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Services,
Technology &
Administration

NSW Procurement – Contracting Services is a Business Unit of the NSW
Department of Services, Technology & Administration

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

PART A

OVERVIEW AND CONDITIONS OF TENDER

Request for Tender 1000435 for Targeted Housing
and Support Services for Ex-Prisoners in Greater
Western Sydney, for Corrective Services NSW

Tender Issue Date: 8 March 2010

Closing Date: Wednesday 7 April 2010

Closing Time: 9:30 am Sydney Time

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

General Manager
Tendering & Contracting
NSW Procurement
Government Services Division
NSW Department of Services, Technology & Administration
McKell Building
2-24 Rawson Place
Sydney NSW 2000
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Targeted Housing and Support for Ex-Prisoners in Greater Western Sydney

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REQUEST FOR TENDER - PART A – OVERVIEW AND CONDITIONS OF TENDER

1 Definitions

Unless the context indicates otherwise, the following terms, where used in Parts A and B of this Request For Tender (“RFT”), shall have the meanings set out below.

“**ABN**” means an Australian Business Number as provided in GST law.

“**Addendum**” means an addition to this RFT made by the Board before Closing Date and Closing Time.

“**Agreement**” means the proposed agreement to be made between the Principal and the Contractor in the form of Part C to this RFT.

“**Alternative Tender**” means a Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the requirement.

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

“**Board**” means the State Contracts Control Board established under the Public Sector Employment and Management Act 2002 whose responsibilities include:

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) Ongoing contract administration and management, and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“**Client**” means a person exiting a correctional centre who has met the criteria for assistance under the targeted housing project administered by Corrective Services NSW.

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

“**Code**” means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The Code can be viewed and downloaded from:
http://www.nswprocurement.com.au/Government-Procurement-Frameworks/Files/code_of_prac-curr.aspx

“**Conforming Tender**” means a tender that conforms in all material aspects to:

- (a) the Specification;
- (b) the terms and conditions of Part C;
- (c) other parts of this RFT; and
- (d) is in the prescribed form.

“**Contractor**” means a tenderer who has entered into an Agreement with the Principal.

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

“GST Law” means any law imposing a GST And includes A New Tax System (Goods & Services Tax) Act 1999 (C’t’h) or if that Act does not exist, means any Act imposing, or relating to a GST and any regulation made under those Acts.

“Non-Conforming Tender” means a tender that does not conform in all material aspects to:

- (a) the Specification;
- (b) the terms and conditions of Part C;
- (c) other Parts of this RFT; and
- (d) is not in the prescribed form.

“NSW Procurement - Contracting Services” means a business unit of the NSW Department of Services, Technology & Administration representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Principal” means Corrective Services NSW, the party executing the proposed Agreement with the successful tenderer.

“Services” means the services sought under this RFT, as detailed in the Specification.

“SME” means small and medium enterprise(s). The term ‘SME’ refers to small and medium enterprises from NSW, other States and Territories of Australia or New Zealand, with up to 500 full time equivalent employees. For this definition of SME, grouping provisions apply. If the SME is controlled by another legal entity (e.g. a parent company), the 500 employees figure is aggregated across both entities. i.e. subsidiaries of larger companies are classified according to their parent company employee levels.

“Specification” means the detailed description of the Services contained in Annexure 1 to Part B.

“State Contracts Control Board” is the Board.

“Value addition” means the value of the tenderer’s output (price) minus the value of all its inputs purchased from other organisations.

2 Outcome

- 2.1 This RFT is issued by the State Contracts Control Board for the provision of services to Clients of Corrective Services NSW to secure accommodation and stable lifestyle as outlined in Annexure 1 to Part B.
- 2.2 The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services, whilst the proposed Agreement will be executed between Corrective Services NSW and the successful tenderer.
- 2.3 The key outcome of this RFT is to provide a procurement solution (through the proposed Agreement) for the required Services which meets the needs of Corrective Services NSW.

3 Scope of RFT

3.1 Services

- 3.1.1 The Contractor will assist the Client to integrate back into the community by organising stable, comfortable and secure housing with sustained support services which specifically address the Client’s social and criminogenic needs. Persons eligible for the targeted housing project are those at risk of homelessness exiting correctional centres who intend to reside in the Greater Western Sydney region. For the purposes of this RFT the Greater Western Sydney region includes the Local Government Areas of Auburn, Bankstown, Blacktown, Camden, Campbelltown, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta, Penrith and that part of the Blue Mountains east of Springwood.

- 3.1.2 The project will accept up to twenty people at any one time. While the maximum period of support will be 12 months, it is anticipated that some participants will develop sustainable tenancy skills in a shorter time period, and that the total number of participants in a 12 month period may be higher than 20.
- 3.1.3 A detailed description of the Services is described in Annexure 1 to Part B.
- 3.1.4 There is a strong preference to appoint one provider to deliver the Services. Notwithstanding, the Board reserves the right to appoint more than one provider if this results in a better outcome for the Government.
- 3.2 Contract Duration**
- 3.2.1 It is envisaged that the term of the proposed Agreement will be 3 years commencing in June 2010 or earlier, which may be extended by up to two further periods, each of one year duration, at the sole discretion of Corrective Services NSW.
- 3.3 NSW Government Requirements**
- 3.3.1 The successful tenderer must comply with NSW Government codes, guidelines and standards listed in Schedule 1 of Part C.

4 RFT Structure

4.1 Interpretation

- 4.1.1 Definitions of terms used in Parts A and B are contained in clause 1 of this Part.

4.2 RFT Structure

- 4.2.1 This RFT comprises three Parts as follows:

Overview and Conditions of Tender – Part A

It is an executive summary of the scope of the RFT and provides the terms, conditions and procedures governing the tender process.

Tender Response – Part B

These are response schedules which are required by the Board to evaluate the tenderers' offers. It also provides at Annexure 1 a detailed description of the Services to be provided which will form part of the Agreement to be executed between the successful tenderer and the Principal.

Agreement - Part C

This is the conditions of contract to be executed between the successful tenderer and the Principal.

- 4.2.2 If submitting a tender, retain Parts A and C. Part B, once completed, forms the tender, and is to be submitted in accordance with Part A.
- 4.2.3 Part C is to be executed later by the successful tenderer and the Principal to form the Agreement.

5 Best Price and Cost Structure

- 5.1.1 Tenderers are encouraged to provide their best price with their tender. Whilst the Board reserves the right to negotiate pre award, such negotiations may not occur and it is not the Board's preference.
- 5.1.2 It is important that tenderers realise they may not be short listed for further consideration if they do not provide their best price with their initial tender.

6 Tender Preparation

6.1 Tenderer to Inform Itself

- 6.1.1 Before submitting its tender, a tenderer must examine all information relevant to the risks and contingencies and other circumstances having an effect on its tender; and satisfy itself that:
- (a) the tender, including the tender price is correct; and
 - (b) it is financially and practically viable for it to enter into and perform the proposed Agreement.

7 Eligibility to Tender

7.1 Legal Entity of Tenderer

- 7.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Principal will only enter into an Agreement with such legal entity or entities.
- 7.1.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within three working days of the request.

7.2 Financial Capability of Tenderer

- 7.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.
- 7.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

7.3 ABN Requirements

- 7.3.1 The Principal will not enter into an Agreement with a tenderer that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their tender.
- 7.3.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an Agreement with the Principal. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

8 Tender Process

8.1 Tenderer Briefing

- 8.1.1 A tenderer briefing will be held on the date, time and place indicated below. The contact officer of NSW Procurement and officers of Corrective Services NSW will be available at that time to answer any queries regarding this RFT and the tender process generally. Names of persons attending the tenderer briefing must be provided to the Contact Officer at least 3 working days prior to the date. No more than three persons from each tenderer will be permitted to attend the briefing.

Location: Room 3, Level 1, Henry Deane Building, 20 Lee Street, Sydney
Date: 15 March 2010
Time: 2.00 p.m.

8.2 Contact Officer

- 8.2.1 The Contact Officer for this RFT is the Principal Procurement Specialist, NSW Procurement, Contracting Services.

8.2.2 Enquiries regarding this RFT should be directed to the Client Support Centre, telephone 1800 NSW BUY, email: nswbuy@services.nsw.gov.au The Client Support Centre will refer enquiries to the Contact Officer where appropriate.

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

8.3 Conformity of Tenders

8.3.1 The Board seeks Conforming Tenders.

8.3.2 Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

8.4 Alternative Tenders

8.4.1 Tenderers may, if they choose, submit an Alternative Tender. An Alternative Tender must be clearly marked "Alternative Tender".

8.5 Submission of Tenders

8.5.1 Prices, responses and other information provided in the tender are to be in writing and in English. The tender price must be in Australian dollars.

8.5.2 Tenderers must complete all of Part B of this RFT as directed and must not amend any of the questions provided.

8.5.3 Tenderers should notify the Contact Officer in writing before the Closing Date and Closing Time if they find any discrepancy, error or omission in this RFT.

8.5.4 Tenders must be provided in Microsoft Word 2003 and/or Microsoft Excel 2003. Please note pdf files are acceptable.

8.5.5 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contact Officer prior to lodgment of the tender.

8.5.6 It is recommended that electronic files be kept as small as practical and the lodgment files below a size of 7 MB, as the limitations of the Internet and communications may affect the successful transmittal and receipt of large files.

8.6 Tender Lodgement

8.6.1 Tenders must be fully received by the Closing Date and Closing Time.

8.6.2 A tender must be lodged electronically to the electronic tender box for this RFT via the NSW Department of Services, Technology & Administration tenders website at: <https://tenders.nsw.gov.au/commerce> (Login as a system user, locate the web page for this RFT and follow the on screen instructions to lodge the tender).

8.6.3 The lodgement can only be made by a registered system user of the NSW Government eTendering system.

8.7 Electronic Tenders

8.7.1 A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW).

8.7.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the conditions and rules on the NSW Department of Services, Technology & Administration tenders website at <https://tenders.nsw.gov.au/commerce>.

8.7.3 A tenderer must follow the following directions:

- (a) A RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" link on the web pages for the RFT.

- (b) To lodge a tender electronically, the files containing the tenderer's response must be up-loaded through the website to the NSW Government eTendering system. Access to the up-loading process is through the blue "Lodge a Response" link, then following the steps and instructions on the NSW Department of Services, Technology & Administration tenders website and any instructions which may have been supplied with the RFT documents, advertisement or invitation.
- 8.7.4 A tenderer must observe the following format for lodgements:
 - (a) An electronically lodged tender must be lodged in a file format required by the RFT (refer clause 8.5.4).
 - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
 - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
 - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading path names too long for the system, as detailed on the NSW Department of Services, Technology & Administration tenders website.
- 8.7.5 Signatures are not required for an electronic tender. A tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person's approval of the information communicated.
- 8.7.6 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:
 - (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.
 - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- 8.7.7 The Board will not be responsible in any way for any loss, damage or corruption of electronically submitted tenders.
- 8.7.8 If a tenderer experiences any persistent difficulty with the NSW Department of Services, Technology & Administration tenders website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- 8.7.9 If there is an extended defect or failure of the NSW Department of Services, Technology & Administration tenders website or eTendering system and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
- 8.7.10 Tenderers may break down the lodgement of large tenders into smaller packages if clearly identified e.g. package 1 of 3; 2 of 3; 3 of 3.
- 8.7.11 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated unless the tenderer provides clear directions to whether the lodgement is:
 - (a) an Alternative Tender,
 - (b) supporting information, or
 - (c) a further part of a tender that has had previous lodgement.
- 8.8 Tender Validity Period**
- 8.8.1 The lodged tender will remain open for acceptance by the Board for a period of six months from the Closing Date and Closing Time for tenders.

8.9 Late Tenders

- 8.9.1 Late tenders shall not be considered unless the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any tenderer whose tender is received late if the delay is due solely to mishandling by the Board.

8.10 Extension of Closing Date and Closing Time

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

8.11 Corruption or Unethical Conduct

- 8.11.1 Tenderers must comply with the requirements of the Department of Services, Technology & Administration Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part B.

- 8.11.2 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have

- (a) offered any inducement or reward to any public servant or employee, agent or sub-contractor of the Board, the Principal, or the NSW Government in connection with this RFT or the submitted tender;
- (b) committed corrupt conduct in the meaning of the Independent Commission Against Corruption Act 1988;
- (c) a record or alleged record of unethical behaviour; or not complied with the requirements of Department of Services, Technology & Administration Business Ethics Statement available at:
<http://www.services.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>;

this may result in the tender not receiving further consideration.

- 8.11.3 The Board may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.
- 8.11.4 If the Board and/or the Principal become/s aware of improper conflict of interests by a successful tenderer after an Agreement has been executed, the Principal reserves the right to terminate the Agreement.

8.12 Code of Practice for Procurement

- 8.12.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.
- 8.12.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

8.13 Prescribed Form of Tender

- 8.13.1 The tender, including any Alternative Tender, must comprise a completed Part B and any attachments to Part B, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.
- 8.13.2 The tender will be taken to be for the provision of the Services on the terms and conditions stated in Part C except to the extent that these are amended by the tender and agreed by the Board.

8.14 Addenda to RFT

- 8.14.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Closing Time, an Addendum will be issued.
- 8.14.2 In each case, an Addendum becomes part of the RFT.
- 8.14.3 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any Addenda were issued prior to closing date, even if a tender has already been submitted.

- 8.14.4 Tenderers must check the web site address <https://tenders.nsw.gov.au/commerce> and download the Addendum.

8.15 Tenderer's Costs

- 8.15.1 The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

8.16 Custody of Tenders After Receipt

- 8.16.1 Tenders lodged electronically to the NSW Department of Services, Technology & Administration Tenders website will be treated in accordance with the *Electronic Transactions Act 2000*.
- 8.16.2 On receipt of tenders lodged electronically to the NSW Government eTendering system, tenders are encrypted and stored in a secure "electronic tender box".
- 8.16.3 For reasons of probity and security, the Board and its agent are prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.
- 8.16.4 The e-mail receipt that is sent to the system user lodging the tender after successfully lodging the tender electronically to the NSW Government eTendering system is the only evidence of tender lodgement provided.

8.17 Ownership of Tenders

- 8.17.1 All tenders become the property of the Board on submission.
- 8.17.2 The Board may make copies of the tenders for any purpose related to this RFT.

8.18 Discontinuance of Tender Process

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

8.19 Variations to Tenders

- 8.19.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 8.19.2, vary its tender:
- (a) by providing the Board with further information by way of explanation or clarification;
 - (b) by correcting a mistake or anomaly; or
 - (c) by documenting agreed changes to the tender negotiated under clause 9.8 of this Part A.
- 8.19.2 Such a variation may be made either:
- (a) at the request of the Board, or
 - (b) with the consent of the Board at the request of the tenderer; but only if,
 - (i) in the case of a variation requested by the tenderer under clause 8.19.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
 - (ii) in the case of variation under clause 8.19.1(c) the Board has confirmed that the draft-documented changes reflect what has been agreed.

- 8.19.3 If a tender is varied in accordance with clause 8.19.1(a) or (b), the Board will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.
- 8.19.4 A variation of a tender under clause 8.19.1 will not be permitted if in the Board's view:
- (a) it would substantially alter the original tender; or
 - (b) in the case of variation under clause 8.19.1(a) or (b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

8.20 Australia and New Zealand (ANZ) Price Preference Margin

- 8.20.1 Under the *Local Jobs First Plan* (available at www.nswprocurement.com.au), the Australia and New Zealand (ANZ) Price Preference Margin is to be applied in the evaluation of tenders.
- 8.20.2 The ANZ Price Preference Margin will be a preference that is applied in the form of a 20% discount on the declared ANZ-SME content of goods and services offered by a tenderer.

For example:

Tenderer	Tender Price	ANZ-SME Content	ANZ Price Preference Margin Applied	Tender Price Evaluated
A	\$15,000	15.00%	\$450	\$14,550
B	\$15,000	30.00%	\$900	\$14,100
C	\$20,000	80.00%	\$3,200	\$16,800
D	\$14,600	0.00%	Nil	\$14,600

*** Evaluated Price = Tendered Price – [(ANZ-SME content x 20%) x Tendered Price]**

- 8.20.3 For the purposes of the evaluation of tenders and to enable the application of the ANZ Price Preference Margin, tenderers are required to provide details of the ANZ-SME content of goods and services offered by a tenderer.
- 8.20.4 Tenderers also agree to make available records from time to time (as and when requested by the Board) to substantiate the information provided about the ANZ-SME content of goods and services offered by a tenderer.
- 8.20.5 Where tenderers do not provide the required information on ANZ-SME content for (ANZ) Price Preference Margin, tender prices will not be adjusted by the applicable discount and tendered prices will be used in the tender evaluation.

8.21 SME Participation

- 8.21.1 All tenderers are required to respond to SME participation questions in this RFT. The responses provided to these questions will be considered in the evaluation of a tenderer's capability to meet the SME participation criteria.

9 Evaluation Process

9.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or to be given equal weight.

9.2 The evaluation criteria for this RFT that do not relate to price will account for 60% of the total evaluation score. The evaluation for this RFT that relate to price will account for 40% of the total evaluation score.

9.3 Information supplied by the tenderer in Part B will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the evaluation criteria listed in this RFT.

9.4 Tenders that do not include a fully completed Part B, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.

9.5 Evaluation Criteria

9.5.1 The evaluation criteria for this RFT include but are not necessarily limited to:

- (a) Quality of the program to deliver the Services in an efficient, effective and timely manner.
- (b) Staffing establishment and structure and quality of staff.
- (c) Profile of organisation, including experience and expertise in conducting similar services.
- (d) Demonstrated financial and managerial capabilities of the organisation including supervision plan.
- (e) Commitment to working with, and understanding of, the target group.
- (f) Timeframe for commencement and implementation plan.
- (g) Degree of compliance with the Specification (but not including Specification items covered in other selection criteria).
- (h) SME participation under the *Local Jobs First Plan* policy.
- (i) Financial viability of the tenderer.
- (j) Compliance with the NSW Government Procurement Tendering Policies and Codes of Practice.
- (k) Compliance with the proposed conditions of contract at Part C.
- (l) Tender price.

9.6 Site Inspections/Presentations/Interviews

9.6.1 The Board may, during the evaluation of tenders, undertake site inspections of the tenderer's, or its sub-contractor's, proposed premises.

9.6.2 The Board may, in its discretion, and as part of the evaluation process, invite one or more of the tenderers to make personal presentations, and/or be interviewed by the evaluation committee, regarding their tender. Such presentations and/or interviews shall be at the tenderer's cost.

9.6.3 Conducting a presentation or being interviewed by the evaluation committee in no way represents a commitment by the Board to accept any aspect of the tender.

9.6.4 All information obtained during the course of a site inspection, presentation or interview may be taken into consideration in the evaluation of tenders.

9.7 Acceptance or Rejection of Tenders

- 9.7.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a Conforming Tender.
- 9.7.2 The Board expressly reserves the right to accept, in its discretion, either or both of the following:
- (a) Any Alternative Tender or part of an Alternative Tender, which meets the scope and functional intent expressed in the RFT; and
 - (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a Conforming Tender.
- 9.7.3 The Board is not bound to accept the lowest tender.
- 9.7.4 If the Board rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).

9.8 Post Tender Negotiations

- 9.8.1 Before making any determination as to acceptance or rejection of tenders the Board may, at its discretion, elect to conduct negotiations with the preferred tenderer or tenderers, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.
- 9.8.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part C.
- 9.8.3 If the Board considers that none of the tenders are acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that adequate conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participant before the commencement of negotiations.
- 9.8.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 9.8.3 with more than one tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

9.9 Exchange of Information Between Government Agencies

- 9.9.1 Lodgement of a tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of a contract.
- 9.9.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within *section 30 of the Defamation Act 2005 (NSW)*, and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication.
- 9.9.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.

- 9.9.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes “personal information” about the tenderer for the purposes of the Privacy and Personal Information Protection Act 1998. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause 9.9.
- 9.9.5 The tenderer’s attention is drawn to the Freedom of Information Act 1989 which obliges disclosure of certain information resulting from the tender and may confer rights, subject to the terms of that Act, to access, and to require the correction of information held by certain agencies, including tenders held by the Board. A summary of the provisions is contained in Annexure 1 to this Part A (Disclosure Information).

10 Method of Acceptance

- 10.1** Acceptance of a tender or part tender will be subject to the execution of a formal Deed of Agreement in the terms of Part C. Until the Principal and the successful tenderer execute a formal Agreement there will be no legally enforceable agreement concluded between them.

11 Disclosure Information

- 11.1** Following the Board’s decision all tenderers will be notified in writing of the outcome of their tenders.
- 11.2** Details of tenderers and the outcome of the tender process will be disclosed in accordance with the Freedom of Information Act 1989 and the NSW Government Tendering Guidelines, available at:
- http://www.nswprocurement.com.au/psc/nsw_government_guidelines/tendering_guidelines.aspx

12 Complaints Procedure

- 12.1** It is the NSW Government’s objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part C, or the Specification in Annexure 1 to Part B, it is invited to write to:
- Chairperson
State Contracts Control Board
Level 22, McKell Building
2-24 Rawson Place
Sydney NSW 2000



Services,
Technology &
Administration

**NSW Procurement - Contracting Services is a Business Unit of the NSW
Department of Services, Technology and Administration**

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

PART B

TENDER RESPONSE

Request for Tender 1000435 for Targeted Housing and
Support Services for Ex-Prisoners in Greater Western
Sydney, for Corrective Services NSW

Closing Date: Wednesday 7 April 2010

Closing Time: 9:30 am Sydney Time

Your Company's Legal Name: _____

Your Company's Trading Name: _____

Your Company's ABN number: _____

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

Contact Phone: _____

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PART B TENDER RESPONSE

PART B1 INFORMATION SUPPLIED IN RESPONSE TO PART A

1. INTRODUCTION

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

2. PRICING

2.1 Instructions

- 2.1.1 Tenderers should submit prices both GST exclusive and GST inclusive.
- 2.1.2 Tendered prices must include all costs involved in satisfying the requirements of the Agreement at Part C, particularly the Specification at Annexure 1 to this Part B and which will form Schedule 2 of the Agreement. In particular, the attention of tenderers is drawn to clause 2.10 of the Specification in relation to the tendered price for Year 1.
- 2.1.3 The Local Jobs First Plan (available at www.nswprocurement.com.au) requires the application of the ANZ Price Preference Margin to the evaluation of the bids for all goods and services procurement actions. To enable proper evaluation of tenders, tenderers must submit the declared ANZ-SME content of goods and services offered by a tenderer (also refer clause 8.20 of Part A).

2.2 Tendered Prices

Description	Tendered Price			
	Price excl GST	GST Amount	Price incl GST	ANZ-SME Content
Organisation of stable, comfortable and secure housing for eligible Clients of Corrective Services NSW and provision of sustained support services in accordance with the Specification detailed in Annexure 1 of this Part B.				
Price for Year 1	\$_____	\$_____	\$_____	_____%
Price for Years 2 and 3	\$_____ per annum	\$_____ per annum	\$_____ per annum	_____%
TOTAL FOR 3 YEARS	\$_____	\$_____	\$_____	_____%

3. NON PRICE SELECTION CRITERIA

3.1 Tenderers are required to respond individually to each of the non price selection criteria outlined in the following spaces. The information provided will be used in the assessment of tenders.

(a) **Quality of the program to deliver the Services in an efficient, effective and timely manner.**

(i) The tenderer should provide a detailed outline of the program design including, but not limited to, what services it will deliver and the methods for delivery, philosophical overview and theoretical approach with details of policies, procedures and programs; and how the tenderer will meet peak workloads and after hours demands.

(ii) The tenderer should also provide any other information it deems necessary to demonstrate it meets this criterion.

(b) **Staffing establishment and structure and quality of staff.**

(i) The tenderer should provide a list of the staff proposed to deliver the services together with their curriculum vitae, qualifications, experience, skills, appropriateness and any other details in relation to their experience which would be relevant for the services required under this RFT.

(ii) The tenderer should provide details of the staffing structure and levels proposed to deliver the service including a detailed recruitment plan if additional staff have to be employed to provide the services. The tenderer should also comment on its ability to retain staff and its plan for ongoing recruitment to maintain staffing levels.

(iii) The tenderer should provide brief details of any support staff proposed and their role in service delivery.

(iv) The tenderer should provide details and relevant experience of any sub-contractors proposed to deliver services which would normally be provided by the Contractor.

(v) The tenderer should also provide any other information it deems necessary to demonstrate it meets this criterion.

(c) **Profile of organisation, including experience and expertise in conducting similar services.**

- (i) The tenderer should provide an overview of the organisation hereunder and general experience.
- (ii) The tenderer should provide a list of similar past and current relevant service delivery projects (no more than 5) and provide the following information for each:.

Information Required	Response
Name and location of the services	
Client	
Scope of the Services Including Term of Contract	
Tenderer's team members and key individuals that were associated with the services	
Value of Contract	
Other information you would like to add	

- (iii) Please provide details of the organisation's networks with related services and training programs available for the personnel involved in delivering the service.
- (iv) Please provide the names and contact details of at least 3 referees. The tenderer may also provide written referee reports if it wishes (however, this does not waive the requirement to provide contact details of 3 referees).
- (v) The tenderer should also provide any other information it deems necessary to demonstrate it meets this criterion.

- (d) **Demonstrated financial and managerial capabilities of the organisation including supervision plan.**
 - (i) The tenderer should provide details of its experience in handling financial matters associated with similar projects such as distribution of brokerage funds etc.
 - (ii) The tenderer should also provide details of its management structure, directors, board members, relationship manager (refer clause 12.2.1 of Part C), reporting lines, lines of communication, business acumen, as well as its supervision plan for the contract including details of staff proposed to manage contract service delivery.
 - (iii) The tenderer should also provide any other information it deems necessary to demonstrate it meets this criterion.
- (e) **Commitment to working with, and understanding of, the target group.**
 - (i) The tenderer should provide whatever information it deems necessary to demonstrate it meets this criterion.
- (f) **Timeframe for commencement and implementation plan.**
 - (i) The tenderer should provide the timeframe required to commence the services (in days/weeks, not dates) together with a detailed implementation plan to commence the Services by the nominated commencement date. The plan should also include details of the phasing in of staff and equipment from commencement of the contract until the peak workload is reached.
- (g) **Degree of compliance with the Specification (but not including Specification items covered in other selection criteria).**

The Specification is provided in Annexure 1 to this Part B (and will form Schedule 2 of the proposed Agreement in Part C). The tenderer must provide a statement of compliance against each and every clause of the Specification.

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

COMPLIES means:

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

Where appropriate, tenderers should state or describe how the requirement is or is to be met.

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

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

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

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

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

Your statement of compliance should be provided hereunder.

(h) **SME Participation under the *Local Jobs First Plan* policy.**

(i) The tenderer must complete the following table in relation to this criterion (also refer clause 8.21 of Part A):

Key Criteria	Description	Tender Response
The dollar value of ANZ-SME content in supply chain.	Specify the level of value-added attributable to ANZ-SMEs involved in supply chains to the tenderer. Note: Claims of ANZ-SME involvement should be demonstrable.	<i>Insert dollar value</i>
The value of new investment in plant or equipment in ANZ-SMEs that will result from the contract.	The expected value of new investment in plant or equipment in ANZ-SMEs that will result over the whole life of the contract	<i>Insert dollar value</i>
The number of retained and new employees engaged by ANZ-SME organisations involved in the supply chain for the delivery of the contract's requirements.	Provide details of the number of jobs that will be created or retained in ANZ-SME firms involved in the supply chain for the delivery of the contract's requirements.	<i>Insert the estimated number of jobs to be created and/or retained over whole life of contract.</i>
The number of ANZ-SME suppliers/providers that will benefit as a result of the contract and their employment numbers	Provide details of the number of intended ANZ-SME suppliers that will benefit as a result of the contract and their employment numbers Note: Claims of ANZ-SME involvement in the supply chain should be demonstrable.	<i>Insert the number of ANZ-SME suppliers. Insert the employment numbers for each SME</i>

(i) **Financial viability of the tenderer.**

- (i) The tenderer should provide copies of audited financial statements for at least the last three financial years (if you are a consortium financial statements should be provided for each member of the consortium) and any other information you deem necessary to demonstrate you meet this criterion.

(j) **Compliance with the NSW Government Procurement Tendering Policies and Codes of Practice.**

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

Yes/No (Delete whichever is not applicable)

- (ii) Will you maintain compliance with the Code for the purposes of the Agreement, advise the Board of any breaches of the Code for the duration of the Agreement and provide evidence of compliance when requested by the Board during the course of the Agreement?

Yes/No (Delete whichever is not applicable)

(k) **Compliance with the proposed conditions of contract at Part C.**

The proposed Agreement is provided in Part C. The tenderer must provide a statement of compliance against each and every clause of the Agreement {excluding Schedule 2, the Specification, which is covered under criterion (g)}.

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

COMPLIES means:

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

Where appropriate, tenderers should state or describe how the requirement is or is to be met.

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

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

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

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

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

Your statement of compliance should be provided hereunder.

4. OTHER INFORMATION REQUIRED

4.1 Tender Validity Period

- 4.1.1 The tender will remain valid for acceptance within _____ months from the deadline for lodgement of tenders, in accordance with Part A.

N.B. The minimum validity period is as stated in clause 8.8 of Part A.

4.2 Department of Services, Technology and Administration (DSTA) Business Ethics Statement

- 4.2.1 Do you comply with the requirements of the DSTA Business Ethics Statement referred to in clause 8.11 of Part A?

Yes/No (Delete whichever is not applicable)

If "No", provide an explanation below

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

4.3 Details of Ownership and/or Directorship

- 4.3.1 If you are a company, please provide details of your ownership, that is, Australian, overseas, largest shareholder, paid-up capital and other relevant details.
- 4.3.2 If you are a partnership, please provide a list of partners and details of the partnership financial arrangements.
- 4.3.3 The tenderer should provide details of its directors.
- 4.3.4 Please provide details of any affiliated companies or organisations i.e. companies or organisations that share the same directors.
- 4.3.5 If you are a consortium, please provide full details of all members of the consortium, directors of each member, ownership details of members that are companies or partnerships and nominate the consortium member who shall be a party to the contract.
- 4.3.6 Is the tenderer currently offering its business for sale, or is the subject of a merger, takeover or change of ownership? Answer yes or no below. If the answer is yes full details are to be provided.

Yes/No

4.4 Contracting as Agent/Trustee

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

4.5 Legal or Other Proceedings

4.5.1 Are you or any of your directors, key office holders or close associates currently, or have you, or have your directors, key office holders or close associates been at any time within the last five years, the subject of or involved with any or any pending:

- (a) legal proceedings, including winding up or bankruptcy proceedings;
- (b) insolvency administrations or investigations;
- (c) investigations by ICAC or ASIC;
- (d) investigations under the Charitable Collections Act, or any other public organisation or body;
- (e) investigations by the Australian Taxation Office.

Yes/No

If “**Yes**”, full details of each event are required to be provided below.

4.6 Further Information

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

5. ADDENDA TO THIS RFT AFTER ISSUE

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

YES/NO/THERE HAVE BEEN NO ADDENDA BY THE BOARD (Delete whichever is not applicable)

If **NO**, provide reasons below

PART B2 TENDERER IDENTIFICATION DETAILS AND CONFIRMATION OF TENDER

1. TENDERER IDENTIFICATION DETAILS

1.1 Name of Tenderer:

Company/Organisation's Full name: _____

Trading Name (if applicable): _____

Name and official position of authorised officer
completing tender: _____

1.2 ABN:

1.3 Address of Tenderer: *[state registered office and, if different, principal place of business]*

1.4 Business Postal Address:

Telephone No.: _____

()

Email: _____

Website: _____

Contact name for general enquiries: _____

Relationship Manager (refer clause 12.2.1 of Part C) _____

Telephone No.: _____

Tenderer's reference number: _____

2. ACKNOWLEDGEMENT AND CONFIRMATION OF TENDER

2.1 Lodgement of a tender will itself be an acknowledgment and representation by you that you are aware of the requirements of the Code; that you will comply with the Code, and that you agree to report to the Board any breaches of the Code for the duration of the Contract.

2.2 Do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Services, Technology and Administration tenders website is sufficient to verify and affirm that this is your tender to supply the Services at the prices tendered on the conditions contained in Parts A and C, except as expressly amended in your tender and that the information contained in your tender is correct?

Note that such acknowledgment and acceptance, by stating "Yes", is a necessary prerequisite to consideration of your tender.

Yes/No

Print Name and Title

ANNEXURE 1 TO PART B

SPECIFICATION FOR TARGETED HOUSING AND SUPPORT SERVICES

1. Background

- 1.1 The NSW Government is focusing on homelessness and has funded a number of projects to assist people being released from custody. Priority #2 of the Action Plan reads: Transition and maintain people exiting statutory care / correctional and health facilities into appropriate long-term accommodation. The Targeted Housing Support Project is a response to this priority. This project is jointly funded by the State and Commonwealth Governments for a period of three years – A Way Home: Reducing Homelessness in NSW - NSW Homelessness Action Plan 2009 – 2014
- <http://www.housing.nsw.gov.au/NR/rdonlyres/070B5937-55E1-4948-A98F-ABB9774EB420/0/ActionPlan2.pdf>
- 1.2 The Australian Housing and Urban Research Institute (AHURI) and other research has identified that lack of appropriate, secure or any accommodation is a major problem for people exiting prison and a major contributing factor to recidivism and poor social outcomes. AHURI research synthesis concludes that improving homelessness outcomes requires:
- 1.2.1 Involving mainstream agencies in homelessness responses;
 - 1.2.2 Coordinating government, non-government and emergency agencies in providing housing and support;
 - 1.2.3 Building a trusting support relationship over a period of time;
 - 1.2.4 Multi-disciplinary case management teams;
 - 1.2.5 Support services addressing identified need; and
 - 1.2.6 Permanent supportive housing rather than transitional accommodation.
- 1.3 The Targeted Housing Support Project is a partnership between Corrective Services NSW; Housing NSW, NSW Department of Health; Community Services NSW and Aging, Disability and Home Care. Corrective Services NSW is the lead agency.

2. Scope

- 2.1 This Specification covers the provision of services for pre and post release offenders (Clients) to secure accommodation and stable lifestyle.
- 2.2 The objective of the project is to achieve a reduction in the rates of homelessness and a reduction in rates of re-offending for the Client group. The Contractor will assist the Clients to integrate back into the community by organising stable, comfortable and secure housing with sustained support services which specifically address their social and criminogenic needs.
- 2.3 The project will focus on ex-prisoners on release who have children and/or complex needs such as intellectual disabilities, low cognitive functioning, substance abuse and/or mental health issues. The target group will be restricted to sentenced prisoners just prior to and after release. A major goal is to prevent exits into rough sleeping or transient, unsuitable accommodation.
- 2.4 A key feature of this project will be the development of strong inter-agency partnerships. The Contractor is required to effectively coordinate the services provided by the agencies. This shall enable a more accessible, consistent and “human” point of service delivery for the Client while providing improved access to specialist services.

- 2.5 The agencies mentioned in clause 1.3 above will provide services to the Clients (as required) in conjunction with other community agencies. The Contractor is required to co-ordinate these activities.
- 2.6 The project will accept up to twenty Clients at any one time. Eligible Clients for this project are people at risk of homelessness exiting correctional centres who intend to reside in the Greater Western Sydney region. They will be offenders released from a custodial sentence (either to parole supervision or not) who have no permanent home and other complex needs. Clients will initially be selected from Dillwynia (Windsor), Emu Plains and Berrima Correctional Centres. Other correctional centres will be utilised if, in the future, there is insufficient referral from the nominated centres.
- 2.7 For the purposes of the Agreement the Greater Western Sydney region includes the Local Government Areas of Auburn, Bankstown, Blacktown, Camden, Campbelltown, Fairfield, Hawkesbury, Holroyd, Liverpool, Parramatta, Penrith and that part of the Blue Mountains east of Springwood.
- 2.8 While the maximum period of support for a Client will be 12 months, it is anticipated that some participants will develop the capacity to become independent of the project in a shorter time period or leave the project early for other reasons. The Principal will identify up to 20 Clients for the purposes of the Agreement from time to time. There may be more than 20 clients in a 12 month period depending on the period of support for a particular Client
- 2.9 Generally, it is expected that the level of intensity will vary from “high level of support” (at least 8-16 hours per day 5-7 days/week with 24 hour on-call availability) in the first 3 months, through “medium level” consisting of 2-5 visits per week, to a maintenance or “low level” in the last phase consisting of 1 visit per week. However, there will be the flexibility to respond to the changes in the needs of Clients e.g. in cases of relapse or crisis.
- 2.10 Referral to the project will occur 3 months before release. This means at the commencement of the contract the Contractor will only be working with Clients prior to their release. Therefore service to post release Clients is not likely to commence until after the first 3 months of the contract. It is anticipated that the number of Clients will slowly increase in the first year of the contract with the estimated peak of 20 expected to be reached somewhere in the latter part of that year. The tenderer's price for the first year of the contract should reflect the phasing in of appropriate staffing numbers in line with the gradual increase in the anticipated number of Clients. The Year 1 price should also include any start up costs.
- 2.11 A brokerage budget of \$2,000 per Client will be provided to furnish properties including bed, lounge, dining tables, white goods, etc. A small amount of this funding may be used for emergencies such as food and medical fees.
- 2.12 The Contractor will take the lead role in the case planning process. All relevant agencies and the Client will also participate in the case planning process and implementation. The intention of the project is to have Clients supported in permanent accommodation to a point where they can independently maintain that housing and meet their needs in the community.
- 2.13 The Principal, as the lead agency, will be responsible for the monitoring of the project and the performance of the Contractor. Housing NSW will endeavour to provide housing assistance and products¹ as per assessed need, to eligible Clients under the terms of the project. NSW Health will, where possible, provide timely access to assessment and treatment services within existing resources. Treatment services will be provided to Clients of the project who meet clinical service eligibility criteria, subject to clinical triage and service availability. Community Services NSW will provide assistance on family matters where children are involved. Aging, Disability and Home Care will provide assistance to Clients with disabilities that fit their criteria.

¹ Housing products are described on the Housing website www.housing.nsw.gov.au

- 2.14 The Contract will run for a period of three years scheduled to commence from May, 2010. Corrective Services NSW may extend the Agreement by up to two further one year periods at its sole discretion.

3. Ethical Standards and Legislative Requirements

- 3.1 The Contractor's staff working with this project shall be guided by a clear and enforceable code of conduct that is developed by the Contractor as required by this RFT for the Agreement. Such a code should be compliant with relevant registration boards and professional associations, statements of ethics and the Corrective Services NSW Code of Conduct.
- 3.2 The Contractor must ensure that all staff working with this project perform work in a manner which displays sensitivity to cultural and linguistic differences.
- 3.3 The Contractor's staff working with this project shall display sensitivity to people with disabilities.

4. Service Descriptions

- 4.1 The Contractor shall report to the Principal, as the lead agency, for operational matters concerning the project.
- 4.2 The Contractor shall liaise with Corrective Services NSW about funding matters.
- 4.3 The Contractor shall provide the following services:
- 4.3.1 Assessment for entry into the project;
 - 4.3.2 Liaison with staff in custodial centres providing referral;
 - 4.3.3 Initiate and guide case plans in consultation with the Client and partner agencies and service providers;
 - 4.3.4 Monitor implementation of case plans and give feedback to service providers;
 - 4.3.5 Coordinate services, particularly accommodation, to be available on the Client's release;
 - 4.3.6 Provide intensive support in the form of:
 - (a) Counselling;
 - (b) Transport including transporting the Client to the accommodation on release and to other services where required;
 - (c) Practical assistance with independent living skills; and
 - (d) Liaise with specialist services in the areas of
 - drug & alcohol;
 - health including mental health;
 - education;
 - training and employment including job seeking skills and generic employability skills;
 - financial counselling;
 - parenting assistance; and
 - children's services.

(Support services shall be provided at an intensity level matched to the individual needs of a participant.)

- 4.3.7 Arrange case conferences. Case conferences should be held on a monthly basis with all operational staff from the partner agencies and any other agencies involved with the Client. These meetings will be used to monitor progress and make any required changes to the case plan. The Client will be an integral participant in the individual case conference process.
- 4.3.8 Case plans must address:
- (a) Parenting support needs if the Client has children;
 - (b) Respond to concerns raised by housing providers about any tenancy issues or breaches or any issues that affect tenancy sustainability;
 - (c) Drug use if relevant;
 - (d) Disabilities;
 - (e) Health including mental health; and
 - (f) Legal requirements.
- 4.3.9 Providing tailored exits plans for Clients leaving the project.
- 4.3.10 Data collection will be an essential activity to be carried out by the Contractor. As a minimum data shall be collected regarding number of people assisted, availability of suitable accommodation by area, services required, services delivered, duration of support package, suitability and maintenance of accommodation etc. Reporting requirements will be as agreed with the Principal.
- 4.4 Services will be provided in the releasing custodial centre and then the Client's residence as well as providing transport services as needed to attend appointments.
- 4.5 The Contractor will report to the project partners on a regular basis about the overall project implementation. The public agency partners will meet quarterly for the first twelve months and thereafter to be decided but no less than annually. The Contractor will be required to attend these meetings.



**Services,
Technology &
Administration**

**NSW Procurement – Contracting Services is a Business Unit of the NSW
Department of Services, Technology & Administration**

PART C **AGREEMENT**

Dated: <Insert Date>

Corrective Services NSW

and

<Insert Contractor name>

**AGREEMENT 1000435 TARGETED HOUSING AND SUPPORT SERVICES FOR
EX PRISONERS**

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THIS AGREEMENT executed by DEED is made on the _____ day of _____ 20__

BETWEEN

the Crown in right of the State of New South Wales, acting through Corrective Services NSW of Henry Deane Building, 20 Lee Street, Sydney 2000, in the State of New South Wales ("the Principal").

AND

[.....name of contractor.....] of [.....address.....] ABN [insert ABN number] in the State of [.....] ("the Contractor").

BACKGROUND

- A. The State Contracts Control Board, at the request of the Principal, issued the Request for Tender for the Services.
- B. The Contractor submitted a Tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter into an Agreement for the supply of the Services in the form of this Agreement.

NOW THE PARTIES AGREE:

1 Interpretation

1.1 Definitions

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

"Approved Sub-Contractors" means the sub-contractors approved by the Principal and indicated in Schedule 5.

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

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

"Client" means a client of Corrective Services NSW, being a person exiting a correctional centre who has met the criteria for assistance under the targeted housing project administered by Corrective Services NSW.

"Circumstances Beyond the Control of the Contractor" include:

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

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

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

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

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

“Contractor” means the contractor under this Agreement and includes its sub-contractors, re-sellers and distributors.

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

“Contract Price” means the total amount payable by the Principal to the Contractor for the Services ordered under this Agreement and calculated in accordance with clause 6.2.

“Contractor Information” means the information provided by the Contractor in Schedule 1 and includes information on Approved Sub-Contractors.

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

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

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

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

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

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

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

“Key Personnel” means the personnel of the Contractor specified in Schedule 1, item 5.

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

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

“Parties” means the Principal and the Contractor.

“Personal Information” has the same meaning as in Privacy and Personal Information Protection Act 1998 (NSW).

“Personnel” of a Party means;

- (a) the officers, employees, agents and contractors of that Party,
- (b) in the case of the Contractor, includes sub-contractors, and the Key Personnel in Schedule 1, item 5.

“Price” means the price payable for the Service as set out in Schedule 3.

“Price Schedule” means Schedule 3 to this Agreement and/or variations made to it in accordance with this Agreement.

“Principal’s Material” means any material, document or Information supplied by the Principal to the Contractor by whatever means.

“Principal’s Delegate” means the Principal’s employee named in Schedule 1, item 8 responsible for the overall administration of this Agreement on behalf of the Principal.

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

“Relationship Manager” means the Contractor’s employee named in Schedule 1, item 5.

“Request for Tender” means Request For Tender 1000435 issued on behalf of the Principal, consequent to which this Agreement was awarded to the Contractor for the supply of the Services.

“Schedule” means a schedule to this Agreement.

“Service Delivery Plan” means the detailed plan to be met by the Contractor to commence and deliver the Services including program design, staffing establishment, contract management and implementation plan as outlined in Schedule 8.

“Services” means the services to be provided by the Contractor in accordance with Schedules 2 and 8 of this Agreement and itemised in Schedule 3, and includes any services which are ancillary to the provision of the Services.

“Specification” means the detailed description of the Services to be provided under this Agreement in Schedule 2.

“Standards” means Australian Standards, where such exist and are applicable to the Services, and includes international standards identified and accepted in the Specification with the successful tenderer.

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

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

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

“Substantial Breach” means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes but is not limited to, any breach of the following clauses:
 - (i) clauses 5.1 to 5.7 (Pricing);
 - (ii) clause 9 (Confidentiality);
 - (iii) clause 11.2 (Compliance with Laws, Standards and NSW Government Requirements);
 - (iv) clause 11.4 (Minimum Insurance Requirements);;
 - (v) clause 11.11 (Child Protection);
 - (vi) clause 11.13 (Small to Medium Enterprise Participation Plan);
 - (vii) clause 16.1 (No Assignment or Novation); and
 - (viii) clause 16.2 (Conflicts of Interests).

“Tender” means the Contractor’s tender response to the Request For Tender.

“Term” means the period of this Agreement, set out in Schedule 1, item 2 and any extension of the Term in accordance with clause 2.2 of this Agreement.

1.2 Rules for Interpreting this Agreement

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

1.2.2 A reference to:

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

1.2.3 Where:

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

1.2.4 A singular word includes the plural and vice versa.

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

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

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

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

- (a) The terms and conditions of this Agreement;
- (b) Schedules 1, 2 and 8 to this Agreement;
- (c) Any other Schedules to this Agreement.

2 Term

2.1 Duration

- 2.1.1 This Agreement commences on the commencement date specified in item 2 of Schedule 1 and expires on the expiry date specified in the same item 2, unless terminated earlier in accordance with this Agreement.

2.2 Extension

- 2.2.1 The Principal may in its sole discretion extend this Agreement for the period or periods specified in item 2 of Schedule 1.

3 Formation

3.1 Nature of the Agreement Between the Principal and the Contractor

- 3.1.1 This Agreement describes the terms and conditions between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Services.
- 3.1.2 This Agreement constitutes the entire Agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.

3.2 Approved Sub-Contractors

- 3.2.1 The Contractor may with the written consent of the Principal, sub-contract any part of this Agreement to an Approved Sub-Contractor in Schedule 5.
- 3.2.2 The Contractor must make the Approved Sub-Contractor aware of the terms and conditions of this Agreement and this clause.
- 3.2.3 The terms and conditions of the sub-contract must be consistent with this Agreement.
- 3.2.4 The Contractor will continue to be bound by, and responsible for the performance of this Agreement notwithstanding that part or all of it may have been sub-contracted.
- 3.2.5 The Principal may, without incurring liability, withdraw its approval of an Approved Sub-Contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of this Agreement. The Principal will notify the Contractor in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 3.2.6 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:
- (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
 - (b) the Contractor will indemnify and release the Principal from any liability or loss resulting from the acts or omissions of any sub-contractor.

4 The Services

4.1 Performance of the Services

- 4.1.1 The Services to be supplied by the Contractor under this Agreement are listed in Schedules 2 and 8 and include all labour, materials, plant and equipment necessary to perform the Services.
- 4.1.2 The Contractor must perform the Services in accordance with this Agreement.
- 4.1.3 The Principal may reject Services which are not in accordance with the Agreement.

4.2 Variation of Services

- 4.2.1 The Contractor must notify the Principal in writing as soon as practicable of any variation to the Services. The Principal must notify the Contractor in writing as soon as practicable if it wishes to vary the Services.
- 4.2.2 A variation under clause 4.2.1 may include a variation to the number of Clients.
- 4.2.3 If the variation of the Services is likely to affect the cost of the Services, the Principal may negotiate a Price reduction or an increase from the Contractor.
- 4.2.4 The Principal will notify the Contractor of its acceptance or rejection of the variation to the Services including a variation to the Price. If the variation is accepted, it shall be taken to be incorporated into Schedule 2 (and Schedule 3 if the Price is varied). The Parties agree that the variation accepted under this clause shall be taken to be a variation of the Agreement in accordance with clause 7.

4.3 Access to Contractor's Premises

- 4.3.1 The Principal shall allow the Contractor reasonable access to its premises for the purpose of meeting its obligations under this Agreement.

4.4 Service Delivery Plan

- 4.4.1 The Contractor warrants that:
 - (a) the Service Delivery Plan in Schedule 8 meets the requirements of this Agreement; and
 - (b) that the Service Delivery Plan is fit for its intended purpose.
- 4.4.2 The Contractor is responsible for ensuring that all of the requirements of the Service Delivery Plan are complied with at the Contractor's cost.

5 Pricing

5.1 Contractor's Obligations

- 5.1.1 The Contractor must supply the Services on the basis of the Prices in Schedule 3.

5.2 Calculating the Contract Price

- 5.2.1 The Prices for the Services in Schedule 3, which are fixed for the periods indicated therein, includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads and profits.

5.3 Price Variation Formula

- 5.3.1 The Contractor may apply to vary the Price in Schedule 3 in accordance with the frequencies and methodology indicated in Schedule 3. Subject to the Contractor having provided the Principal with sufficient documentation to justify the application, the Principal may in writing, approve the application within 30 days of lodgement. A minimum of 30 days' prior notice is required for a Price variation application. No Price increase shall be applied retrospectively.
- 5.3.2 The Principal may reject a Price variation by notifying the Contractor in writing.
- 5.3.3 Where the Price variation is accepted, Schedule 3 will be updated to include the varied Price.

5.3.4 Notwithstanding any other provision in this Agreement, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.

5.3.5 The Parties agree that the new Price accepted under clause 5.3.1 shall be taken to be a variation of the Agreement in accordance with clause 7.

5.4 Continuous Best Price

5.4.1 Notwithstanding any other clause in this Agreement, where the Principal has been able to confirm that the external market pricing for any Service in Schedule 3 is consistently more competitive than under this Agreement, the Principal will provide the Contractor with reasonable evidence of such market situation and request the Contractor vary its Prices to align with the market.

5.4.2 Where the Contractor offers more favourable prices to any other purchaser of similar services in NSW purchased in similar circumstances, it must promptly make the more favourable price available to the Principal.

5.5 Goods and Services Tax

5.5.1 In this clause and Agreement:

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

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

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

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

5.5.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice is received.

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

5.5.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 5.5.4.

6 Payment

6.1 Payment of Contract Price

6.1.1 Subject to clause 6.2 and in consideration of the Contractor providing the Services under this Agreement, the Principal shall, subject to the terms and conditions of this Agreement, pay the Contractor the Contract Price in accordance with this clause 6.

6.1.2 Failure by the Principal to pay the Contract Price at the due time will not be a ground for the Contractor to avoid performance of its obligations under this Agreement.

6.2 Invoices and Time for Payment

6.2.1 All claims for payment made by the Contractor shall be in the form of a Tax Invoice and the Tax Invoice shall include and be substantiated by itemised details of the account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Principal, including but not limited to consolidated quarterly invoicing on behalf of its branches/business units.

- 6.2.2 Subject to this clause 6.2, the Principal shall pay the Contractor on a quarterly basis in advance an amount equal to 1/4th of the relevant annual price after receipt of a valid Tax Invoice
- 6.2.3 The Parties agree the making of a payment is not intended to be an acknowledgement that the Services have been supplied in accordance with this Agreement.
- 6.2.4 If the Principal disputes an invoice amount the Principal shall certify the amount it believes is due for payment and shall pay that amount and the liability for the balance of payment shall be determined in accordance with this Agreement.
- 6.2.5 The Contractor will not be entitled to any credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment by the Principal of money becoming due for the supply of the Services.

6.3 Set-Off/Money Recoverable by the Principal

- 6.3.1 The Principal may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Principal in connection with the supply of the Services.
- 6.3.2 Without limiting clause 6.3.1, any damages, costs and expenses recoverable by the Principal from the Contractor in consequence of the Contractor's breach of this Agreement may be deducted from money then due to the Contractor. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due and owing from the Contractor to the Principal and may be:
- (a) set off against any other money due to the Contractor by the Principal under this or any other Agreement between the Principal and the Contractor; or
 - (b) recovered from the Contractor by the Principal in an appropriate court.

7 Variations

7.1 Variations to Agreement

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

8 Rejection of Services

8.1 Rejection of Services

- 8.1.1 The Principal may reject Services which are not in accordance with this Agreement.
- 8.1.2 Upon rejection of any Services the Principal shall notify the Contractor and may direct that the rejected Services be removed or stopped and replaced or rectified at the Contractor's risk and expense, and within such reasonable time as the Principal may direct.
- 8.1.3 If the Contractor fails to replace or rectify the rejected Services within the time directed, the Principal may have the rejected Services re-performed at the Contractor's risk and expense.
- 8.1.4 Where Services are rejected and the Contractor fails to replace or rectify the rejected Services in conformity with the Agreement, the Principal may:
- (a) purchase from another supplier substitute Services of the kind and quality ordered; or
 - (b) where it is not possible or practicable to purchase from another supplier substitute Services of the kind or quality ordered, the Principal may purchase Services of a superior kind and quality to the Services under this Agreement.
- 8.1.5 In both cases listed in clause 8.1.4, any extra cost or expense incurred over and above the Contract Price shall be a debt due and owing from the Contractor to the Principal.

9 Confidentiality

9.1 Obligations of Parties

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

10 Intellectual Property

10.1 Ownership

- 10.1.1 Intellectual Property created in relation to New Contract Material will be owned by the Contractor upon its creation.
- 10.1.2 The Contractor grants to the Principal an irrevocable, perpetual, non-exclusive, royalty free, transferable licence to use the Intellectual Property in the New Contract Material.
- 10.1.3 The Parties acknowledge and agree that the Parties or, where applicable, particular third parties, are the sole owners of their Intellectual Property rights in or in relation to the Existing Contract Material.
- 10.1.4 The Contractor must ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- 10.1.5 Upon completion of the Agreement, or at such other time as the Agreement or the Principal may require, the Contractor must fully and promptly disclose to the Principal all New Contract Material created or developed under or in connection with this Agreement.

11 Specific Obligations of Contractor

11.1 Licences and Approvals

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

11.2 Compliance with Laws and Standards and NSW Government Requirements

- 11.2.1 The Contractor must, in carrying out this Agreement, comply with:
 - (a) all applicable Statutory Requirements;
 - (b) the NSW Government codes, policies, guidelines and Standards listed in item 4 of Schedule 1 or any other codes, policies, guidelines and Standards specified in writing by the Principal to the Contractor. (If a particular Standard, which has been agreed between the Contractor and the Principal, is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time);

- (c) the obligations imposed on the Principal by the Privacy and Personal Information Protection Act 1998 (NSW) and the Health Records and Information Privacy Act 2002 (NSW) in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with the Contract. The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Principal by the Privacy and Personal Information Protection Act and the Health Records and Information Privacy Act as though the Contractor were, as far as reasonably practicable, the Principal in relation to any such Personal Information. The Contractor will comply with any request of the Principal in relation to Personal Information and will not do anything that would cause the Principal to be in breach of its obligations under the Privacy and Personal Information Protection Act and the Health Records and Information Privacy Act.
- 11.2.2 At least 14 days before commencing the Services under this Agreement, the Contractor must document, submit and implement the following which complies with applicable legislation and Schedules 2 and 9 of this Agreement:
 - (a) An Industrial Relations Plan;
 - (b) An Environmental Management Plan; and
 - (c) An Occupational Health & Safety Management Plan.
- 11.2.3 The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting its obligations under this clause 11.2.
- 11.2.4 The Contractor must ensure that the Services have not been produced using the 'worst forms of child labour' as defined in the Worst Forms of Child Labour Convention, 1999 (ILO Convention 182).
- 11.3 Notification to the Principal**
- 11.3.1 The Contractor must immediately inform the Principal in writing of any problems or issues which prevent, may prevent, or have an impact on the performance of Services under the this Agreement, which may include matters pertaining to industrial relations, occupational health & safety, and environmental management.
- 11.4 Minimum Insurance Requirements**
- 11.4.1 The Contractor must hold and maintain, and must ensure that all Personnel are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
 - (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in Schedule 1, item 7(a) in respect of each claim; and
 - (b) services liability insurance for at least the amount specified in item 7(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor's products for the period of cover; and
 - (c) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees.
- 11.4.2 All policies of insurance must be effected with an insurer rated A – or better by AM Best or an equivalent rating organisation.
- 11.4.3 The Contractor must ensure that each policy is in effect for the Term of this Agreement or such other period as required by the Principal.

- 11.4.4 The Contractor shall, and shall ensure sub-contractors, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Agreement and shall ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim.
- 11.4.5 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained".
- 11.4.6 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.
- 11.4.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

11.5 General Indemnity

- 11.5.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Principal and its officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its Personnel whether employees, agents or sub-contractors or their employees) in the performance of this Agreement.
 - (b) any breach of this Agreement or the confidentiality deeds required by this Agreement.
- 11.5.2 The Contractor's liability in respect of, and indemnity given in, clause 11.5.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Principal, its officers, employees or agents caused or contributed to the loss.

11.6 Contractor's Warranties (General)

- 11.6.1 The Contractor warrants:
- (a) that the Services do not infringe the Intellectual Property rights of a third party;
 - (b) the Services conform to any legally applicable Standards;
 - (c) it has capacity to enter into this Agreement and perform the obligations imposed on the Contractor; and
 - (d) the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of this Agreement by the Contractor.

11.7 Third Party Warranties

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

- 11.7.2 The parties agree that the assignment of any third party warranties is in addition to the warranties offered directly by the Contractor under this Agreement and does not relieve the Contractor from the obligation to comply with the Contractor's own warranties.

11.8 Mistakes in Information

- 11.8.1 The Contractor must pay for any additional costs incurred by the Principal for errors or omissions in material or other Information supplied by it, even though that material or Information may have been approved by the Principal.

11.9 Notification of Change in Control or Transfer of Ownership

- 11.9.1 During the Term, the Contractor must immediately notify the Principal under this Agreement in writing of any Change in Control or other action to restructure or amalgamate itself.

11.10 Notification of Contractor's Insolvency

- 11.10.1 The Contractor must immediately notify the Principal in writing of the Contractor's Insolvency and disclose the details of any:
- (a) Action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement.
 - (b) Existing orders which the Contractor has entered into under this Agreement.

11.11 Child Protection

- 11.11.1 If this Agreement involves "child-related employment" as defined in the Commission for Children and Young People Act ('the Act'), the Contractor agrees to comply with, and ensure that its sub-contractors comply with, the obligations imposed by the Act while performing the obligations imposed by this Agreement.
- 11.11.2 In addition to 11.11.1, the Contractor must ensure that it complies with, and ensures that its sub-contractors comply with, the NSW Department of Services, Technology & Administration Code of Behaviour for the Protection of Children and other Vulnerable People, as applicable, which can be found in Schedule 7 of this Agreement. Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "The Working with Children Check." Information about the Guidelines can be found at www.kids.nsw.gov.au/kids/working/employerguidelines.cfm
- 11.11.3 Without limiting the obligations imposed by the Act, in relation to any work that is "child-related employment":
- (a) the Contractor must not commence employing or continue to employ in child related employment a person that the employer knows is a prohibited person.
 - (b) In addition, the Contractor agrees to:
 - (i) ensure that its sub-contractors do not commence employing or continue to employ in child related employment a person that the employer knows is a prohibited person; and
 - (ii) ensure that its sub-contractors carry out all relevant procedures of background checking on any person who is to perform the work as provided for in the Act before a person is employed in child related employment.

11.11.4 If the work involves access to Department of Education sites, additional requirements relating to community expectations concerning child protection may be imposed as a condition of entry to that site and the Contractor agrees to comply with all such requirements.

11.11.5 The Principal may require the immediate removal of a “prohibited person” or a person who is the subject of a child abuse allegation or investigation from performance of child related employment under the Agreement and the Contractor will ensure compliance by removing that person at no cost to the Principal.

11.12 Other Obligations

11.12.1 The Contractor is solely responsible for the performance of the Services:

- (a) in accordance with this Agreement;
- (b) performing all activities necessary for the completion of the Services including without limitation, the engagement, supervision and direction of Approved Sub-Contractors and other Personnel of the Contractor, the detailed coordination of all activities and the supply of all necessary equipment and administrative requirements;
- (c) taking reasonable steps to ensure that the Services are executed to a high professional standard;
- (d) in accordance with all approvals and requirements of all authorities relevant to the Services;
- (e) in accordance with the Contract Price in Schedule 3;
- (f) in compliance with the Service Delivery Plan in Schedule 8.

11.12.2 The Contractor further agrees that:

- (a) it has specifically correlated all of its inspections and observations with the Agreement and is satisfied that none of the documents evidencing the Agreement are in conflict (except as expressly brought to the Principal's attention before it performed this Agreement);
- (b) the Principal is relying on the Contractor's skill and judgement in the performance of the Services; and
- (c) it will keep the Principal's Delegate fully and promptly informed of all industrial issues, matters and disputes which affect or are likely to affect the performance of the Services.

12 Performance Management

12.1 Principal's Delegate

12.1.1 The Principal has nominated the Principal's Delegate in Schedule 1, item 8 to oversee the performance of this Agreement. The Principal may, by notice in writing to the Contractor, nominate a replacement Principal's Delegate.

12.2 Contractor's Relationship Manager

12.2.1 For the purpose of ensuring an efficient relationship with the Principal the Contractor has appointed the Relationship Manager indicated in Schedule 1, item 5. The Relationship Manager must:

- (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement;
- (b) serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;

- (c) have the authority to implement such actions (including issuing of directions through the Contractor's organisation) as may be required for the Contractor to comply with this Agreement;
 - (d) meet with the Principal's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement; and
 - (e) answer the Principal's queries and work with the Principal to address issues relating to matters considered urgent by the Principal arising out of this Agreement.
- 12.2.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Principal's Delegate to meet with the Principal's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement.

12.3 Exchange of Information Between Government Agencies

- 12.3.1 The Contractor authorises the Principal and its employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Principal and any Information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.
- 12.3.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government departments or agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 12.3.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).
- 12.3.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information under this clause 12.3. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information under this clause 12.3.

13 Personnel

13.1 The Contractor's Personnel

- 13.1.1 The Contractor warrants that all Personnel engaged in the provision of the Services are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and the Key Personnel nominated in Schedule 1, item 5.
- 13.1.2 The Contractor must:
- (a) employ only such persons as are careful, skilled and experienced in the provision of the Services or similar services; and
 - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 13.1.3 The Principal may object to and direct the Contractor to remove any of its Personnel (including the Relationship Manager and Key Personnel) who in its opinion are incompetent, unsuitable, or who have been guilty of neglect, or other improper behaviour. Such named Personnel so removed may not be re-employed by the Contractor under this Agreement.
- 13.1.4 Any replacement Key Personnel provided by the Contractor must be approved by the Principal.

14 Conduct and Dispute Management

14.1 Co-operation

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

14.2 Duty not to Hinder Performance

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

14.3 General

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

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

14.4 Amicable Resolution

- 14.4.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of this Agreement, or about any matter arising under or out of this Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 14.4.2 The Party submitting the Issue Notice must submit it to the other Party's authorised representative, which in the case of the Principal is the Principal's Delegate, and in the case of the Contractor is the Relationship Manager.
- 14.4.3 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 14.4.4 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 14.4.5 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the person or persons specified.
- 14.4.6 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice").
- 14.4.7 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Principal.
- 14.4.8 If the Party giving the Referral Notice is the Principal, it must give the Referral Notice to the Contractor.
- 14.4.9 If a Referral Notice has not been given to the person or persons specified within 28 days, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

14.5 Expert Determination

- 14.5.1 If a Referral Notice is given under clause 14.4, the expert is to be agreed between the Principal and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 14.5.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
 - (b) a person who has been connected with the Agreement; or

- (c) a person who the Parties have been unable to agree on.
- 14.5.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
 - (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the procedure for determination set out in Schedule 6; and
 - (d) any other matter which is relevant to the engagement.
- 14.5.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 14.5.5 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Schedule 1, item 9 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 14.5.6 Unless a party has a right to commence litigation under clause 14.5.5:
 - (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.

15 Termination by the Principal

15.1 Termination for Cause

- 15.1.1 Without prejudice to its rights at common law, the Principal may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
 - (a) where the Contractor makes any statement, fact, information, representation or provides material in the Tender which is false, untrue, or incorrect in a way which materially affects the Agreement;
 - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
 - (c) where the Contractor commits a Substantial Breach of the Agreement that is not capable of remedy;
 - (d) where the Contractor commits a Substantial Breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Principal requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Principal may reasonably allow;
 - (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or sub-contracts the Agreement except in accordance with this Agreement;
 - (f) in the case of the Contractor's Insolvency; or
 - (g) if in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement.

15.2 Effect of Termination for Cause

- 15.2.1 If the Principal terminates this Agreement for cause the Principal may:
- (a) contract with any other person to complete the provision of the Services;
 - (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Principal from any money due; and
 - (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and owing from the Contractor to the Principal.

15.3 Termination for the Principal's Convenience

- 15.3.1 The Principal may terminate this Agreement in whole or in part for its convenience by giving 14 days written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.

15.4 Effect of Termination for Convenience

- 15.4.1 The Principal shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination provided that any claim by the Contractor:
- (a) will be supported by written evidence of the costs claimed; and
 - (b) will be in total satisfaction of the liability of the Principal to the Contractor in respect of this Agreement and its termination.
- 15.4.2 The Principal shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Principal.

16 General

16.1 No Assignment or Novation

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

16.2 Conflicts of Interest

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

16.3 Records and Access to Records

- 16.3.1 The Contractor must keep, and ensure that any sub-contractor of the Contractor keeps, proper accounts and records in accordance with the accounting principles generally applied in commercial practice.
- 16.3.2 During the Term, the Contractor must, within a reasonable time of a request from the Principal, give the Principal access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement, and any financial information, that the Principal reasonably requires including where any such material is in the control or possession of any of the Contractor's Personnel.

16.4 Waiver

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

16.5 Severability

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

16.6 Notices

- 16.6.1 Notices must be sent to the other Party at the address shown in Schedule 1, items 10 and 11, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 16.6.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 16.6.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

16.7 Counterparts

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

16.8 Applicable Law

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

16.9 No Agency/No Employment/No Partnership

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

16.10 Disengagement Period

- 16.10.1 For 6 months following the expiry or termination of this Agreement (or part thereof) the Contractor will provide such assistance as is reasonably requested by the Principal for the supply of the Services to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider to the Principal. Such assistance includes (without limitation):
- (a) providing reasonable co-operation with a third party supplier nominated by the Principal, and
 - (b) providing the Principal's data, information and materials that may be required to enable transacting with a new provider as requested by the Principal.

Schedule 1 Agreement Details

Item 1	Contractor's Name
Item 2	<p>Term: (clause 2.1.1) Commencement Date: Estimated to commence in May or June 2010 Expiry Date: 3 years from Commencement Date</p> <p>Period of extended term (if any): (clause 2.2.1) The Agreement will contain two options to extend the Term both of 1 year duration. Commencement Date: TBA Expiry Date: TBA</p>
Item 3	Not Used
Item 4	<p>Codes and Standards (clause 11.2.1)</p> <ol style="list-style-type: none"> 1. Code of Practice for Procurement 2. Implementation Guidelines NSW Government Procurement 1999 3. Environmental Management Systems Guidelines 4. Occupational Health and Safety Management Systems Guidelines 5. Code of Behaviour (for the protection of children and other vulnerable people)
Item 5	<p>Key Personnel (clause 13.1.1)</p> <p>Relationship Manager (clause 12.2.1)</p> <p>Name:</p> <p>Address:</p> <p>Position:</p> <p>Telephone:</p> <p>Facsimile:</p>
Item 6	Not Used
Item 7	<p>Insurances (clause 11.4.1)</p> <ol style="list-style-type: none"> a) Public Liability Insurance Limit of Indemnity: \$AUS10M b) Services Liability Insurance Limit of Indemnity: \$AUS2M
Item 8	<p>Principal's Delegate (clause 12.1)</p> <p>Name: Maree Mansell</p> <p>Address: Henry Deane Building, 20 Lee Street, Sydney NSW 2000</p> <p>Position: Senior Project Officer, Throughcare</p> <p>Telephone: (02) 8346 1517</p> <p>Facsimile: (02) 8346 1049</p>

Item 9	Expert Determination Amount (clause 14.5.5): AUD: \$100,000
Item 10	Notices to: (clause 16.6) The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile:
Item 11	Notices to: (clause 16.6) The Principal's contact name and address Name: Maree Mansell, Senior Project Officer, Throughcare Address: Henry Deane Building, 20 Lee Street, Sydney NSW 2000 Telephone: (02) 8346 1517 Facsimile: (02) 8346 1049

Schedule 2 Specification

The Specification at Annexure 1 to Part B will be inserted here as amended and agreed to with the successful tenderer.

Schedule 3 Price Schedule and Price Variation Formula

1. Pricing and List of Services

Description	Contract Price		
	Price excl GST	GST Amount	Price incl GST
Organisation of stable, comfortable and secure housing for eligible Clients of Corrective Services NSW and provision of sustained support services in accordance with the Specification detailed in Schedule 2.			
Price for Year 1	\$_____	\$_____	\$_____
Price for Years 2 and 3	\$_____ per annum	\$_____ per annum	\$_____ per annum

2. Price Variation Formula

- 2.1 Prices shall be firm for the initial fixed period of 3 years.
- 2.2 Prices shall then be subject to adjustment by the variation in the Sydney CPI from the March quarter 2010 to that applying in the March quarter of 2013 (effective on the first day of Year 4 of the Agreement if it is extended by one year in accordance with item 2 of Schedule 1) and to that applying in the March quarter of 2014 (effective on the first day of Year 5 of the Agreement if it is extended by a second year in accordance with item 2 of Schedule 1).

Schedule 4 Deed of Confidentiality

THIS DEED DATED THE _____ day of _____ 201__

BETWEEN Corrective Services NSW of Henry Deane Building, 20 Lee Street, Sydney 2000, in the State of New South Wales ("the Principal")

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

RECITALS:

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

OPERATIVE PROVISIONS:

1. Recitals

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

2. Interpretation

2.1 Definitions

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

"**Agreement**" means the Agreement between the Principal and the Contractor dated [insert date] for the supply of the Services.

"**Confidential Information**" means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Principal as confidential; or
 - (c) the Contractor knows or ought to know is confidential;
- and includes but is in no way limited to:
- (d) the Contract Material;

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

"Contractor" means *[insert name of Contractor]*

"Contract Material" means:

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

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

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

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

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

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

2.2 General

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

2.2.2 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;

- (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) anything (including a right, obligation or concept) includes each part of it.

- 2.2.3 If this Agreement expressly or impliedly binds more than one person then it shall bind each such person separately and all such persons jointly.
- 2.2.4 A singular word includes the plural, and vice versa.
- 2.2.5 A word which suggests one gender includes the other genders.
- 2.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

3. Non Disclosure

- 3.1.1 The Contractor must not disclose the Confidential Information to any person without the prior written consent of the Principal.
- 3.1.2 The Principal may grant or withhold its consent in its discretion.
- 3.1.3 If the Principal grants its consent, it may impose conditions on that consent, including a condition that the Contractor procure the execution of a Deed in these terms by the person to whom the Contractor proposes to disclose the Confidential Information.
- 3.1.4 If the Principal grants consent subject to conditions, the Contractor must comply with those conditions.
- 3.1.5 Despite clause 3.1.1, the Contractor may disclose the Confidential Information to its directors, officers, employees, and contractors ("permitted recipients") where such disclosure is essential to carrying out their duties owed to the Contractor or in accordance with this Deed.
- 3.1.6 Before disclosing the Confidential Information to a permitted recipient, the Contractor will ensure that the permitted recipient is aware of the confidentiality requirements of this Deed and is advised that it is strictly forbidden from disclosing the Confidential Information or from using the confidential information other than as permitted by this Deed.
- 3.1.7 The Confidential Information must not be copied or reproduced by the Confidant or the permitted recipients without the express prior written permission of the Disclosing Party, except as for such copies as may be reasonably required for the purposes of this Deed.
- 3.1.8 The Disclosing Party may at any time require the Contractor to promptly arrange for the permitted recipients to execute a Deed of Confidentiality substantially in the form of this Deed.

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

4. Restriction on Use

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

5. Survival

This Deed will survive the termination or expiry of the Agreement for so long as the Confidential Information remains confidential.

6. Rights of the Disclosing Party

6.1 Production of Documents

- 6.1.1 The Disclosing Party may demand the delivery up to the Disclosing Party of all documents in the possession or control of the Contractor containing the Confidential Information.

6.1.2 The Contractor must immediately comply with a demand under this Clause 6.

6.1.3 If the Principal makes a demand under this clause 6, and the Contractor has placed or is aware that documents containing the Confidential Information are beyond his or her possession or control, then the Contractor must provide full particulars of the whereabouts of the documents containing the Confidential Information, and the identity of the person in whose possession or control they lie.

6.1.4 In this clause 6, "documents" includes any form of storage of information, whether visible to the eye or not.

6.2 Legal Proceedings

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

7. Indemnity and Release

7.1 The Contractor is liable for and agrees to indemnify and keep indemnified the Principal in respect of any claim, damage, loss, liability, cost, expense or payment which the Principal suffers or incurs as a result of:

- (a) a breach of this Deed (including a breach of this Deed which results in the infringement of the rights of any third party); or
- (b) the disclosure or use of the Confidential Information by the Contractor or the permitted recipients other than in accordance with this Deed.

8. No Exclusion of Law or Equity

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

9. Waiver

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

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

10. Remedies Cumulative

10.1 Cumulative

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

10.2 Other Instruments

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

11. Variations and Amendments

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

12. Applicable Law

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

13. Notices

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

Executed as a Deed

SIGNED, SEALED AND DELIVERED

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

)
)
)
)
)
)
)

(signature of Principal)

[insert name of Witness]

)

(signature of Witness)

SIGNED, SEALED AND DELIVERED

)
)

by
[insert name of Contractor]

)
)
)

(signature of Contractor)

in the presence of
[insert name of Witness]

)
)

(signature of Witness)

Schedule 5 List of Approved Sub-Contractors

Schedule 6 Expert Determination Procedure

1. Questions to be Determined by the Expert

- 1.1 The Expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
 - 1.1.1 Is there an event, act or omission which gives the claimant a right to compensation under the Agreement:
 - (a) for damages for breach of the Agreement, or
 - (b) otherwise in law?
 - 1.1.2 If so, what is the event, act or omission?
 - (a) On what date did the event, act or omission occur?
 - (b) What is the legal right which gives rise to the liability to compensation?
 - (c) Is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
 - 1.1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
 - (a) What compensation, if any, is due from one Party to the other and when did it fall due?
 - (b) What interest, if any, is due when the expert determines that compensation?
- 1.2 The Expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

2. Submissions

- 2.1 The procedure for submissions to the Expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 business days after the date of the letter of engagement referred to in clause 14.5.3 of the Agreement. This submission must address the questions to be determined by the Expert under clause 1.1 of this Schedule 6.
- 2.3 The other party must respond within 15 business days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Party referred to in clause 2.2 may reply to the response, but must do so within 10 business days after receiving the response, and must not raise new matters.
- 2.5 The other Party may comment on the reply, but must do so within 10 business days after receiving the reply, and must not raise new matters.
- 2.6 The Expert must ignore any submission, response, reply, or comment not made within the time given in clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7 The Expert may request further information from either Party. The request must be in writing, with a time limit for the response. The Expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.

- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the Expert, it must at the same time give a copy to the other Party.

3. Conference

- 3.1 The Expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 3.2 The Parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

4. Role of Expert

- 4.1 The Expert:
- 4.1.1 acts as an expert and not as an arbitrator;
 - 4.1.2 must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
 - 4.1.3 must issue a certificate in a form the Expert considers appropriate, stating the Expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 14.5.3 of the Agreement.
 - 4.1.4 If a certificate issued by the Expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the certificate.

Schedule 7 Child Protection Code of Behaviour for the Protection of Children and Vulnerable People

Code of Behaviour - Protection of Children and other Vulnerable People

The Contractor must ensure that all persons working on the site or sites under the Contract, including but not limited to the Contractor's employees and managers, consultants, sub-contractors and suppliers (Contractor Employees) understand and comply with the requirements shown below.

- All Contractor Employees must gain permission to enter the site or facility before commencing work and they may only enter approved areas. The Contractor's representative or where a sub-contractor is working without the supervision of the Contractor, the sub-contractor's representative must report their presence to the person in charge of the site or facility on arrival each day and record, in the Site Visit Log, the details of all Contractor's or sub-contractor's employees working at the site or sites that day.
- Contractor Employees should avoid talking with, touching or interacting with any children or residents or other users of the site or facility except where the work requires it or in an emergency or safety situation.
- Contractor Employees must only use approved toilets and other facilities, unless the person in charge of the site or facility gives written authority to use alternative arrangements.
- The work area must not be able to be used or accessed by children, or residents or other users of the site or facility while work is in progress. Clear signs and barricades (where appropriate) must be used to prevent any inadvertent or unauthorised access.
- Appropriate privacy must be maintained when working on toilets and similar facilities. Contractor Employees must ensure that toilets and similar facilities are not occupied or in use by children, residents or other users before entering to perform work, and that work does not continue when use of the facilities is required. Where practicable male employees should perform work on male facilities and female employees on female facilities.
- Contractor Employees must wear clothing that is tidy and in good condition, including a shirt, shorts or trousers or skirts at all times.
- Contractor Employees should report any concerns about children's behaviour or child abuse to the person in charge of the site or facility.
- Contractor Employees must wear or carry an identity card at all times when on the site or sites.

Schedule 8 Service Delivery Plan

The Service Delivery Plan will be formulated from the successful tenderer's response to selection criteria, particularly criteria (a), (b), (d) and (f) dealing with program design, staffing establishment, contract management and implementation plan respectively.