (whether a subcontractor or an officer, employee or consultant of the Professional Services Contractor or of a subcontractor) who is an author of that work or subject matter a written consent signed by that person for the benefit of the Principal and the Professional Services Contractor, under which (to the maximum extent permitted by law) that person irrevocably and unconditionally:

- (a) consents to the Principal and the Professional Services Contractor:
 - (i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter anywhere in the world in whatever form the Principal and the Professional Services Contractor thinks fit (including, but not limited to, the making of any distortions, additions, or alterations to that work or subject matter or any adaptation thereof, or to any part of that work or subject matter or of any such adaptation in a manner which but for the consent, infringes or may infringe that person's moral rights in the work or other subject matter) as so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published; and
 - (ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter or any adaptation thereof (or any part of that work or subject matter or of any such adaptation) anywhere in the world without making any identification of that person in relation thereto; and

- (b) waives, to the extent permitted by law, all and any moral rights to which that person may be entitled anywhere in the world in relation to any Contract Material.

8 CONFLICT OF INTEREST

The Professional Services Contractor warrants that no conflict of interest exists in relation to the Services at the date of the Agreement.

The Professional Services Contractor must immediately provide the Principal written notice upon becoming aware of the existence, or possibility, of a conflict of interest in the performance of the Services.

On receipt of a notice under clause 8, the Principal may:

- (a) approve the Professional Services Contractor continuing to perform the Services, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
- (b) where in the Principal's view the conflict of interest cannot be appropriately managed and without limiting clause 21, terminate this Agreement by notice in writing to the Professional Services Contractor effective from the date specified in the notice.

The Principal may, at its sole discretion and at any time, require the Professional Services Contractor to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Services signs and delivers to the Principal a Statement of Interests and Associations in the form attached in Schedule 3.

9 INDEMNITY BY PROFESSIONAL SERVICES CONTRACTOR

Subject to clause 26, the Professional Services Contractor must indemnify the Principal against:

- (a) loss of or damage to property of the Principal including, but not limited to, the Contract Material; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of carrying out the Services but the Professional Services Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that the act or omission of the Principal or the employees, agents or other contractors of the Principal contributed to the loss, damage, injury or death.

10 INSURANCE

10.1 Professional Indemnity Insurance

Before the Professional Services Contractor commences carrying out the Services, the Professional Services Contractor must effect a professional indemnity insurance policy for the Services with a total aggregate cover of not less than the sum stated in the Contract Particulars.

The policy must include provisions for one automatic reinstatement of the sum insured and for loss of documents. The policy and such level of cover must be maintained until the Professional Services Contractor completes carrying out the Services and thereafter for a period as stated in the Contract Particulars.

The Professional Services Contractor must ensure that its subcontractors and consultants have professional indemnity insurance to a level approved by the Principal.

10.2 Public Liability Insurance

The Professional Services Contractor must maintain a public liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Contract Particulars. The policy must be maintained until the Professional Services Contractor completes carrying out the Services.

The policy must cover the Professional Services Contractor in respect of liability to the Principal and third parties in respect of any claim arising from the acts or omissions of the Professional Services Contractor, its employees, subcontractors and consultants in the course of carrying out the Services and must extend to indemnify the Principal as one of the class of persons constituting the Insured or note the Principal as an interested party but not in respect of liability to the extent that the liability is due to or results from the negligence of the Principal.

10.3 Insurance of Employees

Before the Professional Services Contractor commences carrying out the Services, the Professional Services Contractor must insure against liability for death or injury to persons employed by the Professional Services Contractor including, but not limited to, liability, statute and at common law. The insurance cover must be maintained until the Professional Services Contractor completes carrying out the Services.

Where permitted by law, the insurance cover must be extended to indemnify the Principal for the Principal's statutory liability for persons employed by the Professional Services Contractor. The Professional Services Contractor must ensure that employees of the Professional Services Contractor's subcontractors and consultants are similarly insured.

10.4 Professional Services Contractor's Insurance Obligations

The Professional Services Contractor must:

- (a) provide the Principal's Representative with a copy of, or certificate of currency for, any insurance policies required by this clause 10 prior to commencement of the Services and evidence satisfactory to the Principal's Representative that the policy is current as required by the Principal's Representative from time to time; and
- (b) ensure that it:
 - (i) does not do anything which prejudices the insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates any insurance policy if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy to lapse without providing prior written notification to the Principal's Representative. Such notification will not constitute a waiver of the Principal's rights under this Agreement;
 - (v) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or

affect any such policy or the payment of all or any benefits under the insurance.

11 REPRESENTATIVES

11.1 Professional Services Contractor's Representative

The person nominated in the Contract Particulars is the Professional Services Contractor's Representative for this Agreement and has the legal power to bind the Professional Services Contractor in respect of any matter arising in connection with the Services. Any substitute representative must be notified promptly in writing to the Principal.

11.2 Principal's Representative

The person nominated in the Contract Particulars is the Principal's Representative for this Agreement and has the legal power to bind the Principal in respect of any matter arising in connection with the Services. Any substitute representative must be notified promptly in writing to the Professional Services Contractor.

The Principal's Representative may by notice in writing to the Professional Services Contractor delegate any or all of its functions to another person.

12 DIRECTIONS

The Professional Services Contractor must comply with the directions of the Principal or the Principal's Representative. Except where the Agreement otherwise provides, a direction may be given orally.

If the Professional Services Contractor in writing requests the Principal to confirm an oral direction, the Principal must as soon as practicable confirm the oral direction in writing.

13 RECORD KEEPING AND PROGRAM REPORTING

The Professional Services Contractor must:

- (a) keep and ensure its subcontractors keep, accurate records of the performance of the Services;
- (b) ensure that all persons engaged in the performance of the Services produce and maintain:
 - (i) a daily diary record of tasks performed; and
 - (ii) where the Fee is time based, a daily timesheet accurately recording the time spent in the performance of the Services;
- (c) at the Principal's request, provide, and ensure that its subcontractors provide, the records referred to in this clause 13 for their inspection and copying by the Principal;
- (d) if required, provide the Principal's Representative with periodic program reports on the engagement as required by the Agreement; and
- (e) ensure that all records required to be kept by the Agreement, including the Competence Records, are current and accurate.

The records referred to in this clause 13 must be retained for seven (7) years after completion of the Services.

14 COLLABORATIVE AUDITING PROCESS

The Professional Services Contractor and the Principal will, on a collaborative basis, develop, agree and implement, a scope and program for the Principal's Representative to undertake audits of the Professional Services Contractor's compliance with the requirements of the Professional Services Contractor's quality management system (if applicable) as these may apply to the Services and obligations under the Agreement and:

- (a) the Professional Services Contractor agrees to participate and assist in the development and completion of these audits; and
- (b) the Professional Services Contractor and the Principal's Representative shall when requested share the results of any self verification by the Professional Services Contractor and/or the outcome of any audits completed.

15 ACCESS TO PROFESSIONAL SERVICE CONTRACTOR'S PREMISES

The Professional Services Contractor must, at all reasonable times and upon reasonable notice, permit the Principal access to the Professional Services Contractor premises in order for the Principal to inspect, discuss and assess the Contract Material and any other material obtained by the Professional Services Contractor from any person in connection with the Agreement.

16 VARIATIONS

16.1 Proposal

- (a) Subject to clause 16.1(b), the Principal may direct in writing that the Professional Services Contractor vary the Services (including, but not limited to, omitting or deleting a part of the Services), or the timing, including, but not limited to, the time for completion, of the Services or both ("**variation**").
- (b) The Principal may only instruct a variation that is within the general scope of the Services.

Where the variation:

- (i) is outside the general scope of the Services; or
- (ii) would require the Professional Services Contractor to perform the Services earlier than it would otherwise have had to perform the Services,

the Professional Services Contractor is not obliged to comply with the variation unless the Principal first issues a notice of proposed variation and the Professional Services Contractor agrees in writing to carry out the proposed variation. The Professional Services Contractor must not unreasonably withhold its agreement and may not withdraw its agreement once it has agreed in writing to the proposed variation.

- (c) If the Principal proposes a variation, the Principal will specify in the direction a reasonable time by which the Professional Services Contractor must provide a written estimate of the time, cost and programming effects of the proposed variation. If no time is specified, the Professional Services Contractor must provide the estimate within 14 days.

16.2 Variation Instruction

Whether or not the Professional Services Contractor provides a written estimate under clause 16.1(c), but subject to clause 16.1(b), the Principal may instruct in writing the Professional Services Contractor to carry out a variation, and the Professional Services Contractor must comply with such instruction.

16.3 Valuation

The value of a variation instructed under clause 16.1 will be determined by the Principal's Representative as follows:

- (a) by agreement between the Principal's Representative and the Professional Services Contractor including, but not limited to, where the Professional Services Contractor has provided a written estimate pursuant to clause 16.1(c) which the Principal has accepted, the amount in that written estimate;
- (b) by using the hourly rates and other prices set out in the Contract Particulars where included: or
- (c) on the basis of reasonable prices and rates determined by the Principal's Representative.

The Fee will be adjusted by the value of each variation as determined in accordance with this clause 16.3.

16.4 Variation due to a Change in a Statutory Requirement

If a new Statutory Requirement or a change in a Statutory Requirement after the date of the Agreement necessitates:

- (a) a change to the Services;
- (b) has effect after the date of the Agreement; and
- (c) could not reasonably have been anticipated at that date,

then the extent to which the Services are changed by the Statutory Requirement shall be deemed to be a variation and will be valued pursuant to clause 16.3.

16.5 No Variation Due to Professional Service Contractor's Failure to Perform

If, as a result of the Professional Services Contractor's failure to perform its obligations in accordance with this Agreement, the Principal requires the performance of additional services, or the deletion or alteration of the Services then:

- (a) no additional fees shall be payable to the Professional Services Contractor;
- (b) the losses incurred by the Principal as a result of such failure may be deducted from the Fee; and
- (c) the Principal may, in its discretion, retain another contractor to perform those or similar services.

17 PAYMENT OF FEE

17.1 Payment Claim

Subject to clause 17.5 and the Professional Services Contractor performing the Services, the Principal must pay the Professional Services Contractor the Fee and any disbursements referred to in the Contract Particulars for which it is entitled to payment, in accordance with this clause 17.

The Professional Services Contractor must prepare and submit to the Principal claims for payment of the amounts payable under the Agreement at the times set out in the Contract Particulars and containing the details required by the Principal. All invoices must be addressed to the Principal and must refer to the Professional Services Contract No. on the cover page of this Agreement.

Invoices for payment on a time basis must be for the period up to the last calendar day of the month prior to the issue of the payment claim and accompanied by timesheets and a summary of the Services performed in the time period of the claim.

It is a condition precedent to the Professional Services Contractor's right to submit a payment claim under this clause 17.1 that the Professional Services Contractor must, in respect of each payment claim:

- (a) provide the Principal with a duly completed and signed statutory declaration and subcontractor's statement in the form contained in Schedule 2 (or in any other form requested and/or approved by the Principal's Representative);
- (b) where clause 17.6(i) applies, provide the Principal with the statement and the evidence (if any) required to be provided by the Professional Services Contractor pursuant to that clause; and
- (c) provide a certificate of currency in respect of its workers compensation insurance.

17.2 Payment Statement

If the Principal intends making a payment that is less than the amount claimed by the Professional Services Contractor, the Principal must, within 10 Business Days following receipt of a payment claim give the Professional Services Contractor a payment statement which sets out:

- (a) the value of the Services completed in accordance with the Agreement;
- (b) the amount already paid to the Professional Services Contractor;
- (c) the amount that the Principal is entitled to retain, deduct, withhold or set-off under the Agreement;
- (d) the amount (if any) which the Principal proposes to pay to the Professional Services Contractor;
- (e) the reason why the amount in paragraph (d) is less than the amount claimed in the payment claim; and
- (f) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The failure of the Principal to set out in a payment statement an amount which it is entitled to retain, deduct, withhold or set off under this Agreement will not prejudice its right to subsequently exercise such right.

17.3 Payments

The Principal must:

- (a) where a payment statement is issued pursuant to clause 17.2, within the latter of:
 - (i) 15 Business Days of the issue of the payment statement; or
 - (ii) 25 Business Days following receipt of the payment claim,
- (b) otherwise, within 25 Business Days following receipt of a payment claim, pay the amount stated in the payment statement or the amount claimed by the Professional Services Contractor in its payment claim (as the case may be).

The making of a payment by the Principal under this clause 17.3 is not evidence of the value of the Services performed and does not constitute an admission by the Principal that any Services provided by the Professional Services Contractor conform with the requirements of this Agreement but is a payment on account only.

17.4 Fee Adjustment

When the Fee is on a time basis and the Services will be performed over a period which exceeds 12 months, then initially on or after the first anniversary of the Commencement Date and annually thereafter, the Professional Services Contractor may submit a request for a review of rates. Any request must be supported by a justification of the proposed changes in rates. If the Principal does not accept the changes in rates proposed by the Professional Services Contractor, the Principal may dispute the revised rates or terminate the Agreement pursuant to clause 21.

17.5 Set Off

The Principal may at any time withhold, set-off or deduct from amounts otherwise payable to the Professional Services Contractor:

- (a) any debt or other moneys due from the Professional Services Contractor to the Principal (including any due debt from the Professional Services Contractor to the Principal pursuant to Section 26C of the SOP Act; or
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act,

under this Agreement or in respect of the Services.

17.6 Security of Payment Act

- (a) This clause applies if the SOP Act applies to the Services.
- (b) The Professional Services Contractor agrees with the Principal that the date prescribed in clause 17.1 as the date on which the Professional Services Contractor must make a payment claim is, for the purposes of Section 8 of the SOP Act, the "reference date".
- (c) For the purposes of Section 17(3)(b) of the SOP Act the Professional Services Contractor irrevocably chooses the Institute of Arbitrators and Mediators Australia as the authorised nominating authority (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of the Agreement.
- (d) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Professional Services Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 17.2; and
 - (ii) if it is subsequently determined pursuant to the Contract that the Professional Services Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Professional Services Contractor to the Principal which the Professional Services Contractor must pay to the Principal upon demand and in respect of which the Professional Services Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

- (e) Without limiting clause 17.5, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (f) If the Principal withholds from money otherwise due to the Professional Services Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Professional Services Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Professional Services Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Professional Services Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Professional Services Contractor must be made.
- (g) The Professional Services Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of the SOP Act.
- (h) Any amount paid by the Principal pursuant to Section 26C of the SOP Act will be a debt due from the Professional Services Contractor to the Principal.
- (i) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Professional Services Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Professional Services Contractor must so notify the Principal within 5 days of the occurrence of the event in sub-paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

18 SUSPENSION FOR CONVENIENCE

The Principal, may at any time by prior written notice to the Professional Services Contractor, suspend the carrying out of the Services or any part thereof.

The Principal must pay the Professional Services Contractor any costs and expenses reasonably incurred by the Professional Services Contractor by reason of the suspension. The Principal may at any time after giving such a notice, give the Professional Services Contractor reasonable notice to recommence carrying out those Services so suspended.

19 DISPUTE RESOLUTION

19.1 Notice of dispute

If a difference or dispute (together called a “**dispute**”) between the parties arises in connection with the subject matter of the Agreement then either party will give the other party written notice of a dispute by hand or by registered post which adequately identifies the details of the dispute (“**Dispute Notice**”).

19.2 Negotiation

The Professional Services Contractor and the Principal must endeavour to resolve any dispute expeditiously by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice. At such negotiations each party must be represented by a person who has the authority to agree to such resolution. All aspects of the negotiation (except the fact that the negotiations took place) will be privileged.

19.3 Expert Determination

If a dispute between the Professional Services Contractor and the Principal is not resolved by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice (“**Negotiation Period**”), then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to litigation, the parties must submit the dispute to expert determination by an independent expert.

If the Professional Services Contractor and the Principal do not agree upon an independent expert within 10 Business Days of the end of the Negotiation Period then either party may request the President of the Institute of Arbitrators & Mediators Australia to nominate an expert.

The expert determination will be conducted in accordance with the rules in the Contract Particulars and the parties must sign such form of engagement as the expert may reasonably require.

Except where the parties otherwise agree in writing or the rules in the Contract Particulars otherwise provide:

- (a) each party must bear its own costs and pay one half of the expert's fees and expenses;
- (b) the expert must not act as an arbitrator;
- (c) the determination of the expert will be final and binding on the parties except where:
 - (i) the expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out works to the amount stated in the Contract Particulars, or if no amount is stated, \$500,000; and
 - (ii) a party gives notice of appeal to the other party within 15 Business Days of the determination being given; and
- (d) the determination is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 19.4 below.

19.4 Litigation

If the determination of the expert does not resolve the dispute, then subject to clause 19.3(c), either party may commence litigation in relation to the dispute.

19.5 Continuation

Each party must continue to perform its obligations under this Agreement notwithstanding the existence of a dispute.

20 NOTICE OF BREACH

If the Professional Services Contractor is in breach of the Agreement, then the Principal may give a written notice to the Professional Services Contractor stating:

- (a) that it is a notice under this clause 20;
- (b) the breach relied upon; and
- (c) that the Agreement will be terminated unless the breach is remedied within the period set out in the notice, which must be no less than 10 Business Days.

21 TERMINATION

21.1 Termination for Breach or Financial Difficulty

The Principal may, without prejudice to any other right, terminate the Agreement by notice in writing to the Professional Services Contractor from the date stated in the notice if:

- (a) the Professional Services Contractor fails to remedy a breach of the Agreement within the time stated in a notice under clause 20; or
- (b) an Event of Insolvency occurs to the Professional Services Contractor whether or not there has been a breach of contract by the Professional Services Contractor.

If the Agreement is terminated pursuant to clause 21 the parties' remedies, rights and liabilities will be the same as they would have been under the law governing the Agreement had the Professional Services Contractor repudiated the Agreement and the Principal elected to treat the Agreement as at an end and recover damages.

21.2 Termination for Any Reason

- (a) The Principal may terminate the Agreement at any time for any reason, by written notice to the Professional Services Contractor.
- (b) If the Principal terminates the Agreement pursuant to this clause 21.2, the Principal:
 - (i) may in its absolute discretion, complete the uncompleted part of the Services itself or by engaging any third party; and
 - (ii) must reimburse the Professional Services Contractor for the cost of Services performed to the date of termination plus the direct costs reasonably incurred by the Professional Services Contractor as a result of the termination. Such payment will be a limitation upon the Principal's liability to the Professional Services Contractor in connection with the termination of the Agreement.
- (c) If the Principal terminates the Agreement pursuant to this clause 21.2, the Professional Services Contractor must immediately hand over to the Principal

all copies of any documents provided by the Principal to the Professional Services Contractor and all Contract Material (whether complete or not).

- (d) This clause 21.2 survives the termination of the Agreement by the Principal under this clause 21.2.

22 CONFIDENTIALITY

22.1 Acknowledgement

The Professional Services Contractor acknowledges that all of the Confidential Information is and will be the sole and exclusive property of the Principal.

22.2 Warranty and Covenant

The Professional Services Contractor warrants and covenants that it will treat and keep the Confidential Information in the strictest of confidentiality and expressly acknowledges and agrees that the Confidential Information is of a confidential nature.

The Professional Services Contractor warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.

The Professional Services Contractor may not disclose to any person other than:

- (a) the Principal; or
- (b) a person who has signed a Confidentiality Deed Poll in the form of Schedule 1 in favour of the Principal,

that the Confidential Information has been made available to the Professional Services Contractor or that discussions or negotiations are taking place concerning the Agreement, and undertakes:

- (a) to protect and safeguard Confidential Information against unauthorised publication or disclosure; and
- (b) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
- (c) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

22.3 Personal Information

Without limiting any obligation that the Professional Services Contractor has under any applicable privacy laws, where the Professional Services Contractor has access to Personal Information in order to fulfil its obligations under this Agreement, it must where collecting personal information on behalf of the Principal, comply with the *Privacy and Personal Information Protection Act 1998* as if it were the Principal.

22.4 Authorised Disclosure

If the Principal's Representative approves in writing the disclosure of Confidential Information, the Professional Services Contractor may disclose that Confidential Information in accordance with the terms of that approval.

22.5 Return of Confidential Information

If the Principal requests it, the Professional Services Contractor must:

- (a) promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;

- (b) if any Confidential Information in the possession, custody, power or control of the Professional Services Contractor is in a form that cannot be detached from valuable equipment (including, but not limited to, Confidential Information stored by electronic, electromagnetic or other means), the Professional Services Contractor must erase the Confidential Information; and
- (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or erased, as appropriate.

Notwithstanding this clause 22.5 or any other provision of this Agreement, the Principal authorises the Professional Services Contractor to retain for record purposes one copy of material provided to the Professional Services Contractor by the Principal and one copy of the Contract Material. The Professional Services Contractor must treat all material retained under this provision as Confidential Information.

22.6 Confidentiality Deed Poll

Unless otherwise agreed, the Professional Services Contractor must procure each officer, employee, subcontractor, or agent of the Professional Services Contractor involved in the performance of the Services to sign and deliver to the Principal a Confidentiality Deed Poll in the form of Schedule 1.

22.7 Obligations To Continue

The obligations of the Professional Services Contractor under this clause 22 survive completion of the Services or termination of the Agreement and are enforceable at any time at law or in equity and continue to the benefit of and are enforceable by the Principal.

22.8 Injunctive Relief

In the event of a breach by the Professional Services Contractor of the Professional Services Contractor's obligations under this clause 22, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

22.9 Further Assurances

The Professional Services Contractor must do all things and execute all documents, including, but not limited to, executing any agreements of assignment, or agreements under hand or seal, which may reasonably be required by the Principal, to give effect to the provisions of the Agreement.

23 DISCLOSURE OF CONTRACT INFORMATION

The Professional Services Contractor acknowledges that the Principal may disclose this Agreement (and information concerning the terms of this Agreement) under or in accordance with any one or more of the following:

- (a) the *Government Information (Public Access) Act 2009 (NSW)*;
- (b) the *Ombudsman Act 1974 (NSW)*; and
- (c) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability.

24 GOVERNING LAW

The Agreement is subject to the laws of the State of New South Wales.

25 GST

The Principal and the Professional Services Contractor agree:

- (a) unless otherwise stated all dollar amounts referred to in this Agreement are GST exclusive;
- (b) except where an amount is stated to be GST inclusive, if either party ("supplier") is or becomes liable to pay GST arising out of or in connection with any supplies under or in connection with the Agreement or the Services, the supplier will, in addition to any amount it may be entitled to recover for the relevant supply ("consideration"), also be entitled to recover the amount of any GST liability incurred as a result of the supply;
- (c) where under the Agreement a party is entitled to any adjustment to the Fee or otherwise to the payment of money and such adjustment is based on the reasonable or actual cost to the party of performing any work, any input tax credits available to the party in relation to performing such work will be deemed to reduce the cost of such work;
- (d) the supplier must as a condition precedent to the obligation to make a payment under paragraph (b) provide the other party with a valid tax invoice in respect of the supply;
- (e) the Professional Services Contractor must ensure that each insurance policy referred to in clause 10 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed; and
- (f) in this clause 25:
 - (i) **GST** means the tax payable on taxable supplies under GST Law;
 - (ii) **GST Law** means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms which are defined in GST Law have the meaning provided by GST Law.

Subject to paragraphs (a) to (f) (inclusive), the Professional Services Contractor must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.

26 LIMITATION OF LIABILITY

- (a) The Professional Services Contractor will not be liable to the Principal for any damages in the form of consequential damages, including for loss of profit or related economic loss.
- (b) The Professional Services Contractor's aggregate liability to the Principal in contract, tort (including negligence) or otherwise under this Agreement is limited to the amount stated in the Contract Particulars, or if no amount is stated, \$5 million (five million dollars).
- (c) The limitation of liability in paragraph (b) will not apply to any liability which arises from any fraud, wilful misconduct or criminal conduct by the Professional Services Contractor or any of its employees, servants or agents.

27 NO WAIVER

Failure by the Principal to enforce or compel performance of any term or condition of this Agreement does not constitute a waiver of that term or condition and does not

impair the right of the Principal to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

28 RETURN OF DOCUMENTS

On completion of the Services or upon the termination of the Agreement, the Professional Services Contractor must deliver to the Principal:

- (a) all Contract Material produced by the Professional Services Contractor regardless of its stage of completion; and
- (b) the Principal's documents, samples, patterns, moulds and other information provided to the Professional Services Contractor in carrying out those Services.

29 ENTIRE AGREEMENT

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

30 SEVERABILITY

If at any time a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

CONTRACT PARTICULARS

Principal: Transport for NSW (a NSW Government Agency constituted under the *Transport Legislation Amendment Act 2011 (NSW)*).
 ABN 18 804 239 602
 Address: 18 Lee Street
 Chippendale NSW 2008
 Tel: Fax:

Professional Services Contractor:
 ABN
 Address:
 Tel: Fax:

Commencement Date: (Clause 1)

Confidential Information: (Clause 1)

Other Contract documents:
 (Clause 1, refer "Agreement" paragraph (c))

Fee: (Clause 1)

Services: (Clause 1)

Key People: (Clause 3(e))

Date for Completion: (Clause 3(g))

Minimum Level of Professional Indemnity Insurance: (Clause 10) \$5 Million

Time for maintaining Professional Indemnity Insurance: (Clause 10) 6 years

Minimum Level of Public Liability Insurance: (Clause 10.2) \$10 Million

Professional Services Contractor's Representative:
 (Clause 11.1)
 Tel: Fax:

Principal's Representative:
(Clause 11.2)

Tel:

Fax:

Hourly rates for the valuation of variations: (Clause 16.3)**Disbursements for which the Professional Services Contractor is entitled to be paid:** (Clause 17.1)**Times for Payment Claims:**
(Clause 17.1)

Claims to cover period up to last calendar day of the previous month and to be submitted by the fifth Business Day of the month

Expert Determination Rules:
(Clause 19)

The Expert Determination Rules of the Institute of Arbitrators and Mediators, Australia

Expert Determination final and binding amount: (Clause 19.3(c))**Limit of Professional Services Contractor's Liability:** (Clause 26)

\$5 Million

SIGNED as an agreement.

DATED day of20.....

SIGNED for and on behalf of the Principal:) in the presence of:
)

.....
(Signature of Authorised Signatory)

.....
(Signature of Witness)

.....
(Name of Authorised Signatory)

.....
(Name of Witness)

SIGNED for and on behalf of the Professional Services Contractor:) in the presence of:
)

.....
(Signature of Authorised Signatory)

.....
(Signature of Witness)

.....
(Name of Authorised Signatory)

.....
(Name of Witness)

SCHEDULE 1**CONFIDENTIALITY DEED POLL**

Professional Services Contract Number: _____

Professional Services Contractor: _____

(“Professional Services Contractor”)**Confidentiality Deed Poll made at _____ on:**
____/____/____

By:

Name: _____

Address: _____
_____**(“Recipient”)****In favour of:****Transport for NSW****(“Principal”)****Background**

The Principal and the Professional Services Contractor entered into the Professional Services Contract numbered above (**“Professional Services Contract”**), in which the Professional Services Contractor agreed to perform certain services.

It is a requirement of the Professional Services Contract that the Professional Services Contractor procures such of its officers, employees, subcontractors and agents as are required by the Principal to sign an individual confidentiality deed poll.

The Professional Services Contractor has requested and the Recipient has agreed, to execute this deed poll.

Confidential Information1. *Confidential Information* is:

- (a) any information (including, without limitation, information contained in proposals, designs, tenders, reports, advices, minutes of meetings or correspondence) in any form which has come to the knowledge of the Recipient by any means and which has been or will be given to the Recipient either directly or indirectly by the Principal or by a person on behalf of the Principal or by a proponent or tenderer,
- (b) any material produced by the Professional Services Contractor or the Recipient under the Professional Services Contract,

but does not include:

- (c) information which, at the time of disclosure, was already in the public domain;
- (d) information which, subsequent to disclosure, enters the public domain except through breach of this deed poll or any other obligation of confidence; or
- (e) information which the Recipient is required to disclose by law or the listing rules of the Australian Stock Exchange.

In the event of uncertainty as to whether:

- (a) any information is Confidential Information; or
- (b) any information is lawfully within the public domain,

that information is taken to be Confidential Information and the Confidential Information is taken to be not within the public domain, unless the Recipient is informed by the Principal in writing to the contrary.

Warranty and covenant

- 2. The Recipient warrants and covenants that it will treat and keep the Confidential Information in the strictest of secrecy and confidentiality and expressly acknowledges and agrees that the Confidential Information is of a secret and confidential nature.
- 3. The Recipient warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.
- 4. The Recipient may not disclose to any person other than:
 - (a) the Principal;
 - (b) a person who has signed a Confidentiality Deed Poll in favour of the Principal,that the Confidential Information has been made available to the Recipient or that discussions or negotiations are taking place concerning the Professional Services Contract, and undertakes:
 - (c) to protect and safeguard Confidential Information against unauthorised publication or disclosure; and
 - (d) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
 - (e) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

Authorised disclosure

- 5. If the Principal's Representative approves in writing the disclosure of Confidential Information, the Recipient may disclose that Confidential Information in accordance with the terms of that approval.

Return of Confidential Information

- 6. If the Principal requests it, the Recipient must:
 - (a) except as allowed under Clause 22 of the Professional Services Contract, promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;
 - (b) if any Confidential Information in the possession, custody, power or control of the Recipient is in a form that cannot be detached from valuable equipment (including, but not limited to, Confidential Information stored by electronic, electromagnetic or other means), the Recipient must erase the Confidential Information; and

- (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or erased, as appropriate.

Continuing obligation

- 7. The obligations of the Recipient under this deed poll continue after the completion or termination of any employment, engagement or assignment.

Injunctive relief

- 8. In the event of a breach by the Recipient of the Recipient's obligations under this deed poll, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

Further assurances

- 9. The Recipient must do all things and execute all documents, including but not limited to executing any agreements of assignment, or agreements under hand or seal, which may be required by the Principal to give effect to the provisions of this Confidentiality Deed Poll at a later date.

Non-waiver

- 10. The failure of the Principal to enforce any of the provisions of this deed poll or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the Principal to enforce that or any other provision at a later date.

Jurisdiction

- 11. This deed poll is governed by and subject to the laws of New South Wales.

No revocation

- 12. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a Deed Poll

by the Recipient:

in the presence of:

Recipient

Witness

Name (please print)

Name (please print)

SCHEDULE 2

FORM OF STATUTORY DECLARATION

Statutory Declaration	<i>Oaths Act (NSW) Ninth Schedule</i>
I,	<i>Insert full name of Declarant</i>
Of	<i>Insert address</i>
<i>do solemnly and sincerely declare that:</i>	
1. <i>I am the representative of:</i>	
..... ("the Contractor")	<i>Insert name of Contractor, and ACN if applicable</i>
<i>in the Office Bearer capacity of:</i>	
.....	<i>Insert position title of Declarant</i>
2. <i>The Contractor has a contract with the: [.....]:</i>	
..... ("the Contract")	<i>Insert name of Contract</i>
3. <i>I personally know the facts which I have set out in this declaration.</i>	
4. <i>All employees who have at any time been engaged by the Contractor for work done under the Contract:</i>	
a) <i>have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</i>	
b) <i>have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</i>	
<i>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</i>	
Employee	
Amount unpaid or not accrued:	
.....	<i>Insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</i>
.....	
.....	
5. <i>All subcontractors and suppliers to the Contractor have been paid all moneys which as at the date of this declaration have been claimed by them to the Contractor for the performance of work under the Contract (as applicable) and the supply of materials for use in work under the Contract, with the exception of the subcontractors and suppliers and the respective unpaid amounts listed below:</i>	
Subcontractor or supplier:	
Amount unpaid:	
.....	<i>Insert names and addresses of the unpaid subcontractors and suppliers, the amounts owing and whether in respect of materials supplied, work performed etc.</i>
.....	
.....	
6. <i>In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or</i>	

supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

b) that all their employees and subcontractors, as at the date of the making of such a declaration:

i) have been paid all remuneration and benefits due and payable to them by; or

ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:

Due amount unpaid:

.....
.....
.....

Insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier:

Amount unpaid or not accrued:

.....
.....
.....

Insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:

a) under Section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;

b) under Schedule 2 Part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and

c) under Section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.

<p>13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:</p> <p>a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and</p> <p>b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</p> <p>14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.</p>	
--	--

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at: on

(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

* The declaration must be made before one of the following persons:

- where the declaration is sworn within the State of New South Wales:
 - (i) a justice of the peace of the State of New South Wales;
 - (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
 - (iii) a notary public.
- where the declaration is sworn in a place outside the State of New South Wales:
 - (i) a notary public; or
 - (ii) any person having authority to administer an oath in that place.

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1 - see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.

Subcontractor: ABN:
(Business name)

of:
(Address of subcontractor)

has entered into a contract with: ABN:
(Business name of principal contractor) *(Note 2)*

Contract number/identifier: **(Note 3)**

This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**

subject of the payment claim dated:/...../..... **(Note 5)**

I, a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature: Full Name:

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with Section 175B of the *Workers Compensation Act 1987*.

Notes

1. This form is prepared for the purpose of Section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and Section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

SCHEDULE 3 – FORM OF STATEMENT OF INTERESTS AND ASSOCIATIONS

This form is completed by the Professional Services Contractor when directed by the Principal as per clause 8.

Date:

Name:

Organisation:

To: Transport for NSW
..... [Principal]

In relation to: [name of project in full]
.....

Declaration

I [insert full name] of
..... [insert business address]

agree and acknowledge that, except for the matters disclosed below:

To the best of my knowledge, I do not have:

- (a) any financial or other interest, either directly or indirectly in; or
 - (b) any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in; or
 - (c) any other interest or association, either directly or indirectly with;
- the entities listed below.

Disclosure

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(if further space is required please attach a signed separate letter)

I undertake to:

1. notify the Principal as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and
2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

Executed as a Deed Poll

by the Recipient:

in the presence of:

Recipient

Witness

Name (please print)

Name (please print)

Date

Date