

# ***Summary File ONLY***

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FOR YOUR INFORMATION TO DECIDE WHETHER TO  
BECOME A PROSPECTIVE TENDERER ONLY**

Note: This file may contain a brief scope statement, or an extract from the RFT documents, or a full exhibited copy – depending on the specific circumstances.

To participate in this tender process you **MUST** first download or order a full copy of the Request for Tender (RFT) documents, including the responsible components, and any addenda issued to date.

To do this return to the RFT web page on this web site and copy the RFT documents to your own computer or network – the blue “**DOWNLOAD A SOFT COPY**” link at the bottom provides access to the page from which you can do this.

## **STATE PROCUREMENT**

### **NOTICE TO ALL TENDERERS**

#### **IMPORTANT INFORMATION REGARDING CONTRACT MANAGEMENT FEES**

The requirements in respect of Contract Management Fees for NSW Government Period Contracts managed by State Procurement, NSW department of Commerce, on behalf of the State Contracts Control Board (SCCB) have been revised.

Some amendments have been introduced in some Tenders and Contracts released after the 21 August 2006.

*Please refer to the appropriate clauses in each RFT's documents.*

In particular your attention is drawn to: -

- the requirement for periodic sales returns
- the requirement for sales returns to identify the top 10 customers
- the removal of the provision for Contractors to supply Independent Audit reports on request
- the provision for State Procurement to appoint Independent Auditors to examine Contractor's sales records
- the provision for Contractors to pay for the cost of Independent Audits of their sales records on a sliding basis, in accordance with the outcomes of the audit
- the provision for Contractors to pay State Procurement's costs to manage the accounts of those contractors who are overdue and/or understated in provision of their sales reports and/or management fees

AND/OR

- the provision for Contractors to pay a Late Payment Fee for Management Fee arrears
- the provision for State Procurement to amend the terms of trade and/or terminate the agreement for Contractors who do not meet their Management Fee obligations

Please approach the Contract Officer identified for each RFT if you require additional information.



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

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

**Request for Tender 0601379  
Provision of Pre-Prepared Meals  
01/11/2006 to 31/10/2009  
Plus 2 X 1 Year Extension Options**

**Tender Issue Date: 21/08/2006**

**Closing Date: 20/09/2006**

**Closing Time: 9:30 am Sydney Time**

Non-Refundable Hard Copy Document Fee \$110.00 (includes GST). Note: There is no charge for downloading an electronic copy from <https://tenders.nsw.gov.au/commerce>.

This publication is available on request via email in large print and/or on computer disk for people with a disability. To obtain copies of this publication in either of these formats, please contact the Contact Officer identified in this RFT.

Other formats, such as Braille and audio (cassette tape), will be considered on a case-by-case basis.

## COPYRIGHT

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

Other matters should be directed to:

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

## Provision of Cook-Chill and Frozen Meals

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### **Specification for the Provision of Pre-Prepared Meals .....** 36

# PART A The Requirement and Tender Information

## 1. Outline Description of the Requirement

- 1.1 This Request For Tender (“RFT”) is made by the State Contracts Control Board (“the Board”) for the supply to Eligible Customers of the Deliverables defined in this RFT and detailed in the Specification.
- 1.2 The Board is responsible for the conduct of the tender process, assisted by NSW Procurement.

This State Contracts Control Board (SCCB) standing offer arrangement has been established for the supply and distribution of frozen and cook-chilled main meals, desserts and soups and associated products.

As a SCCB Standing Offer Arrangement, Government and Eligible Customers (including Non-Government Not-For-Profit organisations) can access this arrangement if the specification meets their requirements.

The market scope and specifications have been developed in conjunction with the NSW Meals on Wheels Association (which provides meal services to the frail and aged population in their own home) and with input from the Department of Ageing Disability and Home Care (DADHC).

These organisations are representative of needs of the sector that it is envisaged may use the standing offer arrangement.

### **NSW Meals on Wheels**

The Meals on Wheels Association of NSW provides support for over 200 affiliated Not-For-Profit service providers that deliver approximately 3.9 million hot, frozen and chilled meals per annum to 15,000 clients in their homes, through their volunteer network across NSW.

Approximately 75% of meals are sourced from a variety of suppliers as hot, chilled or frozen meals for distribution to clients with only 25% manufactured in 40 production kitchens.

Meals on Wheels organisations are shifting their focus to doing more than just deliver meals. The focus is moving to the “service” component of “food service”, understanding the need to ensure that clients are not only provided with nourishment, but also optimising the consumption of meals and monitoring the general health and wellbeing of clients.

It is estimated that the number of Meals on Wheels clients across NSW will increase by 25% over the next 10 years and that the proportion of clients over the age of 75 years will greatly increase .

The objectives of NSW Meals on Wheels services are to bridge the gap between supplying food and enable a better quality of life for clients.

The Meals on Wheels services are seeking to meet the rapidly changing food services needs of clients. Client expectations are changing, with the need for Meals on Wheels Services offering a greater choice of meals to meet the changing composition of clients and improved quality and presentation. Clients are also living longer at home and lifestyles are changing, hot meals are not always the best option – and there is a need to source a range of meals – hot, chilled, frozen.

### **Market Overview:**

The average annual estimated quantities of meals (eaten at lunch or dinner) listed below are intended as a guide only. Tenderers should rely on their own enquiries in order to determine the potential volume of sales. Tenderers should also note that no guarantee is expressed or implied that any order for any quantity or amount will be issued.

**Meals on Wheels Estimated Quantities:**

Local Government Area	FROZEN Meals ('000 pa)	COOK-CHILLED Meals ('000 pa)	HOT Meals ('000 pa)	TOTAL Meals ('000 pa)	Services #	Location #
Central West Region	87	34	166	287	16	17
Far West Region	0	3	58	61	2	3
Hunter Region	54	375	196	624	21	35
Illawarra Region	94	48	102	243	13	20
Mid North Coast Region	49	24	181	253	10	10
Murray Region	7	16	69	92	13	13
Murrumbidgee Region	26	7	98	130	13	14
North Western Region	19	5	61	85	12	13
Northern Region	24	33	165	222	21	21
Richmond-Tweed Region	23	25	117	164	8	8
South Eastern Region	67	27	89	183	15	24
Sydney Inner Region	144	351	106	601	23	24
Sydney Outer Region	159	209	223	591	20	22
Sydney Surrounds Region	141	114	64	319	6	13
<b>TOTAL</b>	<b>892</b>	<b>1,271</b>	<b>1,693</b>	<b>3,856</b>	<b>193</b>	<b>237</b>

# Number of services relates to the number of organisations or groups/cooperative. The number locations relates to the number of physical locations.

- It is estimated that around 80% of frozen and cooked-chilled main meals and 65% of hot main meals are purchased from external sources. It should be noted that Meals on Wheels Services with on-site production kitchens source some main meals externally.
- As the market for the Meals on Wheels services changes, the mix of meals, frozen, cook-chilled and hot is changing. Hot meals are not always the best option and a shift is seen by the organisation towards an increase in frozen and cook-chilled meals in place of hot meals as these meals become more acceptable to clients.
- All Meals on Wheels offer their clients sweets/desserts in some form. Approximately 90% provide chilled sweets and 70% provide frozen sweets.
- Approximately 95% of Meals on Wheels also offer soup. Approximately 45% offer frozen soup and 36% offer chilled soups.
- Over 65% of Meals on Wheels services deliver meals to clients each weekday, 19% deliver 3-4 weekdays, 3% deliver 1-2 weekdays and 15% deliver on a 6-7 day a week basis.
- Research has found that at the majority of services, client orders are placed on a monthly cycle, which allows for better forecasting of requirements.

On the basis of usage patterns by other Government agencies and Not-For Profit organisations that are able to access this standing offer agreement it is estimated that there is a market for a further 600,000 main meals per annum across NSW.

The breakdown of this analysis is as follows:

<b>Local Government Area</b>	<b>Estimated current Number of Meals per annum (cook-chill, Frozen, Hot) ('000)</b>	<b>Number of Locations</b>
Central West	19	11
Far West	2	1
Hunter	55	31
Illawarra	60	34
Mid North Coast	14	8
Murray	18	10
Murrumbidgee	16	9
North Western	7	4
Northern	32	18
Richmond-Tweed	7	4
South Eastern	21	12
Sydney Inner	118	67
Sydney Outer	206	117
Sydney Surrounds	35	20
<b>Total</b>	<b>610</b>	<b>346</b>

#### **Business Processes:**

A generic overview of the business processes for the procurement of pre-prepared meals is on the following page.

The intent of this approach to the supply market is to allow for improved forecasting of client needs and in turn enhanced information for suppliers

Research has shown that within the marketplace there is a preference for a “master menu” approach for both cook-chill and frozen items, offering flexibility in meal choices.

## Supply chain – flow of product, information or resources

	Delivery Location	Supplier/s	Commerce
	<ul style="list-style-type: none"> <li>• Selects local menu schedule through discussion</li> </ul>	<ul style="list-style-type: none"> <li>• Provide Menu made available to relevant service locations &amp; confirms delivery frequency for frozen &amp; cooked chill</li> <li>• Arrange menu changes and approval</li> </ul>	<ul style="list-style-type: none"> <li>• Commerce assists in RFT and evaluation processes</li> <li>• Committee recommend supply selection</li> </ul>
<b>Forecast</b>	<ul style="list-style-type: none"> <li>• Aggregates all orders into forecast and advises supplier. (Generally as a 28-day forecast which is typically reliable)</li> </ul>	<ul style="list-style-type: none"> <li>• Suppliers make frozen meals to stock from forecast &amp; capacity plan cook/chill production accordingly.</li> </ul>	<ul style="list-style-type: none"> <li>• Menu changes, Food safety, R&amp;D programmes coordinated through Commerce</li> </ul>
<b>Order</b>	<ul style="list-style-type: none"> <li>• Places call-off order for frozen cook /chill deliveries for delivery during next week.</li> </ul>	<ul style="list-style-type: none"> <li>• Suppliers produce cook/chill and pick orders to meet transport despatch dates.</li> </ul>	
<b>Distribute</b>		<ul style="list-style-type: none"> <li>• Suppliers send product via transport providers.</li> </ul>	
<b>Receive</b>	<ul style="list-style-type: none"> <li>• Receives and confirms order</li> <li>• Rejects unfit items as per contract</li> <li>• Rejects or accepts wrong orders as per contract</li> <li>• Advises Commerce of issues</li> </ul>		
<b>Pay</b>	<ul style="list-style-type: none"> <li>• Service location reconciles receipts</li> </ul>	<ul style="list-style-type: none"> <li>• Service location pays supplier within contracted terms.</li> </ul>	
<b>Manage</b>	<ul style="list-style-type: none"> <li>• Service location advises supplier of non-conformances and escalates if required.</li> </ul>	<ul style="list-style-type: none"> <li>• Suppliers rectify non-conformances, report performance and sales each month.</li> </ul>	<ul style="list-style-type: none"> <li>• Commerce monitors contract and contractor performance across agencies</li> <li>• Tracking of contractor compliance to agreement</li> <li>• Assist agencies to implement agreement and communication</li> </ul>

**1.3** The requirement is for the supply and delivery of a range of pre-prepared meals, desserts and soups. Tenderers may tender for:

- (a) Cooked-chilled main meals; or
- (b) Frozen main meals; or
- (c) Soups and desserts; or
- (d) Multi-packs
- (e) Combination of the above

in one, multiple or all of the local government regions nominated in the pricing schedule.

As a minimum tenderers must be able to supply categories of meals as detailed in the Specification.

## 2 Summary information for tenderers

### 2.1 Interpretation

2.1.1 Definitions of terms used in Parts A-C are contained in cl.4 of Part B.

### 2.2 Structure of Request for Tender

2.2.1 This RFT is made up of four Parts as follows:

Part A: The Requirement and Tender information;

Part B: The Tender Process;

Part C: Tender Response, to be completed by the Tenderer, and comprising of:

- Part C1 Information supplied in response to Part B
- Part C2 Statement of compliance with Specification
- Part C3 Price Schedule – Meals and Delivery (Excel File)
- Part C4 Acknowledgement and confirmation of Tender.

Part D: Deed of Agreement

If submitting a Tender, retain Parts A, B and D. Part C, once completed, forms the Tender, and is to be submitted in accordance with Parts A, B and D.

Part D is to be executed later by the successful Tenderer(s) and the Board to form the Standing Offer.

### 2.3 Contact Officer

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

Name: Steve Diekman

Phone: (02) 9372 7524

Fax: (020) 9372 7799

E-mail: [steve.diekman@commerce.nsw.gov.au](mailto:steve.diekman@commerce.nsw.gov.au)

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

## 2.4 Nature and duration of contract

- 2.4.1 The Requirement is to be met by means of a Standing Offer agreement to be embodied in a deed of agreement between the Board and the successful tenderer(s) on the conditions contained in Part D.
- 2.4.2 The Standing Offer agreement will be for a term of three years (3) and may be extended for two (2) further term(s), each of one (1) year duration at the option of the Board.

## 2.5 Non-exclusive Standing Offer agreement

- 2.5.1 The Board reserves the right to appoint more than one Contractor to supply the Requirement or a part of the Requirement, at any time and from time to time.
- 2.5.2 The Board reserves the right to issue a further RFT during the term of the Standing Offer agreement for the additional intake of suppliers for the remaining term of the agreement for the supply of the Deliverables covered by this RFT.

Tenderers will have to meet the same terms and conditions and will be subject to the same evaluation criteria as for this RFT except for the tender issue and closing dates and the agreement period.

## 2.6 Eligibility to tender

- 2.6.1 Tenders must be submitted by a legal entity or, if a joint Tender, by legal entities, with the capacity to contract. The Board will only enter a deed of agreement with the relevant legal entity or entities.
- 2.6.2 *Not Used*
- 2.6.3 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If Tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.
- 2.6.4 The Board reserves the right to reject any Tender if the Board judges the tenderer not to have appropriate financial assets.
- 2.6.5 If the Board judges the tenderer's financial position to be marginal, the Board reserves the right to make acceptance of any Tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.
- 2.6.6 Tenderers must read, understand and comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below. Tenderers must disclose any potential conflict of interests (including any relevant relationships) in the Tender Response.

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

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

## 2.7 Other Eligibility Requirements

2.7.1 The Board will not enter into an agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, Tenderers must be registered for GST and state their ABN in their Tender Response.

2.7.2 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 Board. Such Tenderers must state how and when they intend to obtain an ABN and register for GST in their Tender Response.

2.7.3 Other requirements:

Tenderers must have the appropriate licences/approvals in regard to manufacture of food and supply of meals as required by this RFT and it is a matter for the Tenderer to identify which licences/approvals are appropriate to the supply of meals as required by this RFT. In addition, Tenderers must comply with:

- Food Act (NSW) 2003 as amended.
- FSANZ Food Standard Code.
- Hazard Analysis and Critical Control points (HACCP).
- Occupational Health and Safety Act 2000.
- NSW Health Listeria Guidelines Circular 99/95.
- Other Legislation or standards which are applicable to the supply of the Deliverables during the term of the Standing Offer Agreement.

## 3. Where to obtain this RFT

### 3.1 RFT copies

3.1.1 A tenderer may obtain either a hard copy or electronic copy of this RFT.

3.1.2 NSW Department of Commerce has adopted an electronic tendering system using the internet, which has the capacity for viewing, downloading, or ordering of the RFT and for the lodgement of Tenders.

### 3.2 Hard copy

3.2.1 A hard copy of this RFT may be obtained by:

- (a) Ordering on-line through the NSW Department of Commerce eTendering website at <https://tenders.nsw.gov.au/commerce>. Hard copy orders placed through the website will be filled by standard postal delivery.
- (b) By prior arrangement on (02) 9372 8900 between 8.30 am and 4:30 pm, Mondays to Fridays (except public holidays) to pick up from the Tenders Office, McKell Building, NSW Department of Commerce. Tenderers are met at Level 3 (ground floor) McKell Building, 2-24 Rawson Place, Sydney NSW 2000. Though the Tenders Office is currently located at Level 8, no public access is given to this floor and all public face-to-face tender transactions occur on Level 3.
- (c) Ordering by telephone (02) 9372 8900. An additional fee is charged for delivery by express post or by courier, as required.

- (d) First viewing a full exhibited copy at the Tenders Office by prior arrangement on (02) 9372 8900 between 8.30 am and 4:30 pm, Mondays to Fridays (except public holidays).

3.2.2 A copy of the Price Schedule in CD-ROM form or on a floppy disk may in some cases be provided with the hard copy.

### **3.3 Electronic copy**

3.3.1 An electronic copy of the RFT and any Addenda that may be issued up to the Closing Date and Closing Time, will be displayed on the Commerce e-Tendering Website. All tenderers must view, and where appropriate, download the contents of the website at <https://tenders.nsw.gov.au/commerce> before lodging their tender.

3.3.2 A tenderer is encouraged, although not required, to obtain the RFT and to lodge a Tender electronically through the NSW Department of Commerce eTendering website.

3.3.3 In order to download an electronic copy of the RFT, a tenderer must first register as a site user.

3.3.4 A tenderer should follow the instructions on the site to view and download the RFT.

### **3.4 RFT Purchase Price**

3.4.1 The non-refundable purchase price for a hard copy of this RFT is \$110.00 inclusive of GST.

3.4.2 Payment may be made:

- (a) if purchasing from the Tenders Office, McKell Building, by cheque drawn in favour of the NSW Department of Commerce, or by credit card (MasterCard, Visa and Bankcard). Cash will not be accepted; or
- (b) if ordering a hard copy through the Department of Commerce eTendering website, by credit card (MasterCard, Visa and Bankcard).

### **3.5 Addenda to RFT**

3.5.1 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to closing date, even if a tender has already been submitted. They must obtain a copy of all addenda as given in clause 3.5.2 or 3.5.3 as applicable.

3.5.2 Where a RFT has been acquired in a hard copy form, tenderers must contact the Contact Officer named under clause 2.3 of Part A or the Tenders Office (Level 8 McKell Building 2-24 Rawson Place Sydney, contact number: 9372-8900, e-mail: [Tenders@commerce.nsw.gov.au](mailto:Tenders@commerce.nsw.gov.au)).

3.5.3 Where a RFT has been acquired in an electronic form, tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

3.5.4 It is mandatory for tender response 21.7 in Part C to be completed. Failure to complete tender response 21.7 in Part C will result in your tender not being considered.

## PART B The Tender Process

### 4. Definitions of terms used in Parts A-C

**4.1** Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below. Note the defined terms below may not all appear in this RFT.

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

“**Addendum**” means an addendum or addition to this RFT made by the Board before the Closing Date and Time under cl. 5.4.

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

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

- Inviting and accepting tenders;
- Determining the conditions under which tenders are invited or accepted;
- Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- On-going contract administration and management,

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

“**Breakpoint**” means the number of Order Units at which nominated discounts take effect. There may be more than one Breakpoint nominated by the tenderer in the tender.

“**Bulk Purchase Discount(s)**” means the discount(s) (if any) applying to the Tender Price and specified in the Tender which are based on the aggregate volume of goods comprised in any single Order placed by a particular Customer.

“**Catalogue number**” means the tenderer’s unique catalogue number required for the purposes of an Order.

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

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

[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

“**Conforming Tender**” means a Tender that:

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

“**Contractor**” means a tenderer who has entered into a Deed of Agreement with the Board.

“**Customer**” means the Eligible Customer that places an Order with the Contractor under the Standing Offer agreement.

**“Customer Contract”** means the contract that is made between the Contractor and a Customer, on the terms and conditions stated in cl.2.2.1 of Part D, by means of the placing of an Order by the Customer with the Contractor.

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

**“Eligible Customer” means**

- (a) an entity listed in Schedule 1 to the Public Sector Employment and Management Act 2002 as amended from time to time;
- (b) a public sector agency as defined by clause 18(4) of the Public Sector Management (goods and Services) Regulation 2000 being:
  - 1) a government trading enterprise (including a State owned corporation)
  - 2) a public or private hospital (including an area health service)
  - 3) a local government agency
  - 4) a charity or other community non-profit organisation
  - 5) a public or private school, college or university
  - 6) a public sector agency of this State, the Commonwealth or of any other State or Territory
  - 7) a contractor to a public sector agency (but only in respect of things done as such a contractor)
  - 8) a Nominee Purchaser provided that it satisfies the requirements of clause 4.2 of Part D (Deed of Agreement) and
  - 9) such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

**“Forecast”** means a statement of anticipated demand for each line item by time period, which is provided by each Customer to the Contractor for the purpose of planning production and minimising sensitivity of lead time. The forecast enables efficient production of frozen goods as make-to-stock and scheduling of capacity for cook/chill goods as make-to-order.

**“Government Businesses”** means in general, entities which:

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

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

**“Government Discount”** means the standard discount, and, in the case of a Government Discount from list price, means the standard minimum percentage discount from the relevant list price, which in each case may be offered by the tenderer to Customers under the proposed Standing Offer agreement.

**“Government Mark-Up”** means the standard maximum mark-up on the Manufacturer’s Price List to be offered by the tenderer to Customers under the proposed Standing Offer agreement.

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

**“GST Free Supplies”** and **“Input Taxed Supplies”** have the same meaning as in the GST Law.

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

**“Late Tender”** means a Tender received after the Closing Date and Time for tenders and includes a Tender, which is only partly received by the Closing Date and Time.

**“Minimum Order Quantity”** means the minimum quantity of each Deliverable that must be ordered by a Customer. This should be given in Order Units (see definition below).

**“Non-Conforming Tender”** means a Tender that:

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

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

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

**“Order”** means a request by a Customer to the Contractor for the provision or supply of any or all of the Deliverables.

**“Order Unit(s)”** means the unit(s) used when ordering Deliverables from a Contractor. An Order Unit may be “each”, “per box”, “per carton” or some other unit.

**“Price”** includes a price expressed as a lump sum or a rate per unit of quantity, calculated in accordance with cl.7.3.

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

**“Principal”** is the **Board**.

**“Product Code”** means the tenderer’s unique product code number that identifies each Deliverable and is required for the purposes of an Order.

**“Requirement”** means the requirement for the Deliverables to be met by the Tender, outlined in cl.1 of the RFT and detailed in the Specification.

**“RFT”** means the Request for Tender.

**“SCCB”** means State Contracts Control Board. See definition for **Board**.

**“Selected Price Schedule”** means the list of selected Deliverables and corresponding pricing information that may form Part C4 to some RFTs.

**“smartbuy®”** means an electronic market place, consisting of an internet web site and associated databases and applications, maintained on behalf of the NSW Government, located at <http://smartbuy.nsw.gov.au> and associated domains.

**“SME”** means small to medium enterprise.

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

**“Standing Offer”** means an agreement made by a tenderer with the Board pursuant to the RFT under which there is a standing offer for the provision of the Deliverables on the Order of any Customer for whom the Board has arranged the contract. The Standing Offer will be embodied in a deed of agreement between the Board and the Contractor in the form of Part D to this RFT.

**“State Contracts Control Board”** See definition for **Board**.

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

**“Tender Price”** means, in respect of each Deliverable offered, the Price nominated in the Price Schedule for that Deliverable, except if the Price is calculated on the basis of a Government Discount from list price or Government Mark-Up on list price, when the Tender Price will be the Price nominated in the Price Schedule less the Government Discount or plus the Government Mark-Up, as applicable.

**“Volume Discount(s)”** means the discount(s) (if any) applying to the Tender Price and specified in the Tender which are based on the aggregate yearly volume of Deliverables purchased by a Customer in a specified period.

## 5 Preparation of Tender – General

### 5.1 Conformity of Tenders

5.1.1 The Board seeks Conforming Tenders.

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

5.1.3 Tenderers may, if they choose, submit an Alternative Tender but only in conjunction with a Conforming Tender. Tenderers are encouraged to offer options or solutions that contribute to the Customer’s ability to carry out its business in a more cost-effective manner.

5.1.4 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

5.1.5 An Alternative Tender must be clearly marked “Alternative Tender”.

5.1.6 The Board expressly reserves the right to accept, in its discretion, either or both of the following:

- (a) Any Alternative Tender or part of an Alternative Tender, where submitted with a Conforming Tender; and
- (b) Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board’s opinion, is substantially a Conforming Tender.

### 5.2 Prescribed form of Tender

5.2.1 The Tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

### **5.3 General instructions for completion of Tenders**

- 5.3.1 Prices, responses and other information provided in the Tender are to be in writing and in English.
- 5.3.2 Tenderers must initial and date any alterations to, and deletions from, a hard copy Tender.
- 5.3.3 Tenderers must complete ALL of Part C of this RFT, as directed and must not amend any of the questions provided.
- 5.3.4 Tenderers should notify the Contract Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.

### **5.4 Addenda to this RFT before close of Tenders**

- 5.4.1 A tenderer may ask the Contact Officer for clarification of anything in the RFT before the Closing Date and Time. The Board may issue any instruction resulting from such request in writing to all tenderers in the form of an Addendum.
- 5.4.2 If, for any other reason, the Board requires the RFT to be amended, an Addendum will be issued.
- 5.4.3 In each case, an Addendum becomes part of the RFT.

### **5.5 Pre-Tender briefing (Non-Mandatory)**

A Pre-Tender Briefing is to held on:  
 Wednesday 30 August 2006  
 0930 to 1130 – L8 Sydney Central YHA  
 11 Rawson Place, Sydney

Attendance will be limited to one (1) representative from each organisation attending the briefing. Attendees are also required to register with:

Name: Steve Diekman  
 Phone: (02) 9372 7524  
 Fax: (020) 9372 7799  
 E-mail: [steve.diekman@commerce.nsw.gov.au](mailto:steve.diekman@commerce.nsw.gov.au)

### **5.6 Not Used**

### **5.7 Tenderers to inform themselves**

- 5.7.1 Before submitting its Tender, a tenderer must:
  - (a) Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and
  - (b) Satisfy itself:
    - (i) that the Tender, including the Tender Price is correct; and
    - (ii) that it is financially and practically viable for it to enter into and perform the proposed Deed of Agreement.

## **6. Preparation of Tender – Policy**

### **6.1 Procurement Policy – introduction**

- 6.1.1 Tenderers should read the main policy document listed below. Other relevant policies and particular policy objectives to be implemented through this

procurement are drawn to tenderers' attention in this cl.6. Their requirements are reflected in the selection criteria listed in cl.9.2 and in the responses required from tenderers in Part C.

- (a) NSW Government Procurement: Policy:  
<http://www.treasury.nsw.gov.au/pubs/tpp2004/tpp04-1.pdf>

## 6.2 Code of Practice for Procurement

- 6.2.1 Tenderers must comply with the NSW Government Code of Practice for Procurement, which is available at:

[http://www.treasury.nsw.gov.au/procurement/pdf/code\\_of\\_prac-curr.pdf](http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf)

- 6.2.2 Lodgement of a tender will itself be an acknowledgement and representation by the tenderer that it is aware of the requirements of the Code, that the tenderer will comply with the Code and that the tenderer agrees to provide periodic evidence of compliance with the Code and access to all relevant information to demonstrate compliance for the duration of any agreement that may be awarded.
- 6.2.3 If a tenderer has failed to comply with the Code, this failure will be taken into account by the Board when considering its tender or any subsequent tender and may result in this or any subsequent tender being passed over without prejudice to any other rights or action or remedies available to the Board.

## 6.3 Not Used

## 6.4 Economic Development through Government Procurement

6.4.1 Economic development is a key policy objective in all government procurement. This objective may incorporate policies regarding:

- (a) the giving of purchasing preferences to Deliverables of Australian and New Zealand origin;
- (b) local industry participation, and;
- (c) Small to Medium Enterprise (SME) involvement, employment and workforce development.

- 6.4.2 Policies of particular relevance to this procurement are drawn to tenderers' attention in this clause 6. Further details are to be found in the NSW Government Procurement Policy and from sources identified in this clause.

- 6.4.3 Tenderers are encouraged to take up the services offered by the Industry Capability Network (NSW) Ltd (ICN) to assist in maximising the local content of tenders. The ICN is a business advisory service, managed by industry and funded by the NSW Government, primarily to assist business and buying organisations to source their requirements from local producers who can provide goods, equipment and services against imports. The ICN provides a free service of identifying the supply capabilities of Australian manufacturers and import replacement. The ICN also assists in the preparation of Local Industry Participation Plans. Contact details are given below.

ICN (NSW) Ltd  
 Suite 313 Henry Lawson Business Centre  
 Birkenhead Point  
 Drummoyne NSW 2047

Phone: (02) 9819 7200  
 Fax: (02) 9181 3321  
 E-mail: [enquiry@icnsw.org.au](mailto:enquiry@icnsw.org.au)

Website address: [www.icnnsw.org.au](http://www.icnnsw.org.au)

- 6.4.4 The Board makes no representation or promise in relation to the suitability or otherwise of any advice or assistance offered by the ICN or its compliance with the Board's requirements.

## 6.5 NSW Government Purchasing Preference Scheme

6.5.1 The NSW Government has directed its departments and declared agencies to give preference to goods (and related services) of Australian and New Zealand origin. The NSW Purchasing Preference Scheme supports Australian manufactured products and services in preference to imports. Certain eligible country based suppliers are given additional preference above all other suppliers. Preferences are only used for the purposes of tender evaluation and Contractors or Customers incur no actual costs.

- 6.5.2 The Preference Scheme is implemented by evaluating Tender Prices in the clauses below.

### *Preference – Australian and New Zealand Content*

- 6.5.3 Preference is applied in the form of a 20% loading on the declared imported/overseas content (excluding New Zealand) of the tendered goods (and related services). For example:

Tender Price:	\$10.00
Imported Content:	80%
Preference margin	20% x 80% x \$10.00= \$1.60
Price used for evaluation:	\$10.00 + \$1.60 = \$11.60

- 6.5.4 No preference margin is applied when assessing Tenders for the provision of services alone.
- 6.5.5 Tenderers are required to provide details of the imported (non-Australian and New Zealand) content in the Price Schedule and to make available records (as and when required) to substantiate imported or local content claims. Tenderers must also include detailed statements from their sub-contractors on the imported content of the goods and related services they are offering.
- 6.5.6 The imported content of goods and related services is the estimated duty paid value, inclusive of the value of any services, for example overseas freight and insurance, consultancy or engineering effort, or any charges of overseas origin, together with customs clearing charges.

6.5.7 A further preference loading of up to 5% is applied if the tenderer is based in a NSW country area in accordance with the Country Industries Preference Scheme (CIPS). The preference loading is not applied against New Zealand or other overseas Tenders or Tenders from other states or territories.

- 6.5.8 For preference to be applied to a Tender under the CIPS:
- the tenderer must be registered with the Department of State and Regional Development as a country manufacturer under the Country Industry Preference Scheme (Phone(02) 9338 6717) before the Closing Date and Time for Tenders;
  - The tenderer must quote its Preference Registration Number allocated by the Department of State and Regional Development and the applicable preference margin in the space provided in Part C1 of this RFT;

- (c) The goods being sought are those for which the tenderer is registered; and
- (d) The tenderer is tendering as the prime contractor.

6.5.9 The Country Industries Preference Scheme is intended primarily to benefit manufacturers located outside the metropolitan areas of the State which, in comparison with their city-based competitors, suffer definable economic disadvantages which can be directly attributed to their country location. The preference applies on the following basis to approved manufacturing industries located outside the county of Cumberland, the Cities of Newcastle, Wollongong, Penrith and Liverpool and the Municipality of Camden:

- (a) In the Cities of Maitland, Greater Cessnock and Blue Mountains, the Municipalities of Kiama and Shell Harbour and the Shires of Port Stephens, Lake Macquarie, Gosford, Wyong, Wollondilly, Wingecaribee and that part of the Shire of Hornsby which was previously part of the Shire of Colo: maximum preference of 2.5%.
- (b) Elsewhere in New South Wales: maximum preference of 5%.

6.5.10 Further details of the NSW Purchasing Preference Scheme, and an application for registration under the Country Industry Preference Scheme, can be obtained from:

Department of State and Regional Development  
 Regional Development Division  
 225 George Street  
 Level 43  
 Grosvenor Place  
 SYDNEY 1200  
 Telephone: (02) 9338 6717  
 Facsimile: (02) 9338 6726  
 Website address:

[www.dpws.nsw.gov.au/NR/rdonlyres/ecufn2722d4anbl464l6knvz4d7stllxzkqj2kclauhfxpfbqd6ndphucrof1qsuas24astfwx5njy4ym2gkboxgiexa/NSW+Government+Preference+Scheme.pdf](http://www.dpws.nsw.gov.au/NR/rdonlyres/ecufn2722d4anbl464l6knvz4d7stllxzkqj2kclauhfxpfbqd6ndphucrof1qsuas24astfwx5njy4ym2gkboxgiexa/NSW+Government+Preference+Scheme.pdf)

#### **6.6 to 6.9 Not Used**

#### **6.10 Small to Medium Enterprise (SME) involvement**

If Deliverables are to be sourced from SME sub-contracting arrangements tenderers are to provide details in Part C1 of the likely percentage of the value of the Deliverables to be provided under the Standing Offer agreement that will be sourced from SMEs and of the activities that will be carried out by SMEs under the Standing Offer agreement.

#### **6.11 Regional Development**

6.11.1 It is NSW Government policy to encourage regional development. Tenderers are to provide details in Part C1 of the positive impact that the work flowing to the local region will generate, and any adverse effect should the same work be awarded to a capital city based organisation. Tenderers should also show the level and range of activities under the Standing Offer agreement that will be affecting the region.

#### **6.12 to 6.15 Not Used**

#### **6.16 Occupational Health Safety & Rehabilitation**

- 6.16.1 Tenderers must comply with the following OHS&R requirements in the performance of any Standing Offer agreement awarded:
- (a) The Occupational Health and Safety Act 2000 (NSW) and any regulation made under this Act, including the OHS Regulation 2001; and
  - (b) Codes of Practice, approved and issued pursuant to the above Act and/or regulations made under the Act.
- 6.16.2 Tenderers must ensure that the Tenderer's Sub-Contractors will comply with the OHS&R requirements listed in 6.16.1 in the performance of any Standing Offer agreement awarded.
- 6.16.3 Tenderers must indicate in Part C, compliance with their OHS&R obligations, including any specific obligations in clause 6.7.2 (Occupational Health, Safety & Rehabilitation) of Part D.

### **6.17 Environmental Management**

- 6.17.1 The NSW Government seeks to promote ecologically sustainable development through procurement. The Tenderer is required in Part C1 to highlight how the provision of the Deliverables would promote this object if its Tender is accepted.

### **6.18 Competitive Neutrality**

- 6.18.1 The objective of NSW Government Policy on the application of competitive neutrality is to ensure that Government Businesses, whether they are Commonwealth, State or Local, do not have any net advantage over their competitors as a result of their public sector ownership. It requires that comparisons between public and private sector bids be made on a similar basis. It means, amongst other things, that in-house bids should reflect adjustments that offset the effects of taxation exemptions, where it is feasible to do so, and be accurately costed.
- 6.18.2 A tenderer who is either a Government agency (including an organisational unit of such an agency) or a Government Trading Enterprise will be required to adhere to the NSW Government Policy Statement on the Application of Competitive Neutrality, January 2002, where applicable.
- 6.18.3 You may access this policy statement at [www.cabinet.nsw.gov.au/publics.html](http://www.cabinet.nsw.gov.au/publics.html). Hard copies are available from the Cabinet Office at Level 37, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000.
- 6.18.4 The head, chief officer or other appropriate senior officer of a tenderer who constitutes either a Government agency or a Government Trading Enterprise is required to affirm, in Part C1, that the tenderer does or does not comply with this policy.

### **6.19 Electronic Procurement (smartbuy®)**

- 6.19.1 Department of Commerce/Government Procurement Delivery Systems actively encourages all SCCB suppliers to register with smartbuy® to facilitate NSW government agencies to view and purchase goods and services on line. The Client Services Unit in the Government Procurement Delivery Systems branch provides support services for all suppliers in completing the supplier enrolment process thereby offering maximum exposure of suppliers' items to the government market. The steps required for getting established in the smartbuy® system are outlined below.

- 6.19.2 The NSW Government has placed a heavy focus on the use of electronic procurement to move significant volumes of NSW Government purchasing through smartbuy®.
- 6.19.3 smartbuy® is an electronic procurement system, maintained on behalf of the NSW Government. smartbuy® is located at <http://www.smartbuy.nsw.gov.au>.
- 6.19.4 smartbuy® enables eligible clients to electronically procure goods and services, generally on terms established in Government Contracts. It is intended that all goods and services provided under the Board's Standing Offer Agreements will be browsed, searched and where appropriate, purchased online via smartbuy®.
- 6.19.5 All successful tenderers are required to accept Orders and other business documents and communications by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000. More information on the NSW Government's policy about electronic procurement and smartbuy® can be seen at:
- a) <http://www.smartbuy.nsw.gov.au> and
- b) <http://www.dpws.nsw.gov.au/About+Us/Publications/Government+Procurement+Publications.htm>

**Participating in smartbuy® and smartbuy® enrolment process:**

- 6.19.6 Successful tenderers will be required to enrol with smartbuy®, which is a three step exercise conducted by the Government Procurement Delivery Systems. The first step for a successful tenderer is to register the organisation online, through the smartbuy® website. The tenderer is required to review and sign the smartbuy® Supplier Agreement and participation Rules. A copy of these documents can be requested by contacting the smartbuy® Help desk on 1800 003 985 or [smartbuyinfocentre@commerce.nsw.gov.au](mailto:smartbuyinfocentre@commerce.nsw.gov.au).
- 6.19.7 The second step is for the nominated smartbuy® Supplier Administrator to attend smartbuy® training. This training can be conducted online via the smartbuy® website, or at one of the regularly scheduled training sessions.
- 6.19.8 The final step is to have the catalogue content prepared, submitted, reviewed, confirmed and loaded into smartbuy®.
- 6.19.9 On completion of the enrolment process, the Supplier Administrator will be issued with a log on. This will provide access to their catalogue information as held in smartbuy®, from which buyers will be able to view and purchase.

**Additional supplier establishment Requirements**

- 6.19.10 In addition to enrolling in smartbuy®, as explained above, successful tenderer organisations will be required to:
- a) submit specified information about themselves and the Deliverables to which the Standing Offer Agreement applies, to the Government Procurement Delivery Systems, and keep this information up to date;
- b) provide pricing/product information in the specified electronic format; the format will be provided to successful Tenderers at the time of notification of acceptance of their tender response; or
- c) if applicable provide access to tendered products through an externally hosted catalogue. Tenderers are advised that where OCI

protocol is used, the outbound and any inbound requests should fully comply with OCI version 2.0B and version 3.0.

### **smartbuy® Operational Requirements**

- 6.19.11 The smartbuy® solution is comprised of a number of procurement-related applications and services including the smartbuy® CONNECT. smartbuy® CONNECT is based on an IBM MQ Series platform, and is a full service B2B hub offering a wide range of integration, document transformation and trading partner management capabilities.
- 6.19.12 smartbuy® CONNECT is tightly integrated to the smartbuy® TRADE, and may be connected to Agencies and Suppliers via a number of integration mechanisms. The transmission types and document formats for the different integration options are explained in more detail below.
- 6.19.13 All electronic documents transmitted through smartbuy® are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Agencies and Contractors, without passing through the smartbuy® TRADE.
- 6.19.14 The successful tenderer will be required to transmit documents in accordance with the transmission types and document formats detailed below:

smartbuy® CONNECT supports the following business documents:

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

### **smartbuy® CONNECT Trading Channels**

- 6.19.15 The following Transmission Types and Document Types can be received by the smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

<b>Transmission Type</b>	<b>Document Type</b>	<b>Trading Channel</b>
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
HTTPS	CSV	HTTPS/CSV
FTP	CSV	FTP/CSV
Email (SMTP)	PDF	Email/PDF
Fax	PDF	Fax/PDF

### **smartbuy® Security**

- 6.19.16 smartbuy® is committed to a high level of security, and is working towards full AS/NZS7799 accreditation. smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy®.

6.19.17 Key elements of the security regime include:

- a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
- b) Robust firewalls;
- c) Multi level system design;
- d) Virus protection using Sophos Anti Virus software;
- e) Password protection and restricted access permissions;
- f) Intrusion detection systems;
- g) Audit trails of user activities;
- h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;
- i) Programme of system upgrades to ensure security compliance.

**6.20 Not Used**

**6.21 Compliance with relevant legislation and standards**

6.21.1 In all cases the Tenderers must ensure that the Deliverables tendered comply with the relevant Act, codes and other regulations governing distribution, packaging and labelling of food. In addition, Tenderers must have the appropriate licences/approvals in regard to manufacture of food and supply of meals as required by this RFT and it is a matter for the Tenderer to identify which licences/approvals are appropriate to the supply of meals as required by this RFT. Further, Tenderers must comply with:

- Food Act (NSW) 2003 as amended from time to time.
- FSANZ Food Standard Code.
- Hazard Analysis and Critical Control points (HACCP).
- Occupational Health and Safety Act 2000.
- NSW Health Listeria Guidelines Circular 99/95.
- Other Legislation or standards which are applicable to the supply of the Deliverables during the term of the Standing Offer Agreement.

**6.22 Not Used**

**6.22.1 Marketing**

Tenderers are required to participate at their own cost in the promotion of the Standing Offer agreement to all current and potential Customers. The Tenderer's involvement may include but not be limited to the provision of promotional material, direct marketing, product literature, brochures and other sales related activities. Tenderers are required in Part C1 to indicate their willingness to participate in the promotion of the Standing Offer agreement.

6.22.1.2 The Board will similarly promote the Standing Offer agreement in publications where possible.

## 7. Preparation of Tender – Price Schedule

**7.1 Price Schedule**

7.1.1 Tenderers must complete the Price Schedule that is contained in Part C3 to this RFT. The Price Schedule requires that each Deliverable be priced as a discrete item that can be separately ordered.

7.1.2 The information listed below is to be provided in respect of each item offered, in the spaces provided in the Price Schedule. Items required which are not

offered by the tenderer should be struck through in the space containing the item description.

7.1.3 The Price Schedule must contain the following information in respect of each Deliverable:

- (a) *Deliverable's product name and product code.*
- (b) *Tender price exclusive of GST.*
- (c) *For meals, nutritional information, recipe components and attributes.*
- (d) *For delivery component, tender price exclusive of GST.*
- (e) *For delivery component, delivery frequency.*

## 7.2 Not Used

▬

## 7.3 Calculating the Tender Price

### 7.3.1 General

7.3.1.1 The Tender Price must:

- (a) be in Australian dollars;
- (b) cover all costs of performing the Standing Offer agreement;
- (c) exclude costs of delivery as specified in cl 7.3.2 of this Part;
- (d) include costs of packaging as specified in clause 7.3.3 of this Part;
- (e) take account of the Management Fee (see clause 6.11 of Part D), which is not to be shown as a separate charge;
- (f) include Goods and Services Tax if it is payable and all other applicable taxes, duties and charges at the rates applicable at the Closing Date and Time for Tenders;
- (g) include all costs associated with the preparation and submission of the Tender;
- (h) include any Government Discount, or Government Discount from list price, which applies;
- (i) exclude all other discounts;
- (j) include any Government Mark-Up on list price, which applies;

**7.3.2 Delivery charges** Costs of delivery must be separately priced as discrete Deliverables. The response section Part C4 will detail the delivery areas that the Tenderer will be required to submit a price for deliver.

7.3.3 Packaging charges The Tender Price must be inclusive of costs of suitable packaging in accordance with any packaging requirements stated in the Specification.

## 7.4 Price Adjustment

The tenderer may determine the Tender Price on the basis of one of the two options below. The tenderer will be asked to indicate which option is selected in Part C1.

- (1) Firm and fixed for the first six (6) months of the term of the Standing Offer agreement then subject to review at the end of that period and each six (6) months (including any extension period) based on variations in the Sydney CPI Index for food and transport.
- (2) Firm for the first twelve (12) months of the term of the Standing Offer agreement then subject to review at the end of that period and each twelve (12) months (including any extension period) based on variations in the Sydney CPI Index for food and transport.

7.4.1 The Tender Price is a maximum (ceiling) price that cannot be exceeded during the term (including any extension of the term) of the Standing Offer agreement unless price variation is provided for in this RFT.

7.4.2 If a successful tenderer has a temporary or periodical special offer, which is lower than the Tender Price, this should be made available to all Eligible Customers promptly, and prior notification to the Board is not required. This does not apply to permanent price decreases that shall be submitted to the Board for approval in accordance with the terms and conditions of Part D.

7.4.3 **Additional customised meals**

Successful tenderers may be required by a Customer to provide customised meals ("customised meals") which meet the specific requirements of that Customer. The Contractor agrees to provide the customised meals to meet the requirements of the Customer. The price of the customised meals is to be agreed by the Customer and the successful tenderer but the price must be derived using the tendered pricing for the meals in the Specification as a benchmark.

**7.5 Discounts**

7.5.1 Tenderers must provide full details in Part C1 of any discounts that will apply to the Tender Price. (These discounts do not include any Government Discount, or Government Discount from list price, which, if either applies, are incorporated in the Tender Price.)

**7.6 GST Free or Input Taxed Supplies**

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

**7.7 Minimum Tender validity period**

7.7.1 Tenders must remain open for acceptance for a period of at least 3 months from the Closing Date and Time for Tenders. Tenderers must state in Part C1 if their Tenders will remain open for any longer period.

## 8. Submission of Tenders

**8.1 General instructions for submission of Tenders**

8.1.1 A Tender must be received by the Closing Date and Closing Time.

8.1.2 A Tender may be submitted by any of the following methods:

- (a) by delivery into the Tender Box:

(1) It must be marked:

Tender Box  
NSW Department of Commerce  
Level 3, McKell Building  
2-24 Rawson Place  
Sydney NSW 2000

(2) If delivery personnel requires a signature as evidence of Delivery, the Tender must be delivered between 8:30 a.m. and 4:30 p.m., Mondays to Fridays (except public holidays).

(b) by post, addressed to:

Tender Box  
NSW Department of Commerce  
Level 3, McKell Building  
2-24 Rawson Place  
Sydney NSW 2000

(c) by facsimile to (02) 9372 8974

(d) by electronic lodgement through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce/>

8.1.3 If a tenderer intends to submit electronically through the NSW Department of Commerce *eTendering* website or by facsimile, the following must be considered:

(a) The facsimile machine and NSW Department of Commerce *eTendering* website are at peak use on the morning when Tenders close.

- 1) Due to the limitations of these means of communication it may take longer to lodge a Tender near Closing Date and Closing Time than at other times.
- 2) When lodging by facsimile or through the NSW Department of Commerce *eTendering* website, it is recommended that a Tender be lodged well in advance of the Closing Date and Closing Time.
- 3) A tenderer must determine whether lodgement of a Tender by facsimile or through the NSW Department of Commerce *eTendering* website is appropriate.

(b) The facsimile machine and the NSW Department of Commerce *eTendering* website may experience difficulties in accepting a large Tender. A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. A tenderer is referred to cl. 8.2.4(b) for instructions as to compressing electronically submitted Tenders.

- (1) In order to comply with cl. 8.1.3(b), an electronic Tender may be supported by documents in hard copy or on CD-ROM.
- (2) Supporting documents, to be submitted in hard copy or on CD-ROM, may be designated throughout the RFT. Supporting documents may include, but are not limited to, statutory declarations, certificates, and company brochures.
- (3) If submitting an electronic tender with supporting documents:

- a) The complete Tender, including the supporting documents, must be submitted by Closing Date and Closing Time, and
- b) Supporting documents should be clearly designated as "Supporting Documents to RFT...0601379"

8.1.4 A tenderer is not required to provide multiple copies of a Tender.

- (a) If a tenderer provides multiple submissions, the tenderer should clearly state on the front page of the Tender whether it is:
  - (1) A "Copy." A copy must be identical to an earlier or simultaneous submission in every respect.
  - (2) A "Variation." A variation of an earlier tender will be deemed as superseding a prior submission.
  - (3) An "Alternative Tender" under cl. 5.1.
- (b) In the event that a Tenderer fails to designate whether a submission is a Copy or a Variation, the latest Tender received in the NSW Department of Commerce Tender Box will be deemed as the definitive submission.

8.1.5 If required, a tenderer must provide a copy of the Price Schedule on a CD-ROM or an IBM compatible 1.44MB floppy disk in a file format that can be read, formatted, displayed, manipulated and printed by Microsoft Excel 97.

## 8.2 Electronic Tenders to the NSW Department of Commerce *eTendering* website

8.2.1 A tenderer is strongly encouraged, although not required, to lodge its Tender electronically through the NSW Department of Commerce *eTendering* website at <https://tenders.nsw.gov.au/commerce>. A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than Tenders lodged by other means.

8.2.2 A tenderer, by electronically lodging a Tender, is taken to have accepted conditions shown in the Conditions of Tendering and on the NSW Department of Commerce *eTendering* website.

8.2.3 A tenderer must follow the following directions:

- (a) RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" button on the web pages for the RFT.
- (b) To lodge a Tender electronically, the files containing the Tender Response must be up-loaded through the website. Access to the up-loading process is through the blue "Lodge a Response" button, then follow the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT Summary and/or Responsible Copy.

8.2.4 A tenderer must observe the following format for submissions:

- (a) An electronically lodged Tender must be lodged in a file format which can be read, formatted, displayed and printed by Microsoft Word 97, or any format required by the RFT.

- (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (\*.exe) zip files.
- (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.

8.2.5 Signatures are not required for a Tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a Tender is authorised by the person or persons who may do so on behalf of the Tenderer and appropriately identify the person and indicate the person's approval of the information communicated.

8.2.6 Electronically submitted Tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a Tender that cannot be effectively evaluated because it is incomplete or corrupt. Note that:

(a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a Tender.

(b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.

8.2.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a Tender or otherwise, it is encouraged to advise the Contact Officer. A tenderer should note:

(a) There are usually alternative Tender lodgement methods described in the RFT. It is always the tenderer's responsibility to lodge the Tender by Closing Date and Closing Time.

(b) If there is a defect or failure of the NSW Department of Commerce *eTendering* website and the Board is advised, the Tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the tender process will not be compromised by such an extension.

### **8.3 Custody of Tenders after receipt**

8.3.1 All hard copy tenders submitted (and any accompanying CD-ROMS or floppy disks) are kept in the NSW Department of Commerce Tender Box, which is a locked tender box, until after Closing Date and Closing Time.

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

(a) On receipt of Tenders lodged electronically to the NSW Department of Commerce *eTendering* website, Tenders are encrypted and stored in a secure "electronic tender box."

(b) For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.

(c) The e-mail receipt that is sent to the Tenderer after successfully uploading the Tender is the only evidence of Tender lodgement provided.

## 8.4 Late Tenders

- 8.4.1 In accordance with the requirements of the [NSW Government Code of Practice for Procurement](#), Late Tenders will not be considered except when the Board is satisfied that the integrity and competitiveness of the tendering process will not be compromised.
- 8.4.2 Normally, Late Tenders will not be considered for acceptance if they are:
- (a) hand delivered, including hand delivered by courier; or
  - (b) received through Australia Post unless the envelope is clearly postmarked before the Closing Date and Time; or
  - (c) received through Australia Post with only the tenderer's own franking machine on the envelope; or
  - (d) received by electronic communication (facsimile or over the internet) and the dispatch of the electronic communication of the Tender has occurred after the Closing Date and Time, including where delay may be due to the receiving facsimile or internet facility being engaged, faulty or otherwise inoperative.

## 8.5 Extension of the Closing Date and Time

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

# 9. Evaluation of Tenders

## 9.1 General

- 9.1.1 Tenders will be assessed against the selection criteria listed below, but which are not necessarily exhaustive, in order of significance or to be given equal weight.
- 9.1.2 The selection criteria for this RFT that do not relate to price will account for (55)% of the total evaluation score. The selection criteria for this RFT that relate to price will account for (45)% of the total evaluation score.
- 9.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the selection criteria listed in this RFT.
- 9.1.4 If any criterion or sub-criterion is stated to be "mandatory" a failure by the Tender to fully comply with that criterion or sub-criterion will result in automatic exclusion of the Tender without further consideration. Mandatory criteria include those in which mandatory language such as "must" or "shall" is used.

## 9.2 Selection criteria

- (a) Price
- (b) Fitness for purpose including:
  - (i) *Standard of Compliance to the Specification*
  - (ii) *Quality assurance systems, including food recall procedures*
  - (iii) *Packaging*
  - (iv) *Meal samples – taste testing, appearance*
- (c) Delivery considerations.
- (d) Capacity to perform the Standing Offer agreement including:
  - (i) *Production/technical capacity*

- (ii) *Human resource capacity, qualifications, skills and experience*
- (iii) *Financial capacity and stability*
- (v) *Suitability of sub-contractors*
- (vi) *Range/variety of meals offered*
- (vii) *Previous contract experience and performance*
- (viii) *Satisfactory site inspection*

- (e) Compliance with the proposed conditions of the deed of agreement, as stated in Part D.
- (f) Compliance with NSW Government procurement policy and other applicable NSW Government policies.
- (g) Compliance with relevant legislation and standards.
- (h) Capacity and capability to facilitate electronic commerce through smartbuy®.
- (i) Quality of references.

### **9.3 Variation of Tenders**

- 9.3.1 At any time before the Board accepts any Tender received in response to this RFT, a tenderer may, subject to cl.9.3.2, vary its Tender:
- (a) by providing the Board with further information by way of explanation or clarification;
  - (b) by correcting a mistake or anomaly; or
  - (c) by documenting agreed changes to the Tender negotiated under cl.10.1 of this Part.
- 9.3.2 Such a variation may be made either:
- (a) at the request of the Board, or
  - (b) with the consent of the Board at the request of the tenderer;
- but only if,
- (c) in the case of variation requested by the tenderer under cl.9.3.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
  - (d) in the case of variation under cl.9.3.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 9.3.3 If a Tender is varied in accordance with cl. 9.3.1(a) or (b), the Board will provide all other tenderers whose Tenders have similar characteristics with the opportunity of varying their Tenders in a similar way.
- 9.3.4 A variation of a Tender under cl. 9.3.1 will not be permitted if in the Board's view:

- (a) it would substantially alter the original Tender; or
- (b) in the case of variation under cl.9.3.1(a) or (b), it would result in the revising or expanding of a Tender in a way that would give a tenderer an unfair advantage over other tenderers.

#### **9.4 Samples**

- 9.4.1 Samples of Deliverables sought in this RFT may be called for evaluation. If samples are requested they must be supplied within 10 working days of the request to the location nominated in the letter of request. (Samples should not be submitted with the Tender.) Failure to do so will result in the Tender being given no further consideration

#### **9.5 Exchange of information between government agencies**

- 9.5.1 Lodgement of a Tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.
- 9.5.2 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 23 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.
- 9.5.3 In the evaluation of Tenders, the Board may take into account any information about the tenderer that the Board receives from any source.
- 9.5.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a Tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this cl. 9.5.
- 9.5.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies.
- 9.5.6 During the course of the Agreement, the successful tenderer's performance will be monitored and assessed. Performance assessment reports, including substantiated reports of unsatisfactory performance, can be taken into account by NSW government agencies and may result in future opportunities for NSW government work being restricted or lost.

#### **9.6 Corrupt or unethical conduct**

- 9.6.1 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:
- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, Customer or the NSW Government in connection with this RFT or the submitted Tender;
  - (b) committed corrupt conduct in accordance with the provisions of the *Independent Commission Against Corruption Act 1988*, or

- (c) a record or alleged record of unethical behaviour,
- (d) not complied with the requirements of Commerce Business Ethics Statement.

this may result in the Tender not receiving further consideration.

- 9.6.2 The Board is under no obligation to do so, but 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.

## 10. Outcomes

### 10.1 Negotiations before determination of outcome

- 10.1.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiation with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.
- 10.1.2 The Board will generally not enter into negotiations on the standard conditions of contract contained in Part D.

### 10.2 Acceptance or rejection of Tenders

- 10.2.1 The Board may accept all or any part or parts of any Tender or Tenders, including, in accordance with cl. 5.1, any Alternative Tender or other Non-Conforming Tender.
- 10.2.2 The Board is not bound to accept the lowest or any Tender.
- 10.2.3 If the Board rejects all the Tenders received it may:
- (a) invite fresh Tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new Tenders), or
  - (b) conduct post-tender negotiations in accordance with cl. 10.6.

### 10.3 Discontinuance of the Tender process

- 10.3.1 In addition to its rights under cl. 10.2, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of Tenders.
- 10.3.2 The Board will not be liable for any losses suffered by a tenderer as a result of discontinuance of the tender process, including costs of tendering.

### 10.4 Notification of outcome

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

### 10.5 Entry into Standing Offer agreement

- 10.5.1 Acceptance of a Tender or part Tender will be subject to the execution of a formal deed of agreement in the terms of Part D. Until the Board and the successful tenderer(s) execute a formal deed or deeds there will be no legally enforceable agreement concluded between them.

## **10.6 Post Tender negotiations in the event all Tenders are rejected**

- 10.6.1 If the Board rejects all Tenders on the basis that all Tenders are Non-Conforming, but considers that conformity with the requirements of this RFT is achievable, it may enter into negotiations with the least non-conforming tenderer with a view to achieving a Conforming Tender and entering into a Standing Offer agreement. If such negotiations are unsuccessful the Board may then enter negotiations with the next most acceptable tenderer. This process may be repeated with each of the rejected Tenders in order of potential acceptability. However, the Board is not obliged to enter into negotiations with any tenderer.
- 10.6.2 The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation. Negotiations will not seek to play off tenderers' prices against other tenderers' prices.

## **10.7 Complaints**

- 10.7.1 It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part D or the Requirement, it is invited to write to:

Chairman, State Contracts Control Board  
Level 22, McKell Building  
2-24 Rawson Place  
SYDNEY NSW 2000

## **10.8 Disclosure of information concerning successful and unsuccessful Tenders**

- 10.8.1 In accordance with NSW Government Policy to publicly disclose details of its contracts, the Board may publish the following information about a Standing Offer agreement awarded under this RFT:
- (a) Details of the Standing Offer (description of project to be completed or goods/services to be provided or property to be transferred; commencement date of the Standing Offer; the term of the Standing Offer);
  - (b) The full identity of the successful tenderer including details of cross ownership of relevant companies;
  - (c) The price payable by the agency and the basis for future changes in this price;
  - (d) The significant selection criteria used in Tender assessment and their weightings;
  - (e) Provisions for re-negotiation (where applicable).
- 10.8.2 The Board will not disclose the following information about any Standing Offer agreement awarded under this RFT unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* or is otherwise legally required:
- (a) The Contractor's financing arrangements;
  - (b) The Contractor's cost structure or profit margins;
  - (c) Items of the Contractor having an intellectual property characteristic (eg. non-tangible property that is the result of creativity, such as patentable ideas or inventions, trademarks, copyrights, etc.);
  - (d) Any other matters where disclosure would, in the Board's view, place the Contractor at a substantial commercial disadvantage with

its competitors both at the time of entering into the Standing Offer agreement and at any later date when there would be an effect on future competitive arrangements.

- 10.8.3 A tenderer may request that the Board not disclose particular information included in its Tender but must give the reasons for requesting this. The Board will advise a tenderer in contention for a Standing Offer agreement what information it agrees not to disclose (unless legally required to do so). If the Board and a tenderer cannot agree about what should be disclosed, the Board will seek the advice of the Chair of the Board. The Board's decision is however final and is at the Board's absolute discretion. Neither a decision by the Board, nor a recommendation by the Chair of the Board under this paragraph is a decision that falls within any dispute resolution procedures specified in Part D.
- 10.8.4 The Board may publish the identities of all tenderers, but will not disclose other information included in an unsuccessful Tender unless the tenderer agrees, or release is determined under the Freedom of Information Act 1989 or is otherwise legally required.
- 10.8.5 For Standing Offer agreements valued over \$100,000, the Board will normally publish the names of tenderers when Tenders close, and the other information about the Standing Offer agreement specified in cl. 10.8.1 on the internet, within 90 days after award of the Standing Offer agreement. For other Standing Offer agreements the Board will disclose the specified information in cl. 10.8.1 on request.

## **10.9 Ownership of Tenders**

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

## **10.10 Monitoring of Contractor Performance**

- 10.10.1 During the course of the Standing Offer agreement the Contractor's performance will be monitored and assessed. For details refer to the NSW Government Procurement Guidelines on Service Provider performance management which is available on request from the Contact Officer, the NSW Department of Commerce or can be viewed and downloaded from <http://www.ogp.commerce.nsw.gov.au/NR/rdonlyres/eucuz2722gdb54776cyhkw7ntoj4cpiw5iga5ztwvtvjethi2xjujwd4zrgsfte4cye7lgoqtlf4wxywdioutedaph/Service+Provider+Performance+Management.pdf>
- 10.10.2 The terms and conditions of the proposed deed of agreement, set out in Part D, detail the performance criteria to be applied in the monitoring of Contractor performance.

# ANNEXURE 1 TO PART B

## Specification for the Provision of Pre-Prepared Meals

[A Statement of Compliance to the Specification is given at, Part C2 of the Tender Response Tenderers are to complete this statement.](#)

### Background

This Request for Tender (RFT) seeks to arrange a Whole of Government Contract for the provision of Pre-Cooked-Chill and Frozen main meals, desserts and soups to a wide range of customers. It is anticipated that the major user of the contract will be Meals on Wheels. The Standing Offer agreement is expected to provide better value, greater choice of meals and improved quality to clients.

### 1. MEALS:

Tenderers may bid for either:

- (a) Cooked-Chilled main meals:  
Within this category tenderers must be able to provide single serve packs.
- (b) Frozen main meals:  
Within this category tenderers must be able to provide single serve packs.
- (c) Soups and desserts  
Within this category tenderers must be able to provide single serve packs.
- (d) Multi-packs  
Within this category tenderers must be able to provide multi-serve (3, 5 or 7 serves) pack for each meal type. Tenderers may nominate other pack sizes if available.

Serve sizes must be in accordance with quantities given at Clause 1.3 of this specification.

Tenderers must be able to offer product ranges for summer and winter with at least 8 weeks notice to customers prior to the changes to the seasonal meals. At the release of each seasonal product ranges all information as to main dish ingredients accompaniments and dietary attributes must be provided to the customer.

Introduction of new menu plans will require sample and acceptance taste testing (see details of requirements under tender sampling requirements).

All meals must be planned in conjunction with a qualified dietician. Tenderers are to detail in the Response Section (Part C) qualifications of staff.

A standard meal consists of a soup, main meal, and dessert. Some services may seek a variation to these standard meals, for example by replacing soups with salads during summer or by adding juice, milk, bread or fresh fruits to their standard meals to boost the nutritional value of their meals.

Services providing meals to clients who are aged, frail or with a disability have a specification based on daily nutritional requirements (RDI). Each meal supplies at least:

- 1/3 RDI for calcium
- 1/3 RDI for energy (calories)
- 1/2 RDI for protein and other vitamins and minerals
- 1/3 RDI for fibre

The minimum meal sizes are guided by the minimum portion sizes as set out in 1.3. Historically the main meal component has a nominal net weight of between 330g and 360g in order to achieve that outcome.

The meal provided is typically only intended to satisfy one of the 3 meals per day. In some cases clients may compromise nutrition by not eating adequately throughout the day. In many cases, clients do benefit from greater than the minimum RDI and in such cases this is obtained through the inclusion of options such as breads or soups, and in some cases the purchase of larger sized meals.

In other cases, customers may have low appetite because of illness or inactivity and therefore may elect to order smaller meal sizes. This option is typically only offered on an occasional basis with a preference to instead stimulate appetite and satisfy nutrition through provision of tasty, aromatic and appealing meals.

**1.1** As a minimum the Contractor is required to cater for the following dietary requirements:

*Note: O= Option - processing variant for the range, a specific requirement including dietary or ethno specific requirements  
A = Attribute – a feature of the meal*

- Standard
- Ethno specific foods/culturally specific (O)
- Low fat (A)
- Low cholesterol (A)
- Vegetarian – (O)
- High fibre (A)
- Soft (O)
- Minced (A)
- Pureed (A)
- No gravy/sauce (A)
- Low sodium (A)
- Dairy free (A)
- No seafood (A)
- No nuts (A)
- Low fat gravy/sauces (A)
- Gluten free (A)
- High energy (A)

From time to time the Customer may require special meals that cater for persons with specific allergies. These meals, if required, will be arranged through consultation with the Contractor.

The tenderer is to provide, in the Response Section Part C (Pricing Schedule Excel File), the list of meals that they currently supply to the market together with a list of all ingredients.

#### **1.1.1 Product Lines**

Tenderers are to submit their full range of meals, that as a minimum, must be able to provide for:

- Beef – 10 varieties
- Chicken - 10 varieties
- Pork – 5 varieties
- Lamb – 5 varieties
- Fish – 5 varieties
- Vegetarian/egg – 10 varieties
- Desserts – 20 varieties
- Soup – 10 varieties
- Gluten Free, Diabetes and cholesterol lowering – at least 10 varieties

#### **1.1.2 Other Categories**

It is highly desirable that tenderers be able to provide other foods categories such as sandwiches and finger foods. Tenderers are to attach details to their tender response.

## 1.2 Labelling of all Pre-packaged Main Meals Desserts and soups

All prepacked meals must be labelled in accordance with FSANZ Food Standard Code and have the following information as a minimum:

- Name of meal, desert or soup;
- Use-by-date;
- Batch number;
- Ingredients;
- Reheating instructions eg. Oven, microwave and stove-top, and temperatures & time;
- Storage instructions;
- Special dietary suitability eg. Low fat, pureed etc;
- Name of supplier and their address;
- Country of origin.

## 1.3 Portion Sizes

For individual and multiple serves prepacked cook chill and frozen meals the tenderer must comply with the following minimum weights/portion sizes:

Item	Minimum portion size – Single Serve – Cooked Weight
Soup	180ml
Meat	90g
Fish	120g
Gravy, sauce	60ml
Casserole	160g
Potato, mashed	90g to 120g
Rice	60g to 90g
Pasta	70g to 90g
Carrots, beans cut, cauliflower, zucchini	75g
Broccoli, beans whole, chipped	75g
Peas, carrots sliced and diced, mixed	75g
Roast vegetables (excl potatoes)	75g
Roast Potatoes	90g
Mashed vegetables (excl potatoes)	75g
Desserts	120g including custard or cream

## 1.4 Meal Samples

During the Evaluation Process the tenderer will be required to submit the following prepacked individual meal samples, five (5) serve, three (3) serve and seven (7) serve packs, labelled and packaged, as the customer would receive:

- Soup – 2 varieties – pumpkin and beef and vegetable
- Roast chicken with roast potato, roast pumpkin and one other vegetable (preferably broccoli)
- Grilled or Baked with chips and two vegetables (preferably carrots and beans)
- Beef Casserole with pasta and two vegetables (preferably pumpkin and peas)
- Pasta meal
- Vegetarian meal with mashed potato and 2 vegetables
- Desserts –4 varieties creamy rice, fruit only dessert, bread and butter pudding and cake selection with custard
- Ethno-specific/Culturally specific meal

- Plus other meals the suppliers may recommend i.e. salad selection

All cost incurred in the preparation and delivery of meal samples shall be borne by the tenderer. Samples are not be submitted until requested by the Evaluation Team.

#### **1.4.1 New meal and on going sampling**

Samples of any new recipe meals must be provided for evaluation to NSW Contracting Services prior to their acceptance on to the contract. NSW Contracting Services must be notified at least 8 weeks prior to the introduction of new recipe meals to arrange with the contractor evaluation meal samples for testing. All costs incurred in the preparation and delivery of these new recipe meal samples shall be borne by the contractor.

Major users of the contract may from time to time require sample meals in order to promote their use and acceptance. These meals would be a fraction of the normal meal size to allow individuals to sample more than one meal. To enable feedback the contractor is to provide a feedback/comment template.

These sample-sized meals are to be provided at cost.

### **1.5 Packaging**

- 1.5.1** The tendered prices are to include the cost of normal commercial packing sufficient to ensure the safe delivery and avoid loss or damage to locations shown on purchase orders.
- 1.5.2** Deliverables offered shall comply with the relevant legislation, codes and other regulations governing packaging and labelling.
- 1.5.3** All cartons/containers shall be clearly marked so as to identify the contents and quantity.
- 1.5.4** Packaging for both individual and multiple serve must be able to be placed into a conventional oven/microwave oven/refrigerator/freezer.
- 1.5.5** Packaging materials for frozen meals need to maintain integrity of structure to withstand freezing to –18c and successfully reheat in a microwave or oven to core food temperatures of 75C.
- 1.5.6** It is highly desirable that packaging used enables the consumer to view food and generally presents product in an attractive manner.
- 1.5.7** Tenderers are to detail in the Response Section (Response Question 12.6.1) outer packaging materials and their ability to be recycled as well as any arrangements in place to collect or dispose of this packaging.

### **1.6 Product Shelf Life and Ability to Extend Shelf Life**

Tenderers are to offer cook-chill meals with a minimum shelf life of **3** days. Should packaging that will extend the shelf life of meals be available tenderers are to indicate in the Response Section Part C (Response Question 12.6.2) any additional charge and details of customers supplied with meals in this type of packaging.

Frozen meals must have a minimum shelf life of 6 weeks from the “best before” date at the time of delivery.

### **1.7 Estimate of Meals Required**

The quantities shown at Clause 1.2 of Part A of this RFT are estimates only and are provided as a guide to assist the tenderers in formulating their bids.

## 1.8 Food safety

1.8.1 All items supplied under the contract must comply with all NSW State Government Legislation requirements and licences; as listed below

- Food Act (NSW) 2003 as amended from time to time
- FSANZ Food Standard Code
- Hazard Analysis and Critical Control points (HACCP)
- Occupational Health and Safety Act 2000
- NSW Health Listeria Guidelines Circular 99/95
- Other legislation or standards which are applicable to the supply of the Deliverables during the term of the Standing Offer Agreement.
- 

1.8.2 All items tendered shall be manufactured in premises that are licensed by NSW Food Authority or another applicable regulatory authority

1.8.3 Food products must be stored, processed, handled and transported in a manner that presents the least possible opportunity for contamination.

1.8.4 It is **mandatory** that Tenderers have in place a comprehensive food safety program based on Hazard analysis Critical Control Point (HACCP) principles. The plan must be submitted with the tender response (Please indicate at Response Question 12.4.1) and be available for inspection at any time during the course of any eventual contract.

1.8.5 All products offered must be manufactured and supplied in accordance with a current HACCP program audited by the NSW Food Authority or other applicable regulatory authority.

1.8.6 Tenderers shall provide a summary report of minor and/or major audits carried out over the past two years by NSW Food Authority. The reports should indicate the overall results of the audit and establishment ratings both pre and post audit. These reports are to be submitted with the tender response.

1.8.7 Tenderers shall provide results of microbiological testing for any products and the results of third party audits or internal monitoring of the tenderers HACCP program to NSW Procurement Contracting Services as requested.

1.8.8 Tenderers should describe details of other quality assurance programs that conform to the NSW Food Act 1989 and the relevant Food Standards Australia New Zealand codes (Please provide at Response Question 12.1.1).

1.8.9 Only approved food preservatives/additives shall be used in the products supplied.

1.8.10 The tenderer is to outline in the Response Section Part C (Response Question 12.8.1) its policy and procedure for food recall due to any form of contamination.

## 2.0 Delivery

Delivery is required to the areas/regions detailed in the Response Section (Part C - Excel Pricing file). Tenderers are to nominate in the Pricing Response (Part C – Excel Pricing file) the areas that they are prepared to deliver to and give a price for that area.

It is recognised that the capacity of the logistics network to deliver to a location/region will strongly influence the potential order frequency, delivery lot size, demand on storage capacity and subsequent cost to the buyer. Suppliers are requested to state their frequency of delivery to nominated areas that may be accessed under the agreement. This does not predicate the frequency of actual ordering by the buyer, but provides a measure of flexibility and capacity of the supplier network.

Deliveries are not required on weekends or public holidays unless negotiated between the parties.

A key measure of delivery reliability is the tenderer's capacity to nominate delivery windows within which the agreed order will be delivered. Ability to negotiate time of delivery and flexibility with deliveries to individual sites is highly desirable. As a minimum, deliveries must be able to be made between the hours of 0630 to 1830 Monday to Friday.

Tenderer's must define both delivery frequency and delivery windows in the Response Section Part C (Response Question 14.1.6).

Meals received will be checked against order and packaging integrity as well as compliance with temperature requirements before delivery acceptance. Any replacements required as a result of contamination, incorrect temperature and/or incorrect goods will be required within 2 business days or as negotiated with the customer. The contractor must have sufficient resources to be able to replace these meals within the timeframes as described above

There may be instances where due to equipment/power failure at the customer's location or delivered in a state not fit for purpose, pre-packed meals held will have to be discarded. Customers will urgently require replacement. Tenderers are to indicate in the Response Section Part C (Response Question 14.1.5) their ability to supply urgent deliveries outside normal delivery cycles.

Tenderers are also to give details in the Response Section Part C (Response Question 14.1.7) of their replacement/returns policy.

As part of performance monitoring of the contract the customer/appointed nominee may take one or more samples at random from a delivery lot at time of delivery. The checks conducted may include temperature, weight/portion size and correct labelling or other mandatory quality criteria.

## **2.1. Ordering**

Generally Customers will provide an uncommitted monthly Forecast of meal requirements for each day of a month in advance. This Forecast is generally accurate and may be adjusted as required to reflect new clients, lost clients or changes in client preferences and activities.

Tenderers must specify in the Response Section Part C (Response Question 14.1.3) the lead-time required on firm order for both frozen and cooked-chilled to various geographic locations in order to permit preparation, picking and distribution for delivery by the due date.

On occasion services may have requirement for changes in orders at short notice. Tenderers must specify in the Response Section Part C (Response Question 14.1.4) their capacity to meet these small changes in demand in terms of lead-time required.

On line ordering is highly desirable. The tenderer is required to give details in the Response Section Part C (Response Question 15.2.1), of their ordering system. The ease of processing invoices and order transactions is also highly desirable.

## **3.0 Transportation**

The tenderer shall deliver all food in a manner that protects it from contamination and ensures product freshness and quality, including transporting all food under temperature control in vehicles with refrigeration equipment fitted. The tenderer must deliver to all locations within the area/region nominated.

In order to safely transport and handle the tendered items, it is recognised that a form of outer protection may be required including crates, cartons or other forms of packaging. This cost must be included in the tendered delivery price and the nominated process for managing this need must be defined in the tender response.

Cook-Chill products must be transported and delivered at temperatures of between zero (0) and five (5) degrees Celsius. Frozen meals must be transported and delivered hard frozen.

## **3.1 Unattended Delivery Locations**

Food or any other items supplied under the eventual contract must not be left at unattended delivery locations. The Contractor is responsible to mutually agree on an acceptable delivery window for a receiving officer to be at the nominated delivery point. Alternative arrangements, if necessary, must be made with the Ordering Officer at time of order placement.

#### **4.0 Performance Monitoring**

Performance monitoring is key to ensuring that both parties deliver a successful outcome under this Standing Offer agreement. This process includes:

- Identifying goals
- Determining metrics
- Establishing baseline
- Measuring performance
- Communicating results
- Taking action

Prior to award of the Standing Offer agreement, Key Performance Indicators (KPI's) will be agreed to between the parties and reviewed on an agreed periodic basis. These measures may often be exception reporting and may include, but not be limited to:

(i) Non compliance reporting:

- Incorrect item weights/portions
- Incorrect labelling
- Number of on time and in full deliveries
- Percentage of on time and in full deliveries (%)
- Damaged products report
- Food recall incidences
- Food temperature exception reporting

(ii) Accreditation:

- Current insurance certification
- Current Workers Compensation certification
- Quality Assurance Audit

Structured performance monitoring will occur between the successful tenderer/s with NSW Procurement Contracting Services on a quarterly basis to drive continuous improvement. Performance monitoring will also occur between successful tenderer/s and eligible customers of this eventual standing offer agreement as part of the sales and service process.

#### **5.0 Reporting/Information Provision**

As a minimum, successful tenderers must provide monthly sales data in an agreed electronic format, to NSW Procurement Contracting Services on a monthly basis, detailing:

- Customer account details
- Product code sold
- Product description sold
- Units sold
- Sales value
- Transport value
- GST

Such information is understood to be available in most computerised sales systems and can be made with very little administrative effort.

The successful tenderer/s shall provide on an agreed basis, summary reports which may include, but not limited to:

- Number of meals, desserts and soups delivered by meal code
- Number of Frozen and Cook-Chill Meals/items delivered
- Total Value (incl. GST) of Meals, desserts and soups delivered by meal code for nominated specific periods
- Number of deliveries per site
- Number of deliveries on average per client
- Average order value (incl. GST)
- Average order value of meals, desserts and soups
- Total delivery cost (incl. GST)
- Average delivery cost per order (incl GST)

## **6.0 Promotion of the Contract**

Tenderers are required to participate at their own cost in the promotion of the Standing Offer agreement to all current and potential Customers. The Tenderer's involvement may include but not be limited to the provision of promotional material, direct marketing, product literature, brochures and other sales related activities. Tenderers are required in Part C1 to indicate their willingness to participate in the promotion of the Standing Offer agreement.



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

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

## **TENDER RESPONSE**

### **Contract 0601379 Provision of Pre-Prepared Meals 01/11/2006 to 31/10/2009 Plus 2 X 1 year Extension Options**

**RFT Number 0601379**

Your Company's Legal Name: *<Insert Company name>*

Your Company's Trading Name: *<Insert Trading name>*

Your Company's ABN number: *<Insert ABN number>*

Contact Name: *<Insert name of Contract Administration Officer>*

Contact Phone: *<insert telephone no>*

**If submitting an electronic Tender, please answer the following and indicate Yes or No below:**

- Are you providing supporting documents in hard copy or on CD-ROM?  
**Yes/No**
- Did you clearly mark the supporting documents as "Supporting Documents to RFT No (Guide Note: please fill in the RFT No)?"  
**Yes/No**

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# PART C The Tender Response

## PART C1 Tender Response to Part B

### 11. Introduction

- 11.1 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.
- 11.2 References to “you” in this Part means the tenderer and all responses given will be taken to be responses of the tenderer.

### 12. Fitness for Purpose

#### 12.1 Quality Certification

Question 12.1.1

Indicate below whether you have attached at Part C2 any certification from approved testing authorities that confirm that the items tendered meet the relevant Australian, overseas or International Standards. Tenderers should also describe here details of other Quality Assurance programs that conform to NSW Food Act 1989 and the relevant Food Standards Australia New Zealand codes.

Answer 12.1.1

<type or write your answer here>

**Yes/No**

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#### 12.2 Quality Assurance

Question 12.2.1

Indicate whether your company has attained certification under AS/NZS ISO 9001:2000 (including if you are in the process of transition from AS/NZS ISO 9001:1994 or AS/NZS ISO 9002:1994 to AS/NZS ISO 9001:2000) or is proceeding towards getting certification.

Answer 12.2.1

**Yes/No**

<type or write your answer here>

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**12.3 If certification is being sought**

Question 12.3.1

If you are in the process of attaining certification, provide evidence and a projected timetable and schedule for certification.

Answer 12.3.1

<type or write your answer here>

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**12.4 Other certification requirements**

Question 12.4.1

Tenderers are to submit with their response a copy of their Food Safety Plan. Indicate below if you have attached a copy of your Food Safety plan.

<type or write your answer here>

**Yes/No**

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**12.5 Guarantees and servicing arrangements**

Question 12.5.1

Give full details of any guarantees or warranties relating to the Deliverables offered. If a specific warranty or warranties is or are stated to be a requirement or requirements in Part A or Annexure 1 to Part B, confirm that it is, or they are, offered. Where free service with respect to the Deliverables is offered during the period of guarantee or warranty, provide addresses (both Sydney and country areas) where service is available. State whether service is available at those points after the expiration of the period of guarantee or warranty and, if so, what charges are applicable.

The minimum extent of warranty offered is that prescribed by legislation, where applicable.

Answer 12.5.1

<type or write your answer here>

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**12.6 Packaging**

Question 12.6.1

Give full details of all packaging used to provide the items that you are tendering for, ie, Cook-Chill and or Frozen meals, desserts and soups. Details of outer packaging are also to be given eg, units per outer pack and their ability to be recycled as well as arrangements in place to collect or dispose of this packaging.

Answer 12.6.1

<type or write your answer here>

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Question 12.6.2

Give details of any packaging that you use that extends the shelf life of your product. Please indicate any additional charges if applicable.

Answer 12.6.2

<type or write your answer here>

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**12.7 Other comments on fitness for purpose**

Question 12.7.1

State here any other details you may wish to add, particularly regarding the innovative aspects and performance of the tendered Deliverables.

Answer 12.7.1

<type or write your answer here>

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12.8 Food recall – Policy and procedures

Question 12.8.1

Give details of your policies and procedures that you have in place to manage food recalls due to any form of contamination.

Answer 12.8.1  
<type or write your answer here>

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## 13 Pricing and related factors

### 13.1 Price Schedule

Question 13.1.1.

Complete the Price Schedule at Part C3 in accordance with cl.7.1 of Part B.

### 13.2 Not Used

### 13.3 Price basis

Question 13.3.1.

*You must indicate below the price basis of your Tender. Select the price basis from one of the two options below (tick corresponding box below):*

Answer 13.3.1

1. Firm for the first six (6) months of the term of the Standing Offer agreement then subject to review at the end of that period and each six (6) months following and at the request of the Contractor based on variations in Sydney CPI Index for food and transport (See Australian Bureau of Statistics – [www.abs.gov.au](http://www.abs.gov.au)).
2. Firm for the first twelve (12) months of the term of the Standing Offer agreement then subject to review at the end of that period and each twelve (12) months following and at the request of the Contractor based on variations in Sydney CPI Index for food and transport (See Australian Bureau of Statistics – [www.abs.gov.au](http://www.abs.gov.au)).

Answer 13.3.1  
<indicate the appropriate box below>

1.
2.

### 13.4 Settlement discounts

If settlement discounts are to be offered, please enter details below.

**The Tender Prices are subject to a settlement discount of:-**

%

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

**13.5 Other discounts/Rebates**

**13.5.2 Volume Rebates**

Question 13.5.2

Large sales volumes provide the opportunity for suppliers to maximise profits and dramatically reduce costs through economies of scale. Rebates are sought once sales revenues reach \$\$/month. Please advise your willingness to offer Volume Rebates.

Answer 13.5.2

**Yes/No**

If “Yes”, indicate below the size of the rebate for the requested breakpoints.

<type or write your answer here>

Monthly Sales Breakpoints

<Type %>	per	\$0 - \$20,000 sales value
<Type %>	per	\$20,001 - \$40,000 sales value
<Type %>	per	\$40,001 - \$60,000 sales value
<Type %>	per	\$60,001 - \$80,000 sales value
<Type %>	per	\$80,001 - \$160,000 sales value
<Type %>	per	\$160,001 - \$330,000 sales value
<Type %>	per	\$330,001 - \$580,000 sales value
<Type %>	per	\$580,001 - \$830,000 sales value
<Type %>	per	>\$830,001 sales value

<type or write your answer here, if applicable>

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**13.6 Delivery charges**

Question 13.6.1

Logistics costs are dependent on the region and the number of units delivered per drop, to minimise the risk to suppliers and encourage responsible logistics and ordering behaviour.

Complete the delivery charges schedule at Part C3 (Excel Pricing file) in accordance with CI 7.3.1 of Part B.

## 14. Delivery Considerations

### 14.1 Delivery times

Question 14.1.1

Provide details of your guaranteed delivery times from receipt of Order together with a production plan, detailing how you intend to maintain guaranteed delivery times.

The production plan must provide full details of your supply chain process for the supply of the Deliverables. The plan must outline forecast lead times, strategic alliances or specific arrangements with suppliers or sub-contractors.

Answer 14.1.1

<type or write your answer here>

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Question 14.1.2 Delivery method

Give details of your current delivery method and the size of deliveries. You must demonstrate here that you have the ability to be able to satisfactorily meet the delivery requirements.

Answer 14.1.2

<type or write your answer here>

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Question 14.1.3 Delivery lead time

Please provide your minimum delivery lead time for firm orders of cooked-chilled and/or frozen meals.

Answer 14.1.3

<type or write your answer here>

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Question 14.1.4 Capacity to meet changes in orders

On occasions customers may have a requirement for changes to orders at short notice. Tenderers are to give details here of their capacity to meet these changes in demand in terms of lead time required.

Answer 14.1.4

<type or write your answer here>

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**Question 14.1.5 – Emergency Arrangements**

Tenderers are to indicate below the lead-time provisions offered for emergency deliveries.

**Answer 14.1.5**

<type or write your answer here>

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**Question 14.1.6 – Delivery frequency and delivery windows**

Tenderers are to indicate below delivery frequency and delivery windows

**Answer 14.1.6**

<type or write your answer here>

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**Question 14.1.7 – Replacement/Returns policy**

Tenderers are to give details of their replacement/returns policy

**Answer 14.1.7**

<type or write your answer here>

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**15. Capacity to perform agreement**

**15.1 Years in business**

**Question 15.1.1**

State the number of years you have been in business under your present constituted form.

Answer 15.1.1  
<type or write your answer here>

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**15.2 Technical, warehousing, inventory and distribution capability.**

Question 15.2.1

Tenderers are to demonstrate the suitability of their resources/facilities/procedures for the purpose of fulfilling the Requirement, including your production processes, warehousing, dispatch, transport and delivery arrangements. Include details of:

- (a) size of premises
- (b) On-Line ordering systems
- (c) Reporting capability eg customer reports

**15.3 Human Resource Capability**

Question 15.3.1

Provide details of qualifications, skills and experience of key personnel to be involved in the operation of the proposed Standing Offer agreement.

Answer 15.3.1  
<type or write your answer here>

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**15.4 Help Desk Access**

Question 15.4.1

If you have a toll-free help desk number specify the geographical area covered, the number(s) and help desk hours

Answer 15.4.1  
<type or write your answer here>

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Question 15.4.2

Specify any non toll-free help desk number(s), corresponding toll charges, and help desk hours

Answer 15.4.2

<type or write your answer here>

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**15.5 Not Used**

**15.6 Financial viability**

Question 15.6.1

Give in \$A the annual turnover in Deliverables tendered.

Answer 15.6.1

<type or write your answer here>

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Question 15.6.2

During the course of the tender process, it may be required that you submit a copy of your last three annual financial reports to the Board, or to Kingsway Financial Assessments if so directed, in order to conduct financial analysis on behalf of the Board. Indicate below whether you will provide these reports if required.

Answer 15.6.2

Yes/No

If **"No"**, comment below:

<type or write your answer here>

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**15.7 Information on dealers, distributors and sub-contractors**

Question 15.7.1

Is any part of the Deliverables to be offered through a sub-contractor including delivery. In this context, suppliers of raw materials and/or minor components to be incorporated into the Deliverables supplied by the Contractor are not regarded as sub-contractors for the purpose of this question.

Answer 15.7.1

**Yes/No**

If “**Yes**”, in respect of each nominated sub-contractor, please provide the following information, so far as applicable:

<b>Sub-contractor</b>	
<b>If a company, Company Name</b>	
<b>If a partnership, Partnership Name</b>	
<b>If an individual, individual's name</b>	
<b>4) Trading Name</b>	
<b>5) Australian Business Number (ABN)</b>	
<b>6) Australian Company Number (ACN)</b>	
<b>7) Registered Office (if a company)</b>	
<b>8) Site Address (principal place of business)</b>	
<b>9) Postal Address (principal place of business)</b>	
<b>10) Alternative Address</b>	
<b>11) Contract Administration Contact Name</b>	
<b>12) Contract Administration Contact Telephone No.</b>	
<b>13) Contract Administration Contact E-mail Address</b>	
<b>14) Contract Administration Contact Fax No.</b>	
<b>15) Sales Order Contact Name</b>	
<b>16) Sales Order Phone No.</b>	
<b>17) Sales Order E-mail Address</b>	
<b>18) Sales Order Fax No.</b>	
<b>19) Chief Executive Officer's (CEO) Name</b>	
<b>20) Switchboard Telephone No.</b>	
<b>21) Company E-mail Address</b>	
<b>22) Website address</b>	
<b>23) Items able to be supplied</b>	

### **15.8 Suitability of proposed dealers, distributors and sub-contractors**

#### Question 15.8.1

For each nominated sub-contractor, provide details of their experience and qualifications in the provision of similar Deliverables and any comments you may wish to make.

Answer to 15.8.1

<type or write your answer here>

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Question 15.8.3

Sub-contractors are required to provide a letter of commitment to the Board that:

- (a) they are aware of the content of cl. 5.2 (Supply through dealers or distributors and sub-contractors) of the Agreement and the standard terms and conditions of the Customer Contract, and
- (b) they will offer to sub-contract on terms that are consistent with the Customer Contract and that otherwise enable Contractors to comply with clause 5.2 of the Agreement.

Do you agree to attach to the completed Part C (or, if tendering electronically, to submit as a pre-condition of acceptance of your Tender) a letter of commitment from sub-contractors, and provide a letter of commitment from any sub-contractor approved during the term of the Agreement?

Answer 15.8.3

<type or write your answer here>

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**15.9 Marketing**

Question 15.9.1

The marketing of this Standing Offer agreement may include:

- (a) the provision of promotional material,
- (b) direct marketing,
- (c) product literature, brochures and other sales related activities.

Indicate below which, if any, of the activities above you would be prepared to assume responsibility:

Answer 15.9.1

<type or write your answer here>

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Question 15.9.2

Provide any other relevant information below in regards to your marketing and promotions plan.

Answer 15.9.2

<type or write your answer here>

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**15.10 Other comments on capacity or ability to perform the Standing Offer agreement**

Question 15.10.1

State here any other details you may wish to add. Please also address your capacity to perform the Standing Offer Agreement in the context of the current commitments of your organisation. (Note that details of previous performance of similar agreements are sought in cl.20, below, and should not be referred to here.)

Answer 15.10.1

<type or write your answer here>

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**15.11 Range/Variety of meals offered**

Question 15.11.1

Describe here how you will meet the needs of customers, that is providing high quality and a large variety of nutritional main meals, soups and desserts.

Answer 15.11.1

<type or write your answer here>

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Question 15.11.2

From time to time the Customer may require special meals that cater for persons with specific allergies. These meals, if required, will be arranged through consultation with the Contractor.

Describe here how you presently cater for persons with special meal requirements and your capacity to provide these meals.

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Question 15.11.3

Please provide your organisation's capability to offer options such as mini or maxi main meals (which are approximately +30% or -30% volume respectively, of the general main meal size of approximately 350g).

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Also please provide indicative pricing (GST Exclusive) and meal sizes for maxi or mini main meals as follows: This pricing does not form part of the pricing schedule.

Main Meal Type	Meal Size (g)	Cook-Chilled \$	Frozen \$
Mini Meal			
Maxi Meal			

## 15.12 Customised Meals

Question 15.12.1

There may be a requirement for a range of customised meals to suit the needs of specific Customers ("customised meals").

Tenderers are to indicate if they will be prepared to negotiate any customised meals.

Answer 15.12.1

**Yes/No**

Question 15.12.2

Tenderers are to indicate if they will be prepared to offer prices for customised meals using the tendered prices as a benchmark.

Answer 15.12.2

**Yes/No**

## 16. Compliance with proposed agreement

Question 16.1

Do you agree to be bound by all the conditions contained in Part D of this RFT?

Answer 16.1

**Yes/No**

If “No”, provide a full statement of all amendments sought, giving reasons.

<type or write your answer here>

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Question 16.2

Do you agree to comply with clause 6.5, Minimum Insurance Requirements, contained in Part D of this RFT?

Answer 16.2

**Yes/No**

If “No”, provide a full statement of all amendments sought, giving reasons.

<type or write your answer here>

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Question 16.3

Please list the insurances you currently hold, the respective amount (or Limit of Liability) for each insurance policy and their expiry dates.

Answer 16.3

<type or write your answer here>

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## 17. Compliance with policy

### 17.1 NSW Government Code of Practice for Procurement

Question 17.1.1

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

Answer 17.1.1

**Yes/No**

Question 17.1.2

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

Answer 17.1.2

**Yes/No**

Question 17.1.3

Provide any other relevant information below.

Answer 17.1.3

<type or write your answer here>

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**17.2 Not Used**

**17.3 Purchasing Preference Scheme**

**17.3.1 NSW Country Industries Preference Scheme**

You must complete the following details if you are eligible under the Country Industries Preference Scheme and wish to make use of the CIPS margin:

Question 17.3.1 (a)

Have you registered with the Country Industry Preference Scheme?

Answer 17.3.1 (a)

**Yes/No**

If **“Yes”**, supply Preference Registration Number

<type or write your answer here>

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Question 17.3.1 (b)

Supply details of the location(s) (town(s)) of your manufacturing or other facilities

Answer 17.3.1 (b)

<type or write your answer here>

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Question 17.3.1 (c)

Will the Deliverables be wholly or substantially manufactured or produced at the above location(s)?

Answer 17.3.1 (c)

**Yes/No**

If **“No”** explain below  
<type or write your answer here>

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**17.4 to 17.7 Not Used**

**17.8 SME involvement**

Question 17.8.1

Provide details of the likely percentage of the value of the Deliverables to be provided under the Standing Offer agreement that will be sourced from SMEs and of the activities that will be carried out by SMEs under the Standing Offer agreement.

Answer 17.8.1  
<type or write your answer here>

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**17.9 Regional Development**

Question 17.9.1

Provide details of the positive impact that the work flowing to the local region will generate, and any adverse effect should the same work be awarded to a capital city based organisation.

Answer 17.9.1  
<type or write your answer here>

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Question 17.9.2

Indicate the measures to be taken if the Standing Offer agreement is awarded to enhance local industry participation, SME involvement, employment and workforce development.

Answer 17.9.2

<type or write your answer here>

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**17.10 to 17.13 Not Used**

**17.14 Occupational Health, Safety & Rehabilitation**

Question 17.14.1

Do you currently comply with your OHS&R statutory obligations?

Answer 17.14.1

<type or write your answer here>

**Yes/No**

Question 17.14.2

Will you continue to comply with your OHS&R obligations specified in clause 6.16 of Part B, including obligations relating to performance monitoring and Sub-Contractor performance under the Standing Offer agreement awarded?

Answer 17.14.2

<type or write your answer here>

**Yes/No**

If **“No”**, provide details below. If **“Yes”**, provide details below of how you will ensure that Sub-Contractors will perform in accordance with OHS&R obligations.

<type or write your answer here>

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**17.15 Environmental Management**

Question 17.15.1

Describe in what way or ways your organisation promotes the development of Ecologically Sustainable Development. For assistance in answering this question, you may refer to the Procurement Guidelines on Environment Management available electronically at: [www.commerce.nsw.gov.au](http://www.commerce.nsw.gov.au)

Answer 17.15.1

<type or write your answer here>

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**17.16 Competitive Neutrality**

Question 17.16.1

If you are a public sector tenderer, do you comply with the policy that Government agencies should not have a net advantage over their competitors as a result of their public ownership?

**Yes/No**

If “No”, provide details

Answer 17.16.1

<type or write your answer here>

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**17.17 Electronic Commerce (Smartbuy®)**

Question 17.17.1

If you become the successful tenderer, you are required to review and sign the smartbuy® supplier agreement and associated Participation Rules. Please confirm your ability to accept and conform to the requirements as outlined in these documents. Documents can be requested by contacting the smartbuy® Helpdesk on 1800 003 985 or [smartbuy-infocentre@commerce.nsw.gov.au](mailto:smartbuy-infocentre@commerce.nsw.gov.au)

<type or write your answer here>

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Question 17.17.2

smartbuy® is committed to facilitating electronic procurement document exchange between NSW public organisations and its suppliers. Describe below your present capabilities and services, or future strategies in relation to E-Commerce. Please include

any existing or planned B2B connections with corporate partners or Government departments and any web based procurement tools relevant to the deliverables offered. Please specify whether these capabilities are current (operational), under construction, planned or under consideration.

<type or write your answer here>

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Question 17.17.3

If you become a successful tenderer, please nominate your preferred method of document transaction as specified in Part B, Section 6.19.15 – smartbuy® CONNECT Trading Channels.

<type or write your answer here>

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Question 17.17.4

With reference to Part B, Section 6.19.15, please specify the type of business documents that you are able to send and receive.

<type or write your answer here>

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Question 17.17.5

smartbuy® can facilitate consolidated electronic invoice billing functionality via smartbuy® CONNECT. Please provide an outline of your existing capability, or any proposed future development, in providing NSW Government agencies with e-Billing functionality.

<type or write your answer here>

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Question 17.17.6

If you become a successful tenderer, you will be required to provide catalogue content information in the Catalogue Data Collection (CDC) tool. Short listed tenderers will receive, and be required to populate the CDC tool with catalogue content that will allow purchasing to begin on the new contract from inception. Should your organisation be

short-listed for this contract, please confirm your ability to meet this catalogue content preparation requirement.

<type or write your answer here>

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Question 17.17.7

In helping the NSW Department of Commerce lead eProcurement adoption across NSW government through smartbuy®, please outline proposed initiatives that your organisation could implement to support and increase the volume of orders being transmitted through the smartbuy® CONNECT during the life of the contract.

<type or write your answer here>

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**17.18 Not Used**

**18. Compliance with relevant legislation and standards**

Question 18.1.1

Do you comply with the Food Act (NSW) 2003 as amended from time to time

**Yes/No**

If **“No”**, provide details

Answer 18.1.1

<type or write your answer here>

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Question 18.1.2

Do you comply with the FSANZ Food Standard Code

**Yes/No**

If **“No”**, provide details

Answer 18.1.2

<type or write your answer here>

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Question 18.1.3

Do you comply with the Hazard Analysis and Critical Control Points (HACCP). You must also provide a copy of your food safety plan.

**Yes/No**

If **"No"**, provide details

Answer 18.1.3

<type or write your answer here>

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Question 18.1.4

Do you comply with NSW Health Listeria Guidelines Circular 99/95

**Yes/No**

If **"No"**, provide details

Answer 18.1.4

<type or write your answer here>

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Question 18.1.5

Describe your method for identifying the legislation, standards and codes that apply to the supply of the Deliverables and changes in them.

Answer 18.1.5

<type or write your answer here>

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## 19. Not Used

## 20. Previous contract experience and standard of performance

### 20.1 Previous contract experience

20.1.1 Provide details of any previous Standing Offer agreement(s) (Period Contract(s)) with the Board that you have been involved in during the past four years in the table below:

<type or write your answer below>

Contract No	Contract Name	Date commenced	Date finished (if applicable)

### 20.2 Previous experience in provision of Deliverables

You must demonstrate at Question 20.2.1 any previous experience and how it would relate to the successful provision of services under this proposed requirement.

Question 20.2.1

Demonstrated expertise and experience in the successful provision of goods and/or services on a similar scale to the Requirement (not for the provision of goods and/or services to the Board) is highly desirable. State the number of years in business providing these goods and/or services and give full details of the services you provided.

Answer 20.2.1

<type or write your answer here>

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### 20.3 Previous performance of Standing Offer agreements

Question 20.3.1

If you have undertaken any previous Standing Offer agreements provide details of any assessment undertaken of your performance. If performance reports were prepared in respect of your performance, please provide copies.

Answer 20.3.1

<type or write your answer here>

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## 20.4 Referees

### Question 20.4.1

Please provide three (3) names and contact details of previous customers  
<type or write your answer here>

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## 20.5 Site inspections

### Question 20.5.1

As part of the evaluation process it may be necessary to visit your production and or distribution centres. Please give full details here, production and/or distribution location centres that will be used to supply the deliverables.

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## 21. Other information required

### 21.1 Details of ownership

#### Question 21.1.1

If you are a company, please provide details of your ownership, that is, Australian, Overseas, name of each shareholder holding 20% or more of your issued share capital, paid-up capital and other relevant details.

#### Answer 21.1.1

<type or write your answer here>

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#### Question 21.1.2

If you are a partnership, please provide a list of partners and details of the partnership financial arrangements.

Answer 21.1.2

<type or write your answer here>

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**21.2 Contracting as agent/trustee**

Question 21.2.1

If awarded the Standing Offer Agreement, do you intend to contract in your own right or as agent for some other entity or entities? If an agent, identify the principal who will be bound by the Deed of Agreement and any authority given by that principal to you to execute any such agreement as its agent.

Answer 21.2.1

<type or write your answer here>

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Question 21.2.2

If awarded the Standing Offer Agreement, do you intend to contract in your own right or as trustee for some other entity or entities? If a trustee, provide a copy of the trust deed, set out the names of the trustees, and provide full details below of your capacity to enter any Deed of Agreement as a result of this RFT.

Answer 21.2.2

<type or write your answer here>

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**21.3 Current Legal Proceedings**

Question 21.3.1

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

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

**Yes/No**

If “Yes”, please supply full details below:

Answer 21.3.1

<type or write your answer here>

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**21.4 to 21.6 Not Used**

**21.7 Addenda to this RFT after issue**

Question 21.7.1

Are you aware of any Addenda issued by the Board to this RFT after the issue of this RFT?

Answer 21.7.1

**Yes/No**

Question 21.7.2

If the answer is “Yes”, indicate below whether you have read and allowed for the Addenda in your Tender.

Answer 21.7.2

<type or write your answer here>

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Question 21.7.3

Please specify how many Addenda have you read and allowed for in your Tender.

Answer 21.7.3

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It is the responsibility of the tenderer in accordance with Part A to ensure that it is aware of all addenda issued during the tender period. Failure by the tenderer to allow the addenda in the tender may result in the tender not being considered.

**21.8 Further information**

Question 21.8.1

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

Answer 21.8.1

<type or write your answer here>

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**21.9 Tender validity period**

Question 21.9.1

Indicate below the period for which your Tender will remain valid for acceptance from the deadline for lodgement of tenders.

**N.B.** The minimum validity period is as stated in cl. 7.7.

Answer 21.9.1

---

**21.10 Not Used**

**21.11 Supply of Australian Business Number**

Question 21.11.1

If you do not currently have an ABN, state how and when you intend to obtain an ABN and register for GST.

N.B. Tenderers that do not have an ABN cannot enter into an agreement with the Board.

Answer 21.11.1

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**21.12 Conflict of Interests**

Question 21.12.1

In lodging a tender to this RFT, are you aware of any real or perceived conflict of interests (including any relevant relationships) existing, which require your disclosure.

Answer 21.12.1

Yes/No

If the answer is "Yes", disclose conflict of interest.

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**21.13. Information System**

Question 21.13.1

Please define the business information system currently in use (eg propriety software such as MYOB, paper based)

Answer 21.12.1

<type or write your answer here)

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**21.14 Customer Database**

Question 21.14.1

Please define the information fields available for each customer account in your current customer database, confirm whether multiple sales groupings can be linked to a customer account (such as parent grouping, geographic regional grouping etc)

Answer 21.14.1

<type or write your answer here)

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**21.15 Product Database**

Question 21.15.1

Please define the information fields available for each product code in the current sales database, confirm whether multiple sales groupings can be linked to each product (such as meal type, meal size etc)

Answer 21.15.1

<type or write your answer here)

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**21.16 Sales Reports**

Question 21.16.1

Please confirm the ease with which sales reports can be modified and/or generated.

Answer 21.16.1

<type or write your answer here>

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**21.17 Key Performance Indicators**

Question 21.17.1

Please confirm the proposed measures and metrics for the performance monitoring process. Are these measures currently in place with other customers.

Answer 21.17.1

<type or write your answer here>

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## 22. Tenderer Identification Details

Question 22.1- Type or write your identification details as required below.

<b>1) If a company, Company Name</b>	
<b>2) If a partnership, Partnership Name</b>	
<b>3) If an individual, individual's name</b>	
<b>4) Trading Name</b>	
<b>5) Australian Business Number (ABN)</b>	
<b>6) Australian Company Number (ACN)</b>	
<b>7) Registered Office (if a company)</b>	
<b>8) Site Address (principal place of business)</b>	
<b>9) Postal Address (principal place of business)</b>	
<b>10) Alternative Address</b>	
<b>11) Contract Administration Contact Name</b>	
<b>12) Contract Administration Contact Telephone No.</b>	
<b>13) Contract Administration Contact E-mail Address</b>	
<b>14) Contract Administration Contact Fax No.</b>	
<b>15) Sales Order Contact Name</b>	
<b>16) Sales Order Phone No.</b>	
<b>17) Sales Order E-mail Address</b>	
<b>18) Sales Order Fax No.</b>	
<b>19) Management Fee Contact Name:</b>	
<b>20) Management Fee Contact Telephone No.</b>	
<b>21) Management Fee Contact Fax No.</b>	
<b>22) Chief Executive Officer's (CEO) Name</b>	
<b>23) Switchboard Telephone No:</b>	
<b>24) Company email address</b>	
<b>25) Website address:</b>	
<b>26) Tenderer's Reference No:</b>	

## **PART C2 Statement of Compliance with Specification**

Question 23

Do the tendered Deliverables fully comply with Specification?

**Yes/No**

If **"No"** a full statement of deviations must be given, specifying the relevant clause/s or Deliverable/s and the extent of non-compliance to each.

Answer 23

<type or write your answer here>

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## **PART C3 Price Schedule – Main Meals, Soups and Desserts**

**For Electronic Tender Response Refer to the excel file for the Guide Notes, Technical, Pricing and Logistics that you would have downloaded with the tender documents**

**For hard copy tender response the tender documents that you purchased included a disc with the Guide Notes, Technical, Pricing and Logistics schedules.**

## Part C4 Acknowledgment And Confirmation Of Tender

Note to tenderers: If submitting a hard copy Tender, execute cl. 24.4. If submitting an electronic Tender, only complete cl. 24.5.

24.1 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 Standing Offer agreement.

24.2 Not Used

24.3 Not Used

24.4

I affirm that this is my Tender to supply the Deliverables sought in the RFT at the prices tendered, and in accordance with the conditions of the RFT except as expressly amended in my Tender, and that the information given in my Tender is correct:

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Print Name and Title

---

Signature of tenderer (if an individual, as identified in clause 22)

*or*

---

Signature of authorised officer of tenderer (as identified in clause 22)

*or*

---

Signature of partner completing tender on behalf of partnership (as identified in clause 22)

Question 24.5

If submitting an electronic Tender, do you acknowledge and accept that electronic submission in accordance with the requirements of the RFT and any conditions of the NSW Department of Commerce tenders web site is sufficient to verify and affirm that this is your Tender to supply the Deliverables at the prices tendered on the conditions contained in Part D, except as expressly amended in your Tender and that the information contained in your Tender is correct?

Note that such acknowledgment and acceptance is a necessary prerequisite to consideration of your Tender.

**Yes/No**

---

Print Name and Title



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

**Dated: <Insert Date>**

---

**NSW STATE CONTRACTS CONTROL BOARD**

and

**<Insert Contractor name>**

---

**DEED OF AGREEMENT FOR**

*1*

---

# Part D – Deed of Agreement

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THIS DEED OF AGREEMENT is made on the \_\_\_\_ day of \_\_\_\_\_ 20\_

**BETWEEN NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD** for and on behalf of the Crown in right of the State of New South Wales, of McKell Building, 2-24 Rawson Place, Sydney, in the State of New South Wales ("the Principal")

AND ..... **[insert name of contractor]** of  
..... **[insert address]** in the State of ..... ("the Contractor")

**BACKGROUND**

- A. The Principal issued the Request for Tender for the supply of the Deliverables.
- B. The Contractor submitted the Tender that was accepted by the Principal.
- C. The Principal and the Contractor have agreed to enter a Standing Offer agreement for the supply of the Deliverables in the form of this Agreement.

**NOW THE PARTIES AGREE:**

## PART D1 – Interpretation Provisions

### 1. Interpretation

#### 1.1 Definitions

**“Agreement”** means this Deed of Agreement including the Schedules.

**“Applicable Discount”** means an applicable discount offered in the Tender, including in the Price Schedule to the Tender, as varied from time to time in accordance with the Agreement, or any other applicable discount which may be offered by the Contractor from time to time.

**“Approved Dealer and Distributor Information”** means the schedule of information supplied in respect of each approved dealer and distributor in Schedule 11.

**“Approved Sub-Contractor Information”** means the schedule of information supplied in respect of each approved sub-contractor in Schedule 11.

**“Circumstances Beyond the Control of the Contractor”** include:

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

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

- (a) is by its nature confidential;
- (b) is designated by that Party as confidential; or

- (c) the other Party knows or ought to know is confidential.

**“Contract Material”** means:

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

**“Contract Price”** means the total amount payable by the Customer to the Contractor for the Deliverables ordered under a Customer Contract and calculated in accordance with clause 18.

**“Contractor”** means the person or corporation referred to in item 2 of Schedule 1 who will provide the Deliverables.

**“Contractor Information”** means the information provided by the Contractor in Schedule 10.

**“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 or any Customer Contract;
- (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.

**“Customer”** means the Eligible Customer that places an Order with the Contractor under the Standing Offer agreement.

**“Customer Contract”** means the contract that is made between the Contractor and a Customer when that Customer places an Order;

**“Deliverables”** means the goods and/or services to be supplied by the Contractor in accordance with this Agreement and itemised in the Price Schedule as amended:

- (a) by any document forming Schedule 4 to this Agreement; and
- (b) from time to time in accordance with this Agreement.

**“Eligible Customer”** means

- (a) an entity listed in Schedule 1 to the Public Sector Employment and Management Act 2002 as amended from time to time;
- (b) a public sector agency as defined by clause 18(4) of the Public Sector Management (goods and Services) Regulation 2000 being:

- 1) a government trading enterprise (including a State owned corporation)
- 2) a public or private hospital (including an area health service)
- 3) a local government agency
- 4) a charity or other community non-profit organisation
- 5) a public or private school, college or university
- 6) a public sector agency of this State, the Commonwealth or of any other State or Territory
- 7) a contractor to a public sector agency (but only in respect of things done as such a contractor)
- 8) a Nominee Purchaser provided that it satisfies the requirements of clause 4.2 of Part D (Deed of Agreement) and
- 9) such other persons or entities, which the Principal may from time to time in its discretion, determine through a customer registration process.

**“Forecast”** means a statement of anticipated demand for each line item by time period, which is provided by each Customer to the Contractor for the purpose of planning production and minimising sensitivity of lead time. The forecast enables efficient production of frozen goods as make-to-stock and scheduling of capacity for cook/chill goods as make-to-order.

**“Guaranteed Delivery Time”** means the guaranteed time for the supply of the Deliverables specified in the Tender and agreed by the Principal, or such earlier time as may be agreed by the Customer and the Contractor in respect of a particular Order.

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

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

**“Management Fee”** means the fee payable by the Contractor to the Principal in accordance with clause 6.11.

**“Nominee Purchaser”** means a contractor to a public sector agency, nominated by the public sector agency to be authorised to place Orders under Standing Offer Agreements for things done as such a contractor and registered by NSW Procurement - Contracting Services.

**“NSW Department of Commerce Customer Number”** means the identification number issued by NSW Procurement to a Customer for the purposes of the Customer entering into the Customer Contract.

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

**“Order”** means a written request by a Customer for the supply of any or all of the Deliverables.

**“Payment Period”** means each period nominated in item 8 of Schedule 1 or where this Agreement expires or is terminated before the conclusion of one such period, the period up to and including the date of expiration or termination.

**“Parties”**, where used in relation to the Agreement, means the Principal and the Contractor, and where used in relation to a Customer Contract, means the Customer and the Contractor.

**“Price”** means the price payable for a Deliverable as set out in the Price Schedule and includes a price expressed as a lump sum or a rate per unit of quantity and, if applicable, means that price less any Government Discount and/or plus any Government Mark-up specified in the Price Schedule.

**“Price Schedule”** means the Price Schedule attached to the Tender as Part C2 and any variations to the Price Schedule made by the documents forming Schedule 4 to this Agreement and/or variations made in accordance with this Agreement.

**“Principal’s Material”** means any material, document, or Information supplied by the Principal, a Customer or any department or agency of the Crown to the Contractor by whatever means.

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

**“Public sector agency”** means an entity as defined from time to time in clause 18(4) of the *Public Sector Management (Goods & Services) Regulation 2000* (NSW) and includes:

- (a) a government trading enterprise (including a State owned corporation);
- (b) a public or private hospital (including an area health service);
- (c) a local government agency;
- (d) a charity or other community non-profit organisation;
- (e) a public or private school, college or university;
- (f) public sector agency of:
  - (i) this State (including the Principal),
  - (ii) the Commonwealth, or
  - (iii) any other State or Territory; and
- (g) provided that it satisfies the requirements of clause 4.2, a Nominee Purchaser.

**“Request for Tender”** means the Request for Tender described in item 1 of Schedule 1 including any addenda to the Request for Tender issued by the Principal.

**“Schedule”** means a schedule to this Agreement.

**“Security”** means the security in the amount and form specified by the Principal in its discretion, as set out in item 11 of Schedule 1.

**“Specification”** means the detailed description of the Deliverables to be provided under this Agreement that is attached as Schedule 2, as amended by any document attached as Schedule 4. In the event of any inconsistency between the Specification and any part of this Agreement, this Agreement will prevail to the extent of the inconsistency.

**“Standing Offer”** means an agreement under which there is a standing offer for the provision or disposal of goods or services over the period of the agreement, on the order of any Customer for whom the Principal has arranged the contract.

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

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

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

**“Substantial Breach”** means:

- (a) in the case of this Agreement, a substantial breach of a term of this Agreement by the Contractor and includes any breach of the following clauses (which will be taken in each case to be a substantial breach of this Agreement):
  - (i) clause 3.4 (Prices for the Deliverables),
  - (ii) clause 3.5 (Price Adjustment),

- (iii) clause 6.5 (Minimum Insurance Requirements),
  - (iv) clause 6.5 (Minimum Insurance Requirements),
  - (v) clause 6.10 (Licences and Approvals),
  - (vi) clause 6.11 (Management Fee),
  - (vii) clause 8 (Confidentiality); and
  - (viii) clause 12 (No assignment or novation)
- (b) in the case of a Customer Contract, a substantial breach of a term of the Customer Contract, and includes any breach of the following clauses (which will be taken in each case to be a substantial breach of the Customer Contract):
- (i) clause 16 (Time for Delivery)

**“Tender”** means the tender submitted by the Contractor in answer to the Request for Tender, including any accepted variation to the tender, attached as Schedule 3 or, in some cases, as Schedule 4.

**“Term”** means the period of this Agreement, set out in item 4 of Schedule 1 and any extension of the Term in accordance with clause 2.3.2.

**“Warranty Period”** means, in relation to a particular Deliverable, the period of warranty of that Deliverable offered in the Tender.

## 1.2 Rules for interpreting this Agreement

- 1.2.1 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- 1.2.2 A reference to:
- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (b) a document or agreement, or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (c) a person includes any type of entity or body of persons whether or not it is incorporated or has a separate legal entity;
  - (d) anything (including a right, obligation or concept) includes each part of it.
- 1.2.3 (a) If the Contractor consists of more than one person or corporation, this Contract 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 the tender and in any contract made pursuant to an acceptance of the tender shall bind each person or corporation separately and jointly and each person or corporation shall alone be responsible for the performance of every obligation, representation or warranty contained in the tender or any contract made pursuant to the tender.
- 1.2.4 A singular word includes the plural, and vice versa.
- 1.2.5 A word which suggests one gender includes the other genders.
- 1.2.6 If a word is defined, another part of speech of that word has a corresponding meaning.

- 1.2.7 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.
- 1.2.8 Subject to clause 1.2.9, if there is any conflict between the terms and conditions of this Agreement and any provisions of the Schedules, the terms and conditions of this Agreement will take precedence over the Schedules.
- 1.2.9 To the extent that documents in Schedule 3 (The Tender and documents evidencing agreed variations to the Tender) or Schedule 4 (Documents notifying the Principal's acceptance) expressly modify or replace clauses of this Agreement or the Specification, those documents will take precedence, in chronological order, over the Agreement or the Specification, as applicable.

# PART D2 – Provisions of the Agreement between Principal and Contractor

## 2. Supply under a Standing Offer for the Term

### 2.1 Nature of the Agreement between the Principal and the Contractor

2.1.1 This Agreement describes the terms and conditions of the Standing Offer between the Principal and the Contractor under which the Contractor agrees with the Principal that it will supply the Deliverables to Customers, as and when Orders are placed, on the terms and conditions of the Customer Contract and subject to this Agreement.

2.1.2 This Agreement included the Request for tender and constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. No notification or alteration of any clause of this Agreement will be valid except in writing signed by both Parties.

2.1.3 The Parties agree that any Customer, although not a Party to this Agreement, may take the benefit of, and seek to enforce, this Agreement in its own name.

### 2.2 Formation of Customer Contracts

2.2.1 The Contractor agrees that each time a Customer places an Order a separate Customer Contract is formed on the date of receipt of the Order by the Contractor. The terms and conditions of the Customer Contract are those appearing in:

- (a) Part D1 of this Agreement, including any Schedules referred to in Part D1;
- (b) Part D3 of this Agreement;
- (c) the Order (including any Additional Conditions); and
- (d) any variations of the Customer Contract as may be made in accordance with that Contract.

### 2.3 Term

2.3.1 This Agreement commences on the commencement date specified in item 4 of Schedule 1 and expires on the expiry date specified in the same item 4, unless sooner determined in accordance with this Agreement.

2.3.2 The Principal may in its sole discretion extend this Agreement for the period or periods specified in item 4 of Schedule 1.

## 3. Deliverables and Pricing

### 3.1 List of Deliverables

3.1.1 The list of Deliverables offered by the Contractor is contained in the Price Schedule.

### 3.2 Variation of Deliverables offered

3.2.1 The Contractor must notify NSW Procurement - Contracting Services in writing as soon as practicable of any variation to the description of a Deliverable offered in the Price Schedule.

- 3.2.2 A variation under clause 3.2.1 may include a variation to the description of the item number, name or Specification of the Deliverable but excludes a variation:
- (a) to the Price of the Deliverable;
  - (b) that modifies or upgrades the Deliverable; or
  - (c) that introduces a new Deliverable to the Price Schedule.
- 3.2.3 NSW Procurement - Contracting Services will notify the Contractor of its acceptance or rejection of the variation to the description of a Deliverable. If the variation is accepted, it shall be taken to be incorporated in the Price Schedule.

### **3.3 Improvements to Deliverables**

#### **3.3 Improvements to Deliverables**

- 3.3.1 Where the Contractor improves a Deliverable (whether as a result of technological advances, revised legislation or Australian Standards or Customer requirements) the Contractor will submit a request in writing to the General Manager, NSW Procurement - Contracting Services to replace the Deliverable listed in the Price Schedule with an improved version of the Deliverable. The request will consist of:
- (a) the current item number of the Deliverable;
  - (b) current sales figures for that Deliverable;
  - (c) the correct and full name (including brand name or marking) of the Deliverable;
  - (d) a full and detailed description of where the Deliverable is used and how it is used;
  - (e) if, whether or not to the best of the Contractor's knowledge, other Deliverables are used in conjunction with the Deliverable;
  - (f) a comparison table listing the characteristics of the Deliverable and the characteristics of the improved version; and
  - (g) a description of the benefits that would accrue to Customers should the improved version be included in the Agreement. Such benefits could include, but are not limited to:
    - (i) Data capture;
    - (ii) Safety Aspects;
    - (iii) the solving of a known/existing problem;
    - (iv) Cost benefits;
    - (v) Any other benefits.
- 3.3.2 Upon receipt of the request, the Principal will have the sole discretion as to one or more of the following actions to be taken:
- (a) institute trials of the improved version and evaluate results;
  - (b) evaluate the improved version;
  - (c) invite all existing suppliers under the Standing Offer for the Deliverables to tender for the improved version;
  - (d) invite a supplementary tender for the improved version from any interested tenderers; or
  - (e) decline the request for inclusion of the improved version in this Agreement.

### **3.4 Prices for the Deliverables**

- 3.4.1 Subject to clauses 3.5, 3.6, and 3.7.2, the price of a Deliverable to be supplied under a Customer Contract shall be the Price for that Deliverable, less any Applicable Discount.

- 3.4.2 Clause 3.4.1 does not prevent the Contractor from offering, or the Contractor and Customer from negotiating, to reduce the Price or increase the discount for a particular Deliverable provided that the Price or discount is consistent with clauses 3.6 and 3.7.2 of this Agreement.

### **3.5 Price Adjustment**

#### **3.5.1 Price Adjustment process for Increases in Prices**

- 3.5.1.1 The Contractor may not vary the Price of a Deliverable except in accordance with the Price mechanism selected in Part C1 of the Tender.
- 3.5.1.2 The Contractor must apply in writing to the Principal to increase Prices in the Price Schedule. Sufficient documentation to justify applications for Price variation must accompany the application.
- 3.5.1.3 Subject to the Contractor having provided the Principal with sufficient documentation, the Principal will, in writing, approve or reject a price variation within six (6) weeks of lodgement of the application.
- 3.5.1.4 Increased prices approved by the Principal shall apply to all Customer Contracts made on or after the date upon which the Principal publishes the increased Price. No Price increase shall be applied retrospectively.
- 3.5.1.5 Where the Price variation is accepted, the Price Schedule will be taken to include the varied Price. The increased Price becomes the basis from which any future applications for Price variations will be calculated.
- 3.5.1.6 The provision of Deliverables under a Customer Contract shall not be withheld or disrupted by formalities or disputes associated with the variation of a Price.
- 3.5.1.7 The Principal reserves the right to delete a Deliverable from the Price Schedule or terminate this Agreement if it considers a Price increase application to be unreasonable.

#### **3.5.2 Price Adjustment process for Decreases in Prices**

- 3.5.2.1 Where the Price variation calculated in accordance with Part C1 of the Tender results in a reduced price, the Contractor must apply in writing to the Principal to decrease the Price.
- 3.5.2.2 Notwithstanding a Firm Price basis for the Contract in terms of Part C1 of the Tender, and notwithstanding a variable price basis in terms of Part C1 of the Tender, the Contractor may apply in writing to the Principal to decrease its Prices at any time without any supporting documentation.
- 3.5.2.3 The Principal will approve or reject a price variation within six (6) weeks of lodgement of the application.
- 3.5.2.4 Decreased prices approved by the Principal shall apply to all Customer Contracts made after the "effective date" as determined by the Principal.
- 3.5.2.5 The decreased Price, once approved, becomes the basis from which any future applications for Price variations are calculated.
- 3.5.2.6 Applications for decreases in Price must be made by the individual contractors concerned. Applications by Trade or similar Associations will not be considered.

**3.6 Not Used**

**3.7 Not Used**

**3.8 Maximum Ceiling Price**

3.8.1 The Price for each Deliverable in the Price Schedule is a maximum ceiling Price which cannot be exceeded without the Contractor applying for a Price variation under clause 3.5 of this Agreement.

3.8.2 Where the Contractor offers a temporary or periodical price special that is lower than a Price specified in the Price Schedule it will make available that lower price to all Customers without requirement for prior notification to the Principal. Such prices do not apply to permanent price decreases which must be submitted to the Principal for its approval in accordance with clause 3.5 of this Agreement.

**3.9 Goods and Services Tax**

3.9.1 In this clause and Agreement:

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

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

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

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

3.9.3 Every invoice issued by a person making a Supply must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice for the Contract Price, or any instalment of the Contract Price, is received.

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

3.9.5 Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 3.9.3.

3.9.6 The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Principal.

**3.10 Pricing for special customer meals**

3.10.1 If a Customer, or the Principal acting on behalf of a Customer, has a requirement for Deliverables different from those detailed in the Specification provided at Schedule 2, (“customised meals”) the Contractor must use the prices accepted under the contract as a benchmark to offer pricing for the customised meals and act reasonable to reach agreement with the Customer for the customised meals.

- 3.10.2 The Customer, or the Principal acting on behalf of a Customer, will provide the specific requirements for these customised meals.
- 3.10.3 The Parties agree that a requirement for customised meals under clause 3.10.2 shall be taken to be a variation of the Agreement in accordance with clause 10 such that the customised meals shall be taken to form a part of the Specification but the price for the customised meals will be the price agreed by the Contractor and the Customer in accordance with clause 18.2 of this Agreement.

## 4. Customers

### 4.1 Contractor must supply to all Customers

- 4.1.1 If a Customer, other than a Nominee Purchaser, places an Order with the Contractor during the Term, the Contractor must supply the required Deliverables to the Customer on the terms and conditions of the Customer Contract and in accordance with this Agreement.

### 4.2 Nominee Purchasers

- 4.2.1 Subject to cl. 4.2.2, the Contractor must satisfy any Order placed under this Agreement by a Nominee Purchaser, provided that the Nominee Purchaser provides in its order:
- a) its NSW Procurement - Contracting Services Registration Number;
  - b) the identity of the Nominating Agency;
  - c) the contract number, name and location of the contract in respect of which the purchase is being made; and
  - d) a statement saying that the goods or services ordered are related to carrying out its obligations under a contract with a public sector agency.
- 4.2.2 If at any time during the Term of this Agreement, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Principal. The Principal may approve the request if there are genuine commercial reasons for the Contractor's request. If approved by the Principal, the details of the restrictions will be included in Item 14, Schedule 1.
- 4.2.3 Where the Principal does not approve a request of the Contractor under clause 4.2.2 and the Contractor refuses to deal with a Nominee Purchaser, the Principal may terminate this Agreement under cl. 11.
- 4.2.4 The Contractor may at any time lift the restrictions it has placed on its dealings with a Nominee Purchaser and shall notify the Principal accordingly.
- 4.2.5 If the Contractor makes a supply under the Agreement to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under this Agreement.

## 5. Orders

### 5.1 No Assurance of Orders and Non-Exclusive supply

- 5.1.1 This Agreement does not:
- (a) provide nor imply that the Contractor is the exclusive provider of the Deliverables to the Customer; or
  - (b) oblige the Customer to place an Order for the Deliverables with the Contractor.
- 5.1.2 The Contractor acknowledges that the Principal may at any time and from time to time appoint other suppliers under a Standing Offer agreement to supply the Deliverables and that the Contractor will make no objection to such appointment.

### 5.2 Supply through dealers and distributors

- 5.2.1 The Contractor may supply the Deliverables through a dealer or distributor of the Contractor approved by the Principal from time to time and identified in Schedule 1 ("Approved dealer or distributor") on the terms of this clause.
- 5.2.2 The Contractor must make the approved dealer or distributor aware of this Agreement and the standard terms and conditions of Customer Contract and of this clause.
- 5.2.3 If the Principal requires it, the Contractor must arrange for the approved dealer or distributor to execute the statutory declaration at Schedule 6.
- 5.2.4 The approved dealer or distributor must offer to supply under the terms and conditions of the Customer Contract and otherwise on terms that enable the Contractor to comply with this clause.
- 5.2.5 The Contractor guarantees the dealer or distributor's performance under the Customer Contract as if the Customer Contract had been entered into by the Contractor.
- 5.2.6 The Contractor must ensure the approved dealer or distributor has an adequate system in place to supply sales information to the Contractor so as to enable the Contractor to comply with its own obligations under this Agreement to supply sales information to the Principal for calculation of the Management Fee.
- 5.2.7 The Contractor must ensure the approved dealer or distributor supplies the Contractor with the above sales information.
- 5.2.8 The Contractor must obtain the approved dealer or distributor's agreement to the Principal at its own cost taking such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the sales information supplied by the approved dealer or distributor to the Contractor.

### 5.3 Supply through Sub-contractors

- 5.3.1 The Contractor may sub-contract part or all of a Customer Contract to a sub-contractor approved by the Principal from time to time and identified in Schedule 1 ("approved sub-contractor") on the terms of this clause.

- 5.3.2 The Contractor must make the approved sub-contractor aware of the terms and conditions of the Customer Contract and this clause;
- 5.3.3 If the Principal requires it, the Contractor must arrange for the approved sub-contractor to execute the statutory declaration at Schedule 6.
- 5.3.4 The terms and conditions of the sub-contract must be consistent with the Customer Contract.
- 5.3.5 The Contractor will continue to be bound by, and responsible for performance of, the Customer Contract notwithstanding that part or all of it may have been sub-contracted.
- 5.3.6 The Principal may, without incurring liability, withdraw its approval of a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of a Customer Contract. The Principal will notify the Contractor and the Customer in writing that its approval is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 5.3.7 To the extent that loss is not attributable to the Principal's withdrawal of approval of a sub-contractor:
- (a) the Contractor will be liable for any acts or omissions of any sub-contractor or any employee or agent of the sub-contractor as fully as if they were the acts or omissions of the Contractor, and
  - (b) the Contractor will indemnify and release the Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 5.3.8 The indemnity given under this clause may be enforced by the Customer to the relevant Customer Contract as if it was itself a party to this Agreement.

#### **5.4 Electronic Orders**

- 5.4.1 The contractor must accept Orders placed by electronic communication in accordance with the Electronic Transactions Act (NSW) 2000.

## **6. Specific Obligations of the Contractor**

#### **6.1 Contractor to Fulfil all Orders**

- 6.1.1 The Contractor must fulfil all Orders during the Term in accordance with this Agreement and the Customer Contract.
- 6.1.2 If quantities or values of the Deliverables are described as 'approximate' in the Specification, they are an estimate only and the Customer is not required to take or accept the estimated quantities or values.
- 6.1.3 The Customer may place an Order for any one type or item of the Deliverables either at one time or in instalments or in such quantities as may be required from time to time.

#### **6.2 Conflict of Interest**

- 6.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest for the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under the Agreement.
- 6.2.2 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.
- 6.2.3 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.
- 6.2.4 The Principal may terminate the Agreement in accordance with clause 11.1 if in its view a conflict of interest exists which prevents the proper performance of the Agreement.

### **6.3 Mistakes in Information**

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

### **6.4 Contractor’s Obligation to supply Deliverables at Prices in the Price Schedule**

- 6.4.1 The Contractor must supply the Deliverables on the basis of the Prices in the Price Schedule except where provided in this Agreement. The Prices, except as specifically provided, are inclusive of all the costs and expenses that the Contractor incurs in the supply of the Deliverables.

### **6.5 Minimum Insurance Requirements**

- 6.5.1 The Contractor must hold and maintain, and must ensure that all subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:
- (a) a broad form liability policy of insurance which includes:
    - (i) public liability insurance for at least the amount specified in item 5(a) of Schedule 1 in respect of each claim; and
    - (ii) products liability insurance for at least the amount specified in item 5(b) of Schedule 1 for the total aggregate liability for all claims arising out of the Contractor’s products for the period of cover.
  - (b) workers’ compensation insurance in accordance with applicable legislation for all the Contractor’s employees; and
  - (c) such other insurances as are specified in item 5 of the Agreement Details.
- 6.5.2 All policies of insurance must be effected with an insurer approved by the Principal (which approval will not be unreasonably withheld).

- 6.5.3 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.
- 6.5.4 All policies must, apart from workers compensation insurance must:
- (a) note the interest of the Principal, the State and any subcontractor;
  - (b) not exclude liability assumed by the Contractor under this Agreement.
- 6.5.5 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.
- 6.5.6 The Contractor must, when requested in writing by the Principal, supply proof that all insurance policies required by this Agreement are current.
- 6.5.7 The Contractor must, when requested in writing by the Principal, arrange for its insurer to complete a "Confirmation of Insurances Obtained" form, and on-send this to the Principal within 30 days of this request. An example of this form is at Schedule 14. Equivalent evidence as to the currency of insurance policies required by this Agreement will be acceptable to the Principal.
- 6.5.8 If the Contractor fails to comply with clause 6.5, the Principal:
- (a) may effect and maintain that insurance and pay the necessary premiums; and
  - (b) may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance.
- 6.5.9 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.
- 6.5.10 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

## **6.6 General Indemnity**

- 6.6.1 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 employees, agents or subcontractors or their employees) in the performance of this Agreement; or
  - (b) any breach of this Agreement or the confidentiality deeds required by this Agreement.

6.6.2 The Contractor's liability in respect of, and indemnity given in, clause 6.6.1 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.

## **6.7 Compliance with Laws and Standards**

6.7.1 The Contractor must, in carrying out this Agreement, comply with:

- (a) all applicable Statutory Requirements, including without limitation:
- Food Act (NSW) 2003 as amended
  - FSANZ Food Standard Code
  - Hazard Analysis and Critical Control points (HACCP)
  - Occupational Health and Safety Act 2000
  - NSW Health Listeria Guidelines Circular 99/95
  - Other legislation or standards which are applicable to the supply of the Deliverables during the term of the Standing Offer Agreement.
- (b) the codes, policies, guidelines and Australian standards listed in Item 6 of Schedule 1 or any other codes, policies, guidelines and Australian standards specified in writing by the Principal to the Contractor.

### **6.7.2 Occupational Health Safety & Rehabilitation**

6.7.2.1 The Contractor must comply with the following OHS&R requirements in the performance of this Agreement:

- (a) The Occupational Health and Safety Act 2000 (NSW) and any regulation made under this Act, including the OHS Regulation 2001; and
- (b) Codes of Practice, approved and issued pursuant to the above Act and/or regulations made under the Act.

## **6.8 Not Used**

## **6.9 The Contractor's On-Costs**

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

## **6.10 Licences and Approvals**

6.10.1 The Contractor must identify necessary approvals and licences and must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement, including any licences listed below or otherwise offered in the Tender:

- Food Act (NSW) 2003 as amended.
- FSANZ Food Standard Code.
- Hazard Analysis and Critical Control points (HACCP).
- Occupational Health and Safety Act 2000.
- NSW Health Listeria Guidelines Circular 99/95.

- Other legislation or standards which are applicable to the supply of the Deliverables during the term of the Standing Offer Agreement.

## 6.11 Management Fee

- 6.11.1 (a)  
The Contractor must pay to the Principal a Management Fee in accordance with this clause.
- (b)  
The Contractor shall act in good faith in respect of all its obligations under this clause 6.11 and shall use its best endeavours to ensure that the obligations imposed on it in relation to management fee are met.
- 6.11.2 The Management Fee is the GST-exclusive value of the Deliverables supplied to a Customer, multiplied by the percentage shown in Item 7 of Schedule 1 (the Management Fee Rate), plus the GST payable on this amount, where the supply of Deliverables to the Customer was or should have been made under this Agreement.
- 6.11.3 The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.
- 6.11.4 The Contractor agrees to take all reasonable steps to ensure that all Eligible Customers do purchase all Deliverables under this Agreement. The Contractor agrees that the Principal may treat all purchases of Deliverables by Eligible Customers as Orders under this Agreement, whether or not a NSW Department of Commerce Customer Number is quoted, unless the Contractor can provide evidence, to the satisfaction of the Principal, that the purchase was made under some other contract between that Eligible Customer and the Contractor.
- 6.11.5 The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with the calculation and proving payment of the Management Fee.
- 6.11.6 At the end of each Payment Period, the Principal shall forward to the Contractor a request for a Report ("The Sales Report") which relates to the relevant Payment Period and which requires the Contractor to report the:
- (a) total amount, exclusive of GST, all Customers are liable to pay in respect of all items invoiced by the Contractor or its approved dealers or distributors to Customers in respect of the Agreement; and
- (b) the sales information as set out in Item 9 of Schedule 1 ("the sales information"), or as the Principal requests in writing from time to time.
- (c) such other relevant information as the Contract Authority may require.
- 6.11.7 (a)  
Upon receipt of a request for a Sales Report, the Contractor shall within 30 days complete the Sales Report for the relevant Payment Period and return the same to the Principal.
- (b)  
In the event that the Contractor does not complete the Report within 30 days:
- (i) The Contractor shall be liable to pay to the Principal the cost to the Principal of ensuring the compliance by the Contractor with its obligations under this clause (which would likely include the number of hours multiplied by the hourly rate for Staff of the Principal), and

- (ii) Will be liable for interest in accordance with item 15 of Schedule 1 Agreement Details, on the amount which (had this clause been complied with) would have been invoiced to the Contractor under clause 6.11.8, calculated from 60 days after the expiry of the relevant Payment Period.
- 6.11.8
  - (a) The Principal shall then compile a tax invoice based on the Sales Report and forward that invoice to the Contractor.
  - (b) The Contractor shall then forward payment to the Principal within sixty days of the conclusion of the Payment Period.
  - (c) In the event that the Contractor does not provide payment within sixty days:
    - (i) The Contractor shall be liable to pay to the Principal the cost to the principal of ensuring the compliance by the Contractor with its obligations under this clause (which would likely include the number of hours multiplied by the hourly rate for Staff of the Principal; and
    - (ii) Will be liable for interest in accordance with item 15 of Schedule 1 Agreement Details, on the invoiced amount, calculated from 60 days after the expiry of the relevant Payment Period.
- 6.11.9 The tax invoice will set out the Management Fee payable to the Principal and the GST payable on the Management Fee.
- 6.11.10 The Principal may alter the above procedure for the collection of the Management Fee as advised in writing and from time to time during the Term.
- 6.11.11 Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable during a Payment Period is required, it should consult with the Principal and the Parties may agree on the amount of any adjustment.
- 6.11.12 Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of that Payment Period, a report stating that no Deliverables were provided by the Contractor to any Customer during the Payment Period.
- 6.11.13 The Contractor must set up and maintain a system which:
  - (a) to the reasonable satisfaction of the Principal is suitable for identifying all purchasers of the Deliverables that are eligible Customers whether pursuant to Official Orders or otherwise and
  - (b) enables monitoring by the Principal of the Orders placed with and invoices issued by the Contractor or its approved dealers or distributors and for the provision of the sales information; and
  - (c) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.
  - (d) Failure to establish such a system to the reasonable satisfaction of the Principal shall constitute a breach of this Agreement and the Contract Authority may, in its discretion terminate the Agreement.
- 6.11.14 (a) The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Principal by the Contractor and the

Contractor agrees to cooperate with the Principal (including any auditor appointed by the Principal).

(b)

If the Principal appoints an auditor, the Principal will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with the auditor appointed by the Principal including providing access within 10 working days of the written notification from the Principal that an audit will take place, to information about all sales of Deliverables made to Eligible Customers (whether pursuant to an Order or otherwise), copies of all contracts, orders and invoices between the Contractor and any eligible Customers. The Contractor agrees to provide the Auditor appointed by the Principal access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form set out in Schedule 15.

6.11.15 If the measures taken in clause 6.11.14 verify that the Contractor has not paid the Management Fee that is actually due to the Principal, the Contractor must:

- (a) remit the difference between the Management Fee paid to the Principal and the Management Fee actually due to the Principal within 30 days of a direction from the Principal; and
- (b) will be liable for interest in accordance with item 15 of Schedule 1 Agreement Details, on the additional amount calculated from 60 days after the expiry of the relevant Payment Period, and
- (c) at the discretion of the Principal, reimburse the Principal's costs and expenses of the measures taken (including any auditor's fees) under clause 6.11.14 to the Principal in accordance with the sliding scale set out below:

Difference between management fee paid and payable

- (a) 99% or more of management fee was paid
- (b) 90-98% of management fee paid
- (c) 75-89% of management fee paid
- (d) 50-74% of management fee paid
- (e) less than 50% of payable management fee paid

Portion of Audit costs to be borne

- (a) \$0
- (b) 25% of audit and other costs
- (c) 50% of audit and other costs
- (d) 75% of audit and other costs
- (e) 100% of audit and other costs.

6.11.16 The Contractor shall during the Term of this Agreement and for a 12 month period after the Agreement has expired or is terminated, keep secure all relevant documents and Information for the purposes of this clause and give any auditor appointed by the Principal access to those documents and Information at all reasonable times.

6.11.17 A breach of this clause (including without limitation, a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 6.11.14) shall be a substantial breach of this Agreement which will entitle the Principal to terminate this Agreement pursuant to clause 6.11.1 without prejudice however to the right of the Principal to recover from the Contractor any sums payable to the Principal under this agreement or otherwise, or the right of the Principal to deduct those sums from any money that may be or become payable by the Principal to the Contractor on any other account.

**6.12 Not Used**

**6.13 Not Used**

**6.14 Marketing by the Principal and the Contractor**

6.14.1 The Principal may carry out advertising and marketing and issue promotional material for the purposes of this Agreement. The Contractor must make every endeavour to assist the Principal with such advertising, marketing and promotional material including conducting seminars and providing the Principal with Information about the Deliverables and the Contractor's advertising material, including copies of that material.

**6.15 Not Used**

**6.16 Electronic Commerce (Smartbuy® <sup>TM</sup>)**

6.16.1 To participate in smartbuy® the Contractor must, within 28 days after the commencement of this Agreement:

- a) enter into the smartbuy® Supplier's Agreement appearing on smartbuy®;
- b) submit a Participant Profile as defined in smartbuy®.

**6.17 Maintenance of Contractor, Approved Dealer and Distributor Information and Approved Sub-Contractor Information**

6.17.1 The Contractor must notify the Principal of any change in the Approved Dealer and Distributor Information, the Approved Sub-Contractor Information and the Contractor Information as and when it occurs.

6.17.2 The Contractor must provide this information in any manner and format requested by the Principal.

**6.18 Provision of Catalogue Information for E-commerce Initiatives**

6.18.1 From time to time the Principal may request the Contractor to supply information in the nature of catalogue information, for use in e-commerce initiatives in NSW Government contracting.

6.18.2 The Contractor must promptly supply any such information that is reasonably requested by the Principal in the format, and using the method of delivery, specified by the Principal at the time of the request.

6.18.3 The Contractor consents to the use of such information, including any personal information, in any catalogue created by NSW Department of Commerce to facilitate e-commerce in NSW Government contracting.

**6.19 Child Protection**

6.19.1 If any Customer Contract involves child-related employment, the Contractor must ensure that:

- (a) it complies with, and ensures that its sub-contractors comply with, the NSW Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People, attached at Schedule 13;

- (b) it complies with its obligations, and ensures that its sub-contractors comply with their obligations, as an employer under the Child Protection (Prohibited Employment) Act 1998 (“Prohibited Employment Act”) and the Commission for Children and Young People Act 1998 (“Children and Young People Act”).
- 6.19.2 Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called “the working with children check.” The guidelines are available at [www.kids.nsw.gov.au](http://www.kids.nsw.gov.au).
- 6.19.3 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:
  - (a) if any work under a Customer Contract is “child-related employment” under the Prohibited Employment Act (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor:
    - (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
    - (ii) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
  - (b) if any work under a Customer Contract is “child-related employment” under the Children and Young People Act (any employment that involves direct contact with children where the contact is not directly supervised) the Contractor must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.
- 6.19.4 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a “prohibited person” under the Prohibited Employment Act (persons who have committed a serious sex offence within the meaning of that Act) to perform work under any Customer Contract that is “child-related employment” under that Act.
- 6.19.5 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.
- 6.19.6 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 relevant Customer Contract.
- 6.19.7 If the Contractor does not comply with any requirement under this clause the Principal may do either or both of the following:
  - (a) ensure termination of any relevant Customer Contract by giving written notice to the Customer that the Contractor has not complied with a requirement under this clause;
  - (b) terminate this Agreement for cause.

## 7. Performance Monitoring and Exchange of Information

### 7.1 Monitoring of Performance

- 7.1.1 The Contractor must meet with the Principal from time to time, as reasonably directed by the Principal, to evaluate and monitor performance of this Agreement (including Customer Contracts) by the Contractor on the basis of the criteria listed below or otherwise as agreed by the Parties:

Quality of goods/service delivered

Sales Performance

Marketing Performance

Management Fee management and reporting compliance

Management of sub-contractors, consultants and other service providers

Contract administration and management

Environmental management

Management of employees and industrial relations

Industry and workforce management

OHS&R Management

## **7.2 Exchange of information between government agencies**

- 7.2.1 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.
- 7.2.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.
- 7.2.3 The Principal regards that the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 23 of the *Defamation Act 2005* (NSW).
- 7.2.4 The Contractor releases and indemnifies the Principal and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Principal and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

## **7.3 Not Used**

## **7.4 Contractor to establish necessary facilities**

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

## **7.5 Access to the Contractor's premises**

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

# **8. Confidentiality**

- 8.1 Subject to clause 8.2, the Contractor must not disclose any Confidential Information in connection with this Agreement to any person other than the Principal without first obtaining the written consent of the Principal.
- 8.2 The Contractor may disclose the Confidential Information to its officers, employees and agents where the disclosure is essential to carrying out their duties for the purposes of this Agreement.
- 8.3 The Contractor must ensure that the Confidential Information is used solely in connection with, or for the purposes of, the provision of the Deliverables.
- 8.4 This clause does not affect the Contractor's obligation to disclose any Confidential Information that is required to be disclosed by law.

## 9. Not Used

## 10. Variations

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

## 11. Termination

### 11.1 Termination for cause

- 11.1.1 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 subcontracts the Customer Contract except in accordance with this Agreement;
  - (f) in the case of the Contractor's Insolvency;
  - (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any Order; or
  - (h) If in the Principal's view a conflict of interest exists for the Contractor which prevents the proper performance of the Agreement.

### 11.1.2 Effect of Termination for cause

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

- (a) contract with any other person to complete the provision of the Deliverables including but not limited to any Order remaining to be filled;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Customer under any Customer Contract (which may be ascertained and certified by the Principal), from any money due, or which may become due to the Contractor (whether under this Agreement or any Customer Contract) and/or from the Security (if any); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Principal.

11.1.2.2 The Principal's termination under this clause will not affect any Customer Contract unless the context requires it.

## 11.2 Termination for the Principal's convenience

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

### 11.2.2 Effect of Termination for convenience

11.2.2.1 The Principal's termination under this clause will not affect any Customer Contract unless the context requires it.

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

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

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

11.2.3 The Contractor must, wherever possible, include in all sub-contracts and supply agreements an equivalent provision to this clause 11.2.

## 12. No Assignment or novation

12.1 The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Principal.

- 12.2** The Contractor acknowledges that the Principal may make financial checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

## 13. Issue Resolution

### 13.1 General

13.1.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed in this order until an issue is resolved:

- (a) Amicable Resolution (cl.13.2);
- (b) Expert Determination (cl.13.3)

### 13.2 Amicable Resolution

13.2.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, (“the Issue Notice”) about the meaning or effect of the Agreement or about any matter arising under or out of the Agreement. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.

13.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Agreement, it must give the Issue Notice to the Principal.

13.2.3 If the Party giving the Issue Notice is the Principal, it must give the Issue Notice to the Contractor.

13.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.

13.2.5 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.

13.2.6 A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice.

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

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

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

13.2.10 If a Referral Notice has not been given within 28 days of becoming entitled under clause 13.2.6 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

### 13.3 Expert Determination

13.3.1 If a Referral Notice is given under clause 13.2, 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.

- 13.3.2 The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the Parties;
  - (b) a person who has been connected with the Agreement or the Customer Contract as the case may be; or
  - (c) a person who the Parties have not been able to agree on.
- 13.3.3 When the person to be the expert has been agreed or nominated, the Principal, on behalf of both Parties, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination
  - (b) the expert's fees
  - (c) the procedure for the determination set out in Schedule 5.
  - (d) any other matter which is relevant to the engagement.
- 13.3.4 The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 13.3.5 The procedure for expert determination is set out in Schedule 5.
- 13.3.6 In answer to any issue referred to the expert by a Party, the other Party can raise any defence, set-off, or counter-claim.
- 13.3.7 If the expert determines that one Party must pay the other an amount exceeding the amount shown in Item 10 of Schedule 1 (calculating the amount without including interest on it, and after allowing for set-offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 13.3.8 Unless a Party has a right to commence litigation under clause 13.3.7
- (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.

#### **13.4 Performance of Agreement during Issue Resolution**

- 13.4.1 The Parties agree to continue performing their obligations under this Agreement while the issue is being dealt with in accordance with this clause 13.

## **14. Miscellaneous**

### **14.1 Waiver**

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

### **14.2 Severability**

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

### **14.3 Notices**

- 14.3.1 Notices must be sent to the other Party at the address shown in item 13 of Schedule 1, or the address last notified to the other Party in writing, or in the case of the Contractor, at the Contractor's registered office.
- 14.3.2 All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 14.3.3 If delivery or receipt of a notice is not made on a business day, then it will be taken to be made on the next business day.

### **14.4 Counterparts**

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

### **14.5 Applicable Law**

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

### **14.6 Rights Cumulative**

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

### **14.7 No agency/no employment/no partnership**

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

## **PART D3 – Standard Provisions of Contract between a Customer and the Contractor**

### **15. Provisions of Agreement to apply to the Customer Contract**

**15.1** The following provisions of Part D2 of this Agreement apply to the Customer Contract as if they were repeated in this Part:

- (a) General Indemnity (clause 6.6);
- (b) Compliance with laws (clause 6.7);
- (c) Performance Monitoring (clause 7);
- (d) Confidentiality (clause 8); and
- (e) Miscellaneous (clause 14)

provided that in respect of the Customer Contract, "Agreement" and "Principal" wherever appearing in the clauses described above shall be read as "Customer Contract" and "Customer" respectively.

## 16. Time for delivery

### 16.1 Punctual Delivery

- 16.1.1 The Contractor must deliver the Deliverables within the relevant Guaranteed Delivery Time.
- 16.1.2 As soon as practicable after becoming aware of any matter which is likely to change or which has changed the time for delivery, the Contractor must notify the Customer in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay, and whether the Contractor will be requesting a reasonable extension of time in accordance with clause 16.2.
- 16.1.3 If the Contractor fails to deliver by the Guaranteed Delivery Time and has not been granted an extension of time for delivery under clause 16.2, the Customer may terminate the Customer Contract under clause 24.

### 16.2 Extension of Time

- 16.2.1 Where there is likely to be a significant delay in the Contractor discharging an obligation under this Agreement because of a Circumstance Beyond the Contractor's Control (other than a circumstance arising out of any act or omission on the part of the Contractor), the Contractor will:
  - (a) within 7 days of becoming aware of the possibility of such a significant delay, notify the Customer, in writing of the circumstances which the Contractor considers will give rise to the delay, and the extent or likely extent of the delay and strategies proposed to manage the consequences of the delay; and
  - (b) request a reasonable extension of time.
- 16.2.2 The Customer may consent to a request for extension of time under this clause 16.2 provided that:
  - (a) the Contractor uses its best endeavours to minimise the delay and recover lost time; and
  - (b) where appropriate, the Contractor provides the Customer with a plan indicating in detail the steps the Contractor proposes to take to minimise the impact of the Circumstance Beyond its Control.
- 16.2.3 The Customer may terminate the Customer Contract in accordance with clause 24 if the delay continues beyond the time consented to in this clause 16.
- 16.2.4 The Contractor will not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

## 17. Supply of Deliverables

### 17.1 Specified Version

Where a particular version of a Deliverable is specified in the Price Schedule, the Contractor must supply only that version otherwise approved in writing by the Principal.

## **17.2 Packaging**

The Contractor must ensure that all Deliverables are properly, safely and securely packaged and labelled for identification and in accordance with the FSANZ Food Standard Code, and have the following information as a minimum:

- Name of meal, dessert or soup;
- Use-by-date;
- Batch Number;
- Ingredients;
- Reheating instructions eg, Oven, microwave and stove-top, and temperature and time;
- Storage instructions;
- Special dietary suitability eg. Low fat, pureed etc;
- Name of supplier and their address;
- Country of origin.

## **17.3 Expenses of Delivery**

The Contractor must pay all packaging, freight, insurance, and other charges, in connection with the delivery of Deliverables and the return of Deliverables wrongly supplied except where it is expressly provided in this Agreement.

## **17.3 Delivery and Acceptance of Deliverables**

17.4.1 The Contractor must deliver the Deliverables to the place or places and within the Guaranteed Delivery Time and shall obtain a receipt of their delivery.

17.4.2 Title in the Deliverables shall pass to the Customer on satisfactory delivery of the Deliverables in accordance with the Customer Contract.

17.4.3 Delivery and receipt of the Deliverables shall not be taken to be an acceptance of the Deliverables by the Customer.

17.4.4 The Customer may reject Deliverables which are not in accordance with the Customer Contract.

17.4.5 Receipt of delivery, acceptance or payment shall not prejudice the right of the Customer to maintain an action for breach of condition or warranty should the Deliverables prove to be of inferior quality or contrary to the requirements of the Customer Contract.

## **17.5 Rejection of Deliverables**

17.5.1 Upon rejection of any Deliverables the Customer shall notify the Contractor and may direct that the rejected Deliverables be removed and replaced or rectified at the Contractor's risk and expense within such reasonable time as the Customer may direct.

17.5.2 If the Contractor fails to remove or rectify the rejected Deliverables within the time directed, the Customer may have the rejected Deliverables re-delivered at the Contractor's risk and expense.

17.5.3 Where the Contractor fails to deliver the Deliverables by the Guaranteed Delivery Time, or where Deliverables are rejected and the Contractor fails to replace the rejected Deliverables or to deliver Deliverables conforming to the Agreement, the Customer:

- (a) may purchase from another supplier substitute Deliverables of the kind and quality ordered; or
- (b) where it is not possible or practicable to purchase from another supplier substitute Deliverables of the kind or quality ordered, purchase goods or

services which in the opinion of the Customer are most suitable, even though such goods or services are of a superior kind and quality to the Deliverables.

17.5.4 In both cases listed in clause 17.5.3 any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Customer.

## 18. Contract Price

### 18.1 Calculating the Contract Price

18.1.1 Subject to clause 18.1.2, the Contract Price shall be calculated as follows:

- (a) If the Price of each Deliverable ordered is expressed as a lump sum then the Contract Price shall be the sum of the Price for each Deliverable less any Applicable Discount;
- (b) If the Price of each Deliverable ordered is expressed as a rate per unit of quantity (whether that quantity is measured in time, weight, volume or by some other method) the Contract Price shall be the sum of the products of the rates and the corresponding quantities set out in the Price Schedule, less any Applicable Discount;
- (c) If the Prices of some of the Deliverables ordered are expressed as a lump sum and the Prices of others as a rate per unit of quantity, the Contract Price shall be the sum of :
  - (i) the sum of each of the lump sum Prices; and
  - (ii) the sum of the products of the rates and the corresponding quantities set out in the Price Schedule,less any Applicable Discount;
- (d) If the Price of the Deliverable is expressed as a price range (within which the Customer and the Contractor may negotiate a Price for each Deliverable) then:
  - (i) if the range of Prices stated in the Price Schedule is given on a lump sum basis (that is, a minimum and maximum lump sum price) the Contract Price shall be the sum of each agreed Price less any Applicable Discount;
  - (ii) if the range of Prices stated in the Price Schedule is expressed as a minimum and maximum rate per unit of quantity the Contract Price shall be the sum of the products of the agreed rates and the corresponding quantities less any Applicable Discount.

18.1.2 Clause 18.1.1 shall not prevent the Contractor from offering, or the Contractor and Customer negotiating, to reduce the Price or increase the discount for a particular Deliverable in accordance with the Customer Contract.

### 18.2 Pricing for customised meals

18.2.1 The Contractor agrees that, in the event a Customer requires customised meals and the Customer furnishes details of the requirements for the customised meals to the Contractor, the Specification will be varied to include the customised meals and the

Contractor agrees to supply customised meals to that Customer. The price to be offered by the Contractor to the Customer for the customised meals will be based on a benchmark set from the tendered pricing for the Specification (before the customised meals were added).

- 18.2.2 If the Customer, or the Principal as the Customer's agent, agree to the pricing for the customised meals offered by the Contractor, the Customer will notify the Contractor in writing. The Parties agree that the details of the customised meals will be notified by the Contractor to the Principal within 7 days of receipt of the Customer's Order by the Contractor, to enable the variation of the Agreement to incorporate the customised meals and pricing and, subject to the agreement of the Contractor, to make it available to other Customers.

## 19. Payment

### 19.1 Payment of Contract Price

- 19.1.1 In consideration for the Contractor providing the Deliverables, the Customer shall, subject to the terms and conditions of the Customer Contract, pay the Contractor the Contract Price in the amounts and at the times set out in the Customer Contract.
- 19.1.2 Failure by any Customer to pay the Contract Price at the due time will not be grounds to avoid this Customer Contract.

### 19.2 Invoices and Time for Payment

- 19.2.1 Subject to this clause 19.2, the Customer shall make payment within 30 days from the end of the month after receipt of a correct claim and documents necessary to evidence delivery to the Customer.
- 19.2.2 All claims made by the Contractor shall be in the form of a Tax Invoice. A claim for payment shall be substantiated by an itemised account and the Contractor shall provide any further details in regard to the account that are reasonably requested by the Customer.
- 19.2.3 The making of a payment is not an acknowledgment that the Deliverables have been supplied in accordance with the Customer Contract, but shall be taken to be payment on account only.
- 19.2.4 If the Customer disputes the invoice amount the Customer 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 the Customer Contract.
- 19.2.5 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 of money becoming due for the provision of Deliverables.

### 19.3 Set-Off/Money Recoverable by Customer

- 19.3.1 The Customer may deduct from amounts which may be payable or which may become payable to the Contractor, any amount due from the Contractor to the Customer in connection with the supply of the Deliverables.
- 19.3.2 Without limiting clause 19.3.1, any damages, costs and expenses recoverable by the Customer from the Contractor in consequence of the Contractor's breach of the Customer Contract may be deducted from money then due to the Contractor under the

Customer Contract. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to the Customer and may be:

- (a) set off against any other money due to the Contractor by the Customer under this or any other agreement between the Customer and the Contractor; or
  - (b) recovered from the Contractor by the Customer in an appropriate court.
- 19.3.3 Nothing in this clause will affect the right of any Customer to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- 19.3.4 For the purposes of this clause, the Principal may act for and on behalf of any Customer for the purpose of assessing and certifying any damages, losses, costs and expenses sustained or incurred by the Customer as a result of the breach of the Customer Contract.

## 20. The Contractor's additional expenses

- 20.1** The Customer will only reimburse the Contractor any reasonable costs, expenses, or charges incurred by the Contractor and not provided for in the Customer Contract where the Contractor has first obtained the Customer's written approval.

## 21. Contractor's Warranties

### 21.1 Contractor's warranties (Goods)

21.1.1 In relation to Deliverables that are goods, the Contractor warrants that:

- (a) at the time ownership of a Deliverable passes to the Customer, the Deliverable will be free from any charge or liability;
- (b) during the Warranty Period, each Deliverable:
  - (i) shall be new and shall conform with the Specification;
  - (ii) shall conform to the description, version and the sample (if any) provided by the Contractor in the Request for Tender; and
  - (iii) shall be free from defects.

### 21.2 Contractor's warranties (Services)

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

- (a) it will provide the Deliverables in accordance with the requirements of the Customer Contract and with due care and skill;
- (b) it will comply with all statements or representations as to the provision of the Deliverables contained in the Tender;
- (c) the information contained in the Tender as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Contractor and its employees and subcontractors is correct; and

(d) it will not enter into any arrangement that impedes or is likely to impede the performance of the Customer Contract in the manner and to a standard satisfactory to the Customer, without first obtaining the Customer's consent.

### **21.3 Contractor's warranties (General)**

21.3.1 The Contractor warrants that:

- (a) the Deliverables do not infringe the Intellectual Property rights of a third party;
- (b) the Deliverables conform to any legally applicable legislation and standards.
- (c) it has established and will comply with and maintain during the Customer Contract, the quality assurance arrangements set out in the Tender;
- (d) it has capacity to enter into this Customer Contract and perform the obligations imposed on the Contractor and the Contractor has not entered into any arrangement, whether a trust arrangement or otherwise, that impedes or is likely to impede the performance of the Customer Contract by the Contractor.

### **21.4 Warranty Period**

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

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

21.4.3 The rights and remedies provided in this clause 21 are in addition to, and do not limit, any other rights of the Customer under the Customer Contract or otherwise at law.

### **21.5 Third party warranties**

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

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

## **22. No assignment or sub-contracting of Customer Contract**

**22.1** The Contractor must not assign a Customer Contract without first obtaining the written consent of the Customer and the Principal, which may be given subject to conditions including, in the case of a sub-contract, the completion of the statutory declaration in Schedule 6.

**22.2** The Contractor must not sub-contract a Customer Contract, except to a sub-contractor approved by the Principal from time to time and identified in Schedule 1 ("approved sub-contractor"):

- (a) without the prior written consent of the Principal and the Customer, which may be given subject to conditions, and
- (b) on the terms and conditions of this clause.

- 22.3** A consent under this clause does not relieve the Contractor from its liabilities or obligations under the Customer Contract.
- 22.4** Regardless of any consent given, the Contractor will be responsible for ensuring the suitability of any sub-contractor and that the sub-contractor meets the requirements of a Customer Contract.
- 22.5** The Parties agree that the Principal, without incurring any liability, may withdraw its consent to a sub-contractor if in its reasonable opinion the sub-contractor is not meeting the requirements of the Customer Contract. The Principal will notify the Contractor in writing that its consent is withdrawn and the Contractor will immediately terminate its arrangement with the sub-contractor.
- 22.6** To the extent that loss is not attributable to withdrawal of the Principal's consent to the sub-contract:
- (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 Customer from any liability or loss resulting from the acts or omissions of any sub-contractor.
- 22.7** The Parties agree that the Principal may also enforce, on behalf of the Customer, the indemnity given to the Customer under this clause.
- 22.8** This clause will not merge on the completion or earlier termination of the Customer Contract.
- 22.9** The Contractor will ensure that a sub-contractor is aware of and complies with all the terms and conditions of the Customer Contract and that the sub-contract is consistent with those terms and conditions.
- 22.10** This clause does not apply in the event that the Principal requests a particular sub-contractor to provide the Deliverables.

## 23. Variation of the Customer Contract

The standard provisions of the Customer Contract shall not be varied except by agreement in writing signed by the Parties and having first obtained the consent in writing of the Principal.

## 24. Termination by Customer

- 24.1** Without prejudice to its rights at common law, the Customer may immediately terminate the Customer Contract, by written notice to the Contractor ("Notice of Termination"):
- (a) 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;
  - (b) where the Contractor commits a Substantial Breach of the Customer Contract that is not capable of remedy;
  - (c) where the Contractor commits a Substantial Breach of the Customer Contract in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Customer requiring it to do so ("Notice of Breach"), or such further time as the Customer may reasonably allow;
  - (d) where the Contractor assigns its rights and/or obligations, or subcontracts the Customer Contract otherwise than in accordance with the Customer Contract; or
  - (e) in the case of the Contractor's Insolvency.

**24.2** In the event of termination, the Customer:

- (a) may procure from any other source a reasonably similar alternative to the Deliverable suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
- (b) may, by notice in writing to the Contractor, require the Contractor at its expense to remove the specified Deliverable not accepted by the Customer and to dismantle or remove specified work from the Customer's premises by a date specified in the notice;
- (c) shall be liable under the Customer Contract to pay only for the Deliverables delivered and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
- (d) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.

This clause will survive the termination of the Customer Contract.

**24.3** If the Customer terminates this Customer Contract the Customer may:

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

**24.4** The Customer's termination under this clause will not affect the Agreement, unless the context requires it.

**24.5** Any termination by the Customer is without prejudice to any accrued rights or remedies of the Customer under the Customer Contract.

## 25. Issue Resolution

### 25.1 General

25.1.1 In order to resolve any conflicts or issues between the Parties promptly and to the satisfaction of the Parties, the issue resolution process stated below will be followed in this order until an issue is resolved:

- (a) Amicable Resolution (clause 25.2);
- (b) Expert Determination (clause 25.3)

### 25.2 Amicable Resolution

25.2.1 Either Party may give notice to the other Party of an issue, including a dispute or difference, ("the Issue Notice") about the meaning or effect of the Customer Contract or about any matter arising under or out of the Customer Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.

25.2.2 If the Party giving the Issue Notice is the Contractor, and this issue has arisen under the Customer Contract, it must give the Issue Notice to the Customer and to the State Contracts Control Board.

- 25.2.3 If the Party giving the Issue Notice is the Customer, it must give the Issue Notice to the Contractor and to the State Contracts Control Board.
- 25.2.4 The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 25.2.5 If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 25.2.6 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.
- 25.2.7 A Party may only refer an issue to Expert Determination by giving notice in writing specifying the issue to be decided ("the Referral Notice") within 28 days of becoming entitled to under clause 25.2.6.
- 25.2.8 If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the Customer and the State Contracts Control Board.
- 25.2.9 If the Party giving the Referral Notice is the Customer, it must give the Referral Notice to the Contractor and the State Contracts Control Board.
- 25.2.10 If a Referral Notice has not been given to the person or persons specified within the time limited by clause 25.2.7 then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).
- 25.2.11 For the avoidance of doubt, failure to give an Issue Notice or a Referral Notice in accordance with the requirements of clause 25 and clause 26 will result in an invalid notice for the purposes of this clause.

### **25.3 Expert Determination**

- 25.3.1 Clause 13.3 (Expert Determination) of Part D2 of the Agreement applies to the Customer Contract as if it was repeated in this Part D3. Reference to "the Principal" in clause 13.3.3 shall be read as a reference to the State Contracts Control Board.
- 25.3.2 The Parties agree that the State Contracts Control Board will represent the Customer in the expert determination process.

## **26. Notices (Customer and Contractor)**

- 26.1** A notice which may be given to or served on a Party (including the Board) under a Customer Contract must be in writing addressed to the other Party and:-
  - (a) in the case of the Contractor, at the registered office or principal place of business of the Contractor or the address set out in the Order or such other address as is notified in writing to the Customer from time to time;
  - (b) in the case of the Customer, at the address set out in the Order or such other address as is notified in writing to the Contractor from time to time;
  - (c) in the case of the Board, at the registered office of the Board.
- 26.2** All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 26.3** 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.

## 27. Additional conditions

Subject to clause 23, the Customer and the Contractor may agree in writing to such other terms and conditions (in the Customer Contract called the “Additional Conditions”) as they think fit, which terms and conditions are to be set out in the Order. The Parties agree that the Additional Conditions shall not, without the consent of the Principal, either expressly or by implication, derogate from the terms and conditions set out in this Agreement and to the extent that those Additional Conditions do derogate from those terms and conditions, the Parties agree that those Additional Conditions shall be void and have no effect.

# Schedule 1

## Agreement Details

Item 1	<b>Request for Tender No 0601379</b> .date submitted 20/09/2006 (clause 1.1)
Item 2	<b>Contractor's Name</b> (clause 1.1)
Item 3	<b>Specified Personnel</b> (if any)(clause 7.3):
Item 4	<b>Term:</b> (clause 2.3.1) Commencement Date: Expiry Date:  <b>Period of extended term</b> (if any): (clause 2.3.2) Commencement Date: Expiry Date:
Item 5	<b>Broad Form Liability Insurance Policy Amount</b> (clause 6.5)  (a) Public Liability Insurance Limit of Indemnity: \$AUS20M  (b) Product Liability Insurance Limit of Indemnity: \$AUS10M  (c) Workers Compensation
Item 6	<b>Codes</b> (clause 6.7.1(b))  1. The Code of Practice for NSW Government Procurement. 2. Implementation Guidelines for NSW Government Procurement.
Item 7	<b>Management Fee Rate</b> (clause 6.11)  1.25%
Item 8	<b>Payment Period of Management Fee</b> (clause 6.11)  Monthly.
Item 9	<b>Sales Information</b> (clause 6.11.6)  <u>1. The names of the ten largest Customers listed by dollar value invoiced by the Contractor in the relevant Payment Period.</u>  2. Other sales information that may be requested from time to time and detailed in the Specification

<b>Item 10</b>	<b>Expert Determination Amount</b> (clause 13.3.7):  \$A:100,000
<b>Item 11</b>	<b>Security</b> (clause 6.13):  Amount: Not Used Form: Not Used
<b>Item 12</b>	<b>A. List of approved dealers and distributors</b> (Clause 5.2)  <b>B. List of approved sub-contractors</b> (Clause 5.3)
<b>Item 13</b>	<b>Notices to:</b> (clause 14.3)  <b>The Contractor's contact name and address:</b>  Name:  Address:  Position:  Telephone: Facsimile:  <b>The Principal's contact name and address:</b>  Name: Chairman, SCCB  Address: McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000  Telephone: 9372 8818 Facsimile: 9372 8803
<b>Item 14</b>	<b>Restrictions on Nominee Purchasers</b> (clause 4.2)
<b>Item 15</b>	<b>Interest for Late Payment of Management Fee</b> (clause 6.11.7, 6.11.8 and 6.11.15)  Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Principal in accordance with the clause 6.11.7, 6.11.8 and 6.11.15.

# Schedule 2

## Specification

Schedule 3

The Tender and documents evidencing agreed variations to the Tender

Schedule 4

Documents notifying the Principal's acceptance

## Schedule 5

### 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 13.3.2 of the Agreement.
- 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 13.3.3 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 6

### Statutory Declaration by Dealer, Distributor or Sub-Contractor (clause 5.2, 5.3 and 8.7)

Oaths Act 1900 (NSW), Ninth Schedule

I  
(1) \_\_\_\_\_

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

1. *[insert full dealer/distributor/sub-contractor company name and its ACN]* ("the Declarant") has been selected as a dealer/distributor of, or sub-contractor to, *[insert name of the Contractor]* ("the Contractor") under a standing offer agreement between the **NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD** for and on behalf of the Crown in right of the State of New South Wales ("Principal") and the Contractor for the supply of the Deliverables to certain customers ("the Agreement").
2. The Declarant is aware of:
  - (a) where relevant, the responsibilities imposed on Contractors under clause 5.2 of the Agreement in relation to use of approved dealers and distributors including obligations to ensure that these persons supply relevant sales information to the Contractor and permit independent audit of that information by the Principal, and
  - (b) the standard terms and conditions of customer contracts as set out in the Agreement.
3. The Declarant, if an approved dealer or distributor of the Contractor, offers to supply:
  - (a) under the standard terms and conditions of customer contract;
  - (b) on terms that enable compliance by the Contractor with clause 5.2 of the Agreement.
4. The Declarant, if a sub-contractor, will offer to sub-contract on terms that will:
  - (a) be consistent with the standard terms and conditions of customer contract and,
  - (b) in the case of a Board approved sub-contractor under the Agreement, enable compliance by the Contractor with clause 5.3 of the Agreement.
5. There are no reasons of which I am aware that would prevent a customer contract or sub-contract (as relevant) from being signed and performed in a manner that would allow the satisfactory and timely performance of:
  - (a) the customer contract, and
  - (b) any relevant Contractor responsibilities under clause 5.3 of the Agreement.

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

(2) \_\_\_\_\_

Declared at \_\_\_\_\_

the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_\_\_\_

Before me, (3) \_\_\_\_\_

(4) \_\_\_\_\_

- (1) Here insert name, address and occupation of person making the declaration and his or her position in the company.
- (2) Signature of person making declaration

- (3) Signature of person before whom the declaration is made \*
- (4) Here insert title of person before whom the declaration is made.
- 

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

***Note: State and Territories to use equivalent, appropriate legislation and modify this form accordingl***

Schedule 7

Deed of Confidentiality

Schedule 8

Undertaking

Schedule 9

**NOT USED**

Schedule 10

Contractor Information

Schedule 11

Approved Dealer, Distributor or Sub-Contractor Information

Schedule 12

NOT USED

## Schedule 13

### 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, subcontractors and suppliers (Contractor Employees) understand and comply with the requirements shown below.

- All Contractor Employees must gain permission to enter the school or facility before commencing work and they may only enter approved areas. The Contractor's representative or where a subcontractor is working without the supervision of the Contractor, the subcontractor's representative must report their presence to the person in charge of the school or facility on arrival each day and record, in the Site Visit Log, the details of all Contractor's or subcontractor'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 school 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 school 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 school 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 school or facility.
- Contractor Employees must wear or carry an identity card at all times when on the site or sites.

# Schedule 14

## Confirmation of Insurances

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Insurance Body:

Insured:

Re: Agreement for the provision of Pre-Prepared Meals between the Insured and the State Contracts Control Board, NSW

It is confirmed that:

**1. The Insured has obtained the following policies (the Insurance Policies)**

- (a) Broad Form Liability Expiry \_\_/\_\_/20\_\_
- (b) The public liability component of the Broad Form Liability policy is to the value of \$AUD\_\_\_\_(the Limit of Indemnity) in respect of each claim; and
- (c) The products liability component of the Broad Form Liability policy is to the value of \$AUD\_\_\_\_for the total aggregate liability for all claims arising out of the Insured's products for the period of cover.
- (d) Other insurances, if required:

Type of insurance	Value
Workers Compensation	_____
_____	_____

- 2. The respective rights and interests of the Principal and any sub-contractors of the insured are noted on the Insurance Policy(ies) 1(a), 1(b) and 1(c).**
- 3. The Insurer will accept a notice of claim given by the Insured, the Principal, or any sub-contractor as being a claim given by all of the insured under insurance policies 1(a), 1(b) and 1(c).**
- 4. The insurance policies conform to the requirements of clause 6.5 of the Agreement between the Principal and the Insured.**

Attach a Certificate of Currency for the policy/ies above.

Specify below any exclusions beyond the standard exclusions for the Insurance Policies.

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**Authorised Representative of Insurer**  
**Position:**  
**Dated:**

**Signed:**

# Schedule 15

## MANAGEMENT FEE AUDIT CONFIDENTIAL DISCLOSURE AGREEMENT

Effective Date:  
Auditor (Company):

This Confidential Disclosure Agreement is entered into by and between the Contractor ("**Contractor**") ABN \_\_\_\_\_ and the "Auditor", which has been engaged by the State Contracts Control Board ("**Board**") to carry out a review of the Contractor's records and systems in connection with the contract referred to in clause 1 below as notified to the Contractor by the Board on [ ] date] ("**the Audit**").

The Contractor and the Auditor agree in relation to the confidential information disclosed to the Auditor by the Contractor as follows:

1. **Disclosure of Information.** The Audit relates to the following contract between the Board and the Contractor "**Contract**", and is to be governed by the terms and conditions contained therein:

Name of contract

In accordance with the clause ## of the Contract the Contractor will disclose to the Auditor all information that the Auditor may reasonably require in connection with the following purposes:

*"The Principal may at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify the Contractor has paid the correct amount of Management Fee due to the Principal by the Contractor and the Contractor agrees to cooperate with the Principal (including any auditor appointed by the Principal) including providing access to information about all sales made to any entity that is eligible to buy Deliverables under this Agreement, copies of all contracts, orders and invoices between the Contractor and any such entity."*

2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:

On behalf of the Contractor:  
Name:  
Title:  
The Contractor's address:  
Other officer:

On behalf of Auditor:

Name: \_\_\_\_\_ and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.

Title:

Work Address of Auditor's representative above:

3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.
4. **Disclosure Period and Term.** This Agreement controls only Confidential Information which is disclosed between the Effective Date and 3 months thereafter ("Disclosure Period"). The Auditor's duty to protect Confidential Information disclosed under this Agreement expires three (3) years after the end of the Disclosure Period ("the Term").
5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.
6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the information was disclosed and where such persons have a need to know. The Auditor shall protect the Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorised use, dissemination or publication of the Confidential Information as the Auditor uses to protect its own confidential information of a like nature. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.
7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:
  - (a) is or becomes a matter of public knowledge through no fault of the Recipient;
  - (b) is required to be disclosed under operation of law; or
  - (c) is disclosed by the Recipient or the Participant with the Discloser's prior written approval; or
  - (d) is disclosed to a party's legal adviser in connection with the Review or this agreement.
8. **Proprietary Rights.** Neither party to this Agreement acquires any intellectual property rights or any other rights under this Agreement except the limited right to use set out in paragraph 5 above.

9. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements concerning such

Confidential Information, whether written or oral. All additions or modifications to this Agreement must be made in writing and must be signed by both parties. This Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

<b>CONTRACTOR:</b> ..... <b>ABN/ACN:</b> .....	<b>AUDITOR:</b> ..... <b>ABN/ACN:</b> ..... .....
Authorised Signature: _____	Authorised Signature: _____
Name: _____	Name: _____
Title : _____	Title : _____
Date: _____	Date: _____

## EXECUTED AS A DEED

Guide Note: The signature required for and on behalf of SCCB is, of course, a core clause. Option 1 below is not a core clause but may be adopted if appropriate or deleted if not suitable. If Option 1 is not appropriate, please select from the remaining options (2 to 4) contained in the Library the relevant contractor (Company, Individual, or Power of Attorney) that will sign the Deed.

**SIGNED, SEALED AND DELIVERED** by <insert name and position of person signing> )  
For and )  
on behalf of the **NEW SOUTH WALES STATE** )  
**CONTRACTS CONTROL BOARD** for and on )  
behalf of the Crown in right of the State of New  
South Wales but not so as to incur any personal  
liability in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

### Option 1. Company

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

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

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

\_\_\_\_\_  
<Director/Secretary>

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

<b>Guide</b>		
<b>Data Fields (Columns)</b>	<b>Explanation</b>	<b>DATA ENTRY RULES</b>
<b>SCHEDULE A - Technical</b>		
Minimum Product Lines	Numbers quoted are minimum product lines required within each category.	No input or change required
Tendered # Product Lines	Change this number to the total number of product lines you will be offering in the category as part of your tender.	Enter the number of items your organisation will be tendering within each category.
Tendered Product Lines	If you will be offering more product lines within a category, highlight the last row in the category, click on the insert field and insert a row (the row will be inserted above). Input all products that your tender will be covering.	Insert additional rows as required
Tenderer's Product Code	A unique product code must be entered if available (preferably the EAN) eg: 12345.	Must be completed if bidding Alphanumeric, up to 35 characters
Product Name	Name of the Product full title - roast beef, roast lamb etc	Must be completed
Form	What form does the tendered item come in i.e. frozen, Cook-Chill. Note: If your organisation provides both cook-chill and frozen products, different products can be provided, but there must be a minimum number (as specified) of frozen or cook/chill product lines.	In the relevant cell place the number "1" Yes or "0" for No or Don't Know. All cells must be populated.
Weight of product	Fill in the weight of the product. There must be the relevant minimum number of items for each of the frozen and cook-chill main meal options within the menu sub category.	Enter the weight of the product in number of grams. Numeric - up to 4 characters. I.e. 1.2kg is 1200
Nutritional Information	Fill in the nutritional information per 100g	Data to be entered in as a number. Numeric up to 2 digits I.e. 20% as 20. Must be completed.
Recipe Components	Recipe components as a percentage of total weight	Data to be entered in as a number. Numeric up to 2 digits I.e. 20% as 20. Must be completed.
<b>Attributes</b>		
<i>Recipe</i>	What attributes fit the recipe description	In the relevant cell place the number "1" Yes or "0" for No or Don't Know. All cells must be populated.
<i>Textural</i>	What textural option/s does the product come in	In the relevant cell place the number "1" Yes or "0" for No or Don't Know. All cells must be populated.
<i>Suitability</i>	What group of end users is this product suitable	In the relevant cell place the number "1" Yes or "0" for No or Don't Know. All cells must be populated.
<i>Cultural</i>	What cultural attributes are relevant to this recipe	In the relevant cell place the number "1" Yes or "0" for No or Don't Know. All cells must be populated.
Manufacturer's Name	Manufacturer's Name	Must be completed Alphanumeric, up to 35 characters
Brand Name	Known brand name. (if applicable)	Alphanumeric, up to 35 characters
Product Description	Detailed and full description of product and inclusions i.e. sauces and vegetables	Must be completed. Alphanumeric up to 255 characters
Additional Comments		Additional Comments. Alphanumeric up to 255 characters
<b>SCHEDULE B - PRICING</b>		
Tendered Product Lines	This list of products is the same list provided in schedule A - Technical. Numbers quoted are minimum product lines within each category. If you need to add more product lines to a category, highlight the last row in the category and insert a row (the row will be inserted above)	Enter the number of items your organisation will be tendering within each category
Tenderer's Product Code	This code is the same as that entered against the item in Schedule A - Technical. Unique product code must be entered, eg: 12345	Must be completed if bidding Alphanumeric, up to 35 characters
Product Name	This product name is the same as the name entered in Schedule A - Technical. Name of the Product full title - roast beef, roast lamb etc	Must be completed
Minimum Production Batch Size (Units)	Minimum number of units per batch size for each product line (note: this is not the minimum order quantity)	Alphanumeric. Must be completed

<b>Guide</b>		
<b>Data Fields (Columns)</b>	<b>Explanation</b>	<b>DATA ENTRY RULES</b>
Price per item (Ex Works & Ex. GST)	Do not include GST value in price This is the base price of each product category, excluding delivery and GST. Differing prices are permitted for the different forms (i.e cook-chill and frozen) and for differing net weights (i.e main meal, mini meal, multipacks). The one price is to be given within a menu category (ie.one price for a standard frozen main meal). For menu categories added by the tenderer, prices can be stated per menu category, menu subcategory or by product line item.	Must be completed. Currency (\$AUD), up to 2 decimal places.
Is GST Applicable (Y/N)	A 'Yes' or 'No' answer to indicate wether or not GST applies to the item	In the relevant cell place the number "1" Yes or "0" for No or Don't Know. All cells must be populated.

<b>Guide</b>		
<b>Data Fields (Columns)</b>	<b>Explanation</b>	<b>DATA ENTRY RULES</b>
<b>SCHEDULE C - LOGISTICS</b>		
<b>Number of Meals by Council and Local Government Area</b>		
Local Government Area	Wider Local Government Area which includes the Councils listed in the column titled "Councils"	No action required
Councils	Councils relating to the relevant Local Government Area listed in column titled "Local Government Area"	No action required
Frozen Meals	Estimated number of frozen meals provided in the Local Government Area and Council	No action required
Cook-Chilled	Estimated number of cook-chilled meals provided in the Local Government Area and Council	No action required
Hot Meals	Estimated number of hot meals provide in the Local Government Area and Council	No action required
Total Meals	Estimated number of total frozen, cook-chilled and hot meals provided in the Local Government Area and Council	No action required
LGA/Council Tendered	Note the region/s that your organisations is tendering for.	Must be completed if bidding In the relevant cell place the number "1" Yes or "0" for No. All cells must be populated. If your organisation will not be tendering products to every council within an LGA enter "N" in the shaded row - denoting that you are not tendering for an entire LGA. Each cell in this column must be populated
<b>Logistics Cost Per Item as function of Delivery Lot Size</b>		
	Logistics cost per meal depending on the order quantity to each location either within a council area or a Local Government Area. Costs should only be entered for regions that you will be tendering for. Logistics cost can be the same for the entire state, within a Local Area Region or for some councils within a Local Area Region. Logistics costs are all inclusive of costs such as storage, distribution, intermediary, cross docking, transport to deliver the item to the customer's delivery point.	Must be completed for each tendered region or council area. Currency, up to 2 decimals. The logistics cost must be entered in against each council even if the logistics cost is the same across all regions and all councils. Where there are no logistics costs for a region for which you are tendering, enter "NIL" in each cell and in the shaded box. If logistics costs vary within the region, leave the shaded cell blank.
<b>Number of Delivery Days per week (Monday - Friday)</b>	Number of delivery days per week to a region or local council area. Please enter days per week in each cell. Costs should only be entered for regions that you will be tendering for. Logistics cost can be the same for the entire state, within a Local Area Region or for some councils within a Local Area Region.	Must be completed for each tendered region or council area. Numeric, Enter a number from 0 to 5. The number of delivery days per week to each region or council area must be completed even if this is the number across all regions and all councils. If the number of delivery days varies across within a region or you are not tendering for a complete region, leave the shading cell blank.