

Tasmanian Risk Management Fund – Provision of Actuarial Services

**Procurement No. TRMF 2009-1
February 2009**

Request For Tender

Enquiries about this RFT should be directed to the Contact Officer:

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Address: 21 Murray Street, Hobart, TAS 7000

Place to lodge Tender:

Tender Box
Department of Treasury and Finance
21 Murray Street
Hobart TAS 7000

Closing Date and Time:

27 March 2009 at 2.00PM (Eastern Standard Time)

Issue Date:

28 February 2009

**Lodgement is to be in accordance with Conditions of Tender Clause 13.
Electronic lodgement option is not available for this tender.**

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Part One

Important information for Tenderers

1 Explanation of the RFT documentation

1.1 Conditions of Tender

The Conditions of Tender are the conditions on which the Department will receive and evaluate Tenders. The Department may reject a Tender that does not comply with all the terms of the RFT.

The Conditions of Tender also specify the **evaluation criteria** against which Tenders will be evaluated.

1.2 Specification

The Specification provides a comprehensive description of the Department's Requirements.

1.3 Conditions of Contract

The Conditions of Contract contain the terms of the contract which the successful Tenderer must sign. It may be varied only by agreement between the Tenderer and the Department during the Tender evaluation and negotiation process.

A contract to supply the Department's Requirements is not formed until counterparts of the Conditions of Contract have been signed and exchanged between the Department and the Tenderer.

1.4 Tender Form

The Tender Form is a required form which **must** be returned as part of the Tender. A Tender is likely to be rejected if this Form is not used. A Tender must contain all the information and details required by this RFT.

2 Pre-Tender briefing

If a pre-tender briefing is to be provided, details are on the Cover Page of this RFT. It is strongly recommended that Tenderers attend.

3 Contact Officer for RFT enquiries

During the tender period, prospective Tenderers may seek clarification of the general or technical areas of this RFT from the Contact Officer. Contact details are provided on the Cover Page of this RFT. Unauthorised communication with other staff may lead to disqualification of the Tender.

4 Lodging a Tender

Details for lodgement of Tenders are on the first page of this RFT and in clauses 13 of the Conditions of Tender.

By lodging a Tender, a Tenderer may become bound by the Conditions of Tender and in particular, clauses 3, 4, 5, 11, 12, 13, 18 and 19.

5 Assistance to prepare a Tender

Information on preparing a Tender is available on the Tasmanian Government's Purchasing website at <<www.purchasing.tas.gov.au>> under Winning Government Business. Tasmanian Tenderers can also seek advice from the Industry Capability Network Tasmania (ICNTAS) on (03) 6233 5550 or by email to info@icntas.org.au.

6 Conditions about the *Professional Standards Act 2005*

6.1 Conditions of Appointment

The Department will only appoint, as successful Tenderer, a Tenderer who agrees to the following conditions, when relevant.

6.2 No scheme in force

If no scheme in force under the *Professional Standards Act 2005* applies to the Tenderer, the Tenderer must waive all present and future rights, against the Crown, to claim any limitation of liability provided by a future scheme under that Act, in relation to future legal liability, claims or proceedings arising from, or attributable to, the Tenderer delivering the Department's Requirements including a wrongful (including negligent) act or omission.

6.3 Scheme in force

If a scheme applies to the Tenderer, the Tenderer must obtain an approval under Section 27 of the *Professional Standards Act 2005* for a level of liability not less than the level described in the Specification.

7 Crown policy on confidentiality of information in Government contracts

7.1 Crown policy

The Crown is committed to ensuring that Government contracting is conducted in an open and transparent manner and that unnecessary confidentiality provisions do not fetter scrutiny of contracts. The Crown's policy on confidentiality of information provides that in any contract between the Crown and another party, confidentiality requirements in relation to the provisions of the contract are not to be included.

7.2 Application for exemption

Only the Department may apply for an exemption from the Crown's policy on confidentiality. The Department will determine the need for an application, having regard to its own requirements and any request from the preferred Tenderer. The Department will apply for an exemption that it considers suitable before entering into a contract with the successful Tenderer. A contract must reflect the outcome of the application.

If an application for exemption is refused, or is granted on terms unacceptable to either party, the dissatisfied party may either withdraw from the negotiations and the tender process or waive its confidentiality requirements.

7.3 Details of the Crown's policy on confidentiality

Further details of the Crown's policy on confidentiality are in clauses 5 and 23.2 of the Conditions of Tender and clause 12 of the Conditions of Contract.

Part Two

Conditions of Tender

1 Definitions

In this RFT, unless the context precludes it:

“Closing Time” means the closing time (Tasmanian time) and date for submitting Tenders shown on the cover page of this RFT or as extended under clause 3.4;

“Conditions of Contract” means the Conditions of Contract in Part “Four” of this RFT;

“Contact Officer” means the person identified as Contact Officer on the first page of this RFT;

“Contractor” means the Person with whom the Crown enters into a contract to provide the Department’s Requirements;

“Crown” means the Crown in Right of Tasmania;

“Department” means the Tasmanian Department named on the cover page of this RFT;

“Department’s Requirements” means the services described in the Specification;

“Electronic Tender Box” means the electronic website for lodging electronic Tenders, on the Tasmanian Government’s Integrated Purchasing Web Site at www.purchasing.tas.gov.au/tenders;

“Electronic Tender System” means the Tasmanian Government electronic tender system, which is available on the Tasmanian Government’s Integrated Purchasing Web Site at www.purchasing.tas.gov.au/tenders for the downloading and submission of tender documentation electronically;

“GST” means any tax imposed under any GST law and includes GST within the meaning of the GST Act;

“GST Act” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth) as amended;

“GST Law” means the GST law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

“Person” includes a natural person, a corporation, a partnership, a board, a joint venture, an incorporated association, a government, a local government authority and an agency;

"**Request for Tender**" or "**RFT**" means this document inviting Tenderers to offer to deliver the Department's Requirements by submitting a Tender;

"**RFT Number**" means the RFT number shown on the cover page of this RFT;

"**Scheme**" means a scheme in force under the *Professional Standards Act 2005* for limiting the occupational liability of members of an occupational association;

"**Specification**" means the Specification in Part "Three" of this RFT;

"**System Failure**" in relation to Electronic Tender System means an outage, fault or delay occurring for any reason, including, without limitation:

- (a) technical difficulties with the performance or operation of the Electronic Tender System or another person's software, equipment or systems; or
- (b) any outages, faults or delays with the Internet or other infrastructure involved in the transmitting of any document associated with this tender process;

"**Tender Box**" means the locked box at the address on the cover page of this RFT exclusively to receive responses to the RFT;

"**Tender**" means the documents constituting a Tenderer's offer to deliver the Department's Requirements under this RFT;

"**Tender Description**" means the Tender description shown on the cover page of this RFT;

"**Tenderer**" means a Person who offers to deliver the Department's Requirements under this RFT;

2 Rights and obligations

Because the Department is part of the Crown, rights and obligations of the Department under this RFT are to be read and construed as rights and obligations of the Crown.

3 Reservations

3.1 No warranty as to accuracy

The Department does not warrant the accuracy of the content of the RFT and the Department is not liable for any omission from the RFT.

3.2 Right to vary

The Department may vary the RFT at any time by:

- (a) informing all Tenderers; and

- (b) notifying all Persons:
 - (i) to whom the Department has issued the RFT; or
 - (ii) who have downloaded a copy of the RFT;at the contact address they have provided to the Department.

3.3 Indicative quantities only

Quantities stated in the RFT are indicative only unless specifically stated otherwise. Where quantities are indicative, the Department will be liable to accept only the quantities ordered, subject to contract.

3.4 Right to extend Closing Time

The Department may extend the Closing Time by:

- (a) informing all Tenderers; and
- (b) notifying all Persons:
 - (i) to whom the Department has issued the RFT; or
 - (ii) who have downloaded a copy of the RFT;at the contact address they have provided the Department; and
- (c) advertising the extension in the Saturday edition of each daily Tasmanian newspapers in which the original RFT was advertised; and
- (d) advertising the extension in the Tenders section of the <<www.purchasing.tas.gov.au>> website.

3.5 Rights to cease or suspend

The Department may discontinue or suspend the RFT process.

3.6 No obligation to enter into any binding contract

The RFT is not to be construed as making any express or implied representation, undertaking or commitment by the Department that it will enter into a binding contract with any Person to supply the Department's Requirements.

3.7 Right to reject

The Department may reject a Tender which does not comply with the terms of the RFT.

3.8 Right to accept all or part of a Tender

The Department may accept all or part of a Tender at the price or prices tendered unless the Tender states specifically to the contrary.

3.9 No obligation to accept any Tender

The Department is not obliged to accept the lowest priced or any other Tender.

3.10 No representation is to be binding

No representation made by or on behalf of the Crown about the Tender or the RFT (or their subject matter) binds the Crown unless it is in writing and is incorporated into the Conditions of Contract or its annexures.

3.11 Incomplete or illegible Electronic Tender

If a Tender lodged using the Electronic Tender System cannot be read, or is corrupted, illegible, inadequate or incomplete because of encryption, transmission, storage or decryption, so that it is impossible to determine whether the essential requirements of the RFT have been met, the Department, in its sole and absolute discretion, may reject the Tender.

4 Unauthorised communication

The Tenderer must direct all communications through the Contact Officer unless he or she directs otherwise. Unauthorised communication with other Department staff may lead to disqualification of the Tender.

5 Confidentiality

5.1 RFT remains property of the Department

The RFT remains the property of the Department and may be used only to prepare a Tender.

5.2 Use of RFT is restricted

Except for information available to the public generally (other than by breach of these Conditions), a person receiving the RFT must not publish, disclose or copy any of its content, except to prepare a Tender.

5.3 Tenderer must not disclose information

The Tenderer must keep confidential all information provided by the Crown, as part of, or in connection with, the RFT.

5.4 Tenders become property of the Department

All Tenders become the property of the Department, which may reproduce all or any part of a Tender for Tender evaluation.

5.5 Department's right to use a Tender

Despite any confidentiality or intellectual property right of the Tenderer in the successful Tender that gives rise to a binding contract with the Crown:

- (a) the Department may reproduce all or any part of that Tender in a contract awarded to the Tenderer, without reference to the Tenderer;
- (b) subject to paragraph (c) of this subclause, either party may publish all or any part of that Tender that is included in a contract, without reference to the other; and
- (c) neither party may publish any part of that Tender that the Crown Contracts Confidentiality Standing Committee has determined should be exempt from the Crown's policy on confidentiality in Government contracts, during the period of exemption.

5.6 Confidentiality of Tender to be preserved

Subject to the previous subclause, the Crown and the Tenderer must hold the Tender in confidence, so far as the law allows, except if:

- (a) the information is available to the public generally, other than by breach of this obligation;
- (b) a law requires a party to file, record or register something that includes information in the Tender;
- (c) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (d) it is necessary or advisable to make disclosure to a taxation or fiscal authority;
- (e) it is necessary to provide the information in the Tender in answer to a question asked of a Minister in the Parliament, or otherwise to comply with a Minister's obligations to Parliament; or
- (f) it is disclosed confidentially to a party's professional advisers:
 - (i) to get professional advice about this tender process; or
 - (ii) otherwise to consult such professional advisers.

6 Content and format of Tender

6.1 Content of Tender

A Tender must include all the information requested in the Specification and in other parts of the RFT.

6.2 Mandatory requirements

All items, features and functions specified in the RFT are mandatory requirements unless expressly stated otherwise. If a Tender does not comply with a mandatory requirement, it may still be considered by the Department,

but the Department, in its sole and absolute discretion, may reject it under clause 3.7.

6.3 Format of Tender

The Tenderer must submit the Tender under cover of the Tender Form provided in Part “Five” of this RFT. The Tender Form must be completely filled in, and be accompanied by any other supplemental documents necessary to make the Tender complete. A Tenderer may reproduce the Tender Form in an expanded format to provide additional space for response.

6.4 Unnecessary responses

Unnecessarily elaborate responses or other presentations beyond what is sufficient to present a complete and effective proposal are neither required nor desired. Elaborate artwork and bindings, expensive visual and other presentation aids are unnecessary.

7 Price

7.1 Currency

All Monetary amounts are to be expressed in Australian Dollars.

7.2 GST exclusive

The Tenderer must quote all prices excluding GST. The Conditions of Contract allows for the payment of GST (clause 29).

8 Australian Business Number (ABN)

The Tenderer must either provide its Australian Business Number (ABN) or state why the Tenderer does not have an ABN. If the Tenderer does not register or disclose an ABN, then PAYG Withholding Tax may apply and the Department is required by law to deduct the relevant amount from each contract payment and to remit that amount to the Australian Taxation Office.

9 Compliance

9.1 Implied compliance

The Tenderer will be taken to agree or comply with all the Conditions of Tender, Specification and the Conditions of Contract, unless the Tender states otherwise.

9.2 Non-compliance

If a Tender does not fully comply with the Conditions of Tender, the Specification and Conditions of Contract, the Tenderer must include a statement in the Tender specifying each condition or requirement with which the Tenderer does not agree or comply and indicating, for each condition or requirement, whether the offer:

Partially Complies

(This means:

- If a clause imposes a contractual condition, that the condition can only be met subject to certain qualifications. Those qualifications must be stated in full; and
- If a clause specifies a characteristic or performance standard, that the condition can only be met subject to certain conditions. If this is the case, and the Tenderer is prepared to make good on the condition, characteristic or performance standard, the Tenderer must describe how the non-compliance is to be made good.)

Does Not Comply

(This means:

- That the offer does not meet the complete contractual condition, or characteristic or performance standard of the clause. Full details of the non-compliance must be stated.)

OR IS

Alternative

(This means that the services either:

- (a) do not require the feature; or
- (b) fully comply in a manner different from that described.

In either case a full explanation must be provided.)

9.3 Prominence to statements of non-compliance is required

The Tender must give prominence to statements of non-compliance (as described in clause 9.2) - it is not sufficient if the statement appears only as part of an attachment to the Tender, or is included in a general statement of the Tenderer's usual operating conditions.

10 Alternative Tender

10.1 Identification

The Tenderer may submit an alternative proposal if it is clearly identified as an "Alternative Tender" wherever it fails to comply with the specified requirements.

10.2 Supplementary material to be included

A Tenderer who submits a Tender which meets the Department's Requirements in an alternative and practical manner, taking into account the

totality of the requirements, must include any supplementary material, and associated prices, which demonstrates, in detail, that the alternative will fully achieve all the requirements.

10.3 Novel and innovative offers are encouraged

Tenderers are encouraged to offer options or solutions that, in a novel or innovative way, contribute to the Department's ability to carry out its business in a more cost-effective manner. These may relate to the functional, performance and technical aspects of the requirements or to opportunities for more advantageous commercial arrangements.

10.4 No obligation to consider Alternative Tenders

The Department reserves the right either to consider Alternative Tenders on their merits or not to consider them further.

11 Preparation of Tenders

The Department will neither be responsible for, nor pay for, any expense or loss incurred by a Tenderer for:

- (a) preparing or lodging a Tender; or
- (b) providing additional information or clarification during the evaluation of a Tender.

12 Validity

A Tender constitutes an irrevocable, unalterable offer by the Tenderer to the Crown which must remain valid and open to be accepted for 90 days from the Closing Time of the RFT and may be extended by written agreement.

13 Non-electronic lodgement of a Tender

13.1 Method of lodgement

The original Tender, plus three hard copies and one electronic copy, must be placed in an envelope clearly marked with the RFT Number, Closing Time and Tenderer's name, and be lodged at the address shown on the cover page by either:

- a. placing it in the Tender Box; or
- b. posting it so the Department receives it, before the Closing Time.

13.2 Facsimile

A Tender submitted by facsimile before the Closing Time will be considered only if an identical tender, complying with this RFT, is dispatched on the same day and is delivered to either the Tender Box (by hand), or the Department (by mail), within two Business Days after the Closing Time.

13.3 Implied agreement

By lodging a Tender in accordance with clauses 13.1 and 13.2 and in consideration of the Department starting to evaluate the Tender, the Tenderer agrees to be bound by these Conditions of Tender and in particular, clauses 3, 4, 5, 11, 12, 13, 18 and 19.

14 Electronic lodgement of a Tender (not applicable to this Tender)

14.1 Method of lodgement

A Tenderer who elects to lodge a Tender using the Electronic Tender System must lodge the Tender in the Electronic Tender Box using the Electronic Tender System before the Closing Time and following the electronic lodgement procedures detailed in these Conditions of Tender.

14.2 Format

A Tenderer lodging a Tender using the Electronic Tender System must lodge the Tender using a format and the naming conventions in clause 15. Failure to comply with the format or the naming conventions may result in the Tender not uploading successfully or being rejected.

14.3 File size

A single submission of combined file sizes for a Tender lodged using the Electronic Tender System must not exceed 5 megabytes (5Mb). If a Tender exceeds the specified file size limit, the Tenderer must either:

- (a) lodge the Tender in separate parts not exceeding the file size limit, each part to be clearly identified as part of the Tender; or
- (b) lodge the Tender as a compressed (zip) file not exceeding the file size limit; or
- (c) lodge the Tender in accordance with Clause 13.

14.4 Time for completion of lodgement

The relevant page for the Tender on the Electronic Tender System will not be accessible after the Closing Time. Lodging a Tender must, therefore, be completed by that time.

14.5 User problems

If a Tenderer has problems using the Electronic Tender System, the Tenderer must notify the Contact Officer of this before the Closing Time. If the Tender is not successfully lodged using the Electronic Tender System by the Closing Time then the Tender will be a Late Tender and will be accepted, if at all, only under clause 16.

14.6 Meaning of Closing Time

A Tenderer using the Electronic Tender System agrees that, to ascertain the Closing Time, the date and time appearing on the Electronic Tender System website is the conclusive date and time for the lodgement. If that date and time is inconsistent with the date and time of the Tenderer's system, then the former prevails.

14.7 No warranty by Department of unauthorised Internet access

A Tenderer using the Electronic Tender System acknowledges that:

- (a) the Department does not warrant that unauthorised access to information and data transmitted via the Internet will not occur. A Tenderer releases the Department and its staff from, and indemnifies them against, all claims that arise because unauthorised access occurs during the transmission of information via the Internet; and
- (b) if the Electronic Tender System suffers System Failure, the Department does not warrant that it will be possible to successfully upload (i.e. lodge) a Tender into the Electronic Tender Box.

14.8 Waiver of liability for loss or damage

Lodgement of a Tender, using the Electronic Tender System, is at the Tenderer's sole risk.

14.9 Viruses, worms and disabling features

A Tenderer lodging a Tender using the Electronic Tender System acknowledges that it has taken reasonable steps to ensure that the Tender is free of viruses, worms or other disabling features which may affect Electronic Tender System. The Department, at its sole and absolute discretion, may reject a Tender found to contain a virus, worm or other disabling feature.

14.10 Implied agreement

By lodging a Tender using the Electronic Tender System and in consideration of the Department starting to evaluate the Tender, the Tenderer agrees to be bound by the Conditions of Tender and in particular, clauses 3, 4, 5, 11, 12, 14, 18 and 19.

15 Format and naming conventions for electronic lodgements (not applicable to this Tender)

15.1 Format

A Tender lodged electronically must be submitted in one of the following formats:

- Rich Text Format (RTF);

- Adobe Acrobat - Portable Document Format (PDF);
- Microsoft Word (DOC);
- Microsoft Excel (XLS); or
- Image Files (JPG, GIFF, TIFF).

It is recommended that the Tender file/s be compressed into a zip format.

15.2 Conventions

A Tender lodged electronically must comply with the following naming conventions:

- File names must be in English;
- File names that contain a space, must have an underscore in the space's place (" _ ")
- File names must contain the RFT Number, the name of the document and the Tenderer's name.

(For example: "A123_Tender_Submission_ABC_Company.doc" would be a suitable file name.)

16 Late Tenders

16.1 Department may not accept

Late Tenders will not be accepted unless the Contact Officer is satisfied that:

- (a) circumstances beyond the Tenderer's control caused the lateness; and
- (b) accepting a late Tender will not compromise the integrity of the tendering process or provide an unfair advantage to the Tenderer lodging the late Tender.

16.2 Return of late Tenders

A late Tender that is not accepted will be marked on the envelope with the time and date of receipt, and be returned unopened to the Tenderer, if sufficient address details are available.

17 Evaluation of Tenders

The evaluation process will be undertaken with the aim of determining which Tender represents best value for money. In determining value for money, Tenders will be assessed against the following evaluation criteria and weighting:

17.1 Compliance Criteria

Tenders will initially be assessed for compliance with the requirements set out in the RFT document and for an appropriate level of compliance with and acceptance of the Conditions of Contract, including insurance requirements.

Compliance with the RFT document is taken to mean:

- submission of the offer by the closing date and in accordance with all other lodgement instructions;
- provision of all of the information requested in the RFT; and
- demonstrated ability to meet all Conditions of Tender and Specification requirements.

17.2 Qualitative Criteria

Tenderers will be assessed against the following broad criteria, which will be weighted as indicated for evaluation purposes:

Qualitative Evaluation Criteria	Weighting %
Organisational experience and capability	20
Capability of the Tenderer to fulfil the Department's requirements	40
Service Levels	35
Environmental initiatives and value added services	5
Total %	100

The Tenderer's ability to satisfy the qualitative criteria will be assessed on the basis of scores allocated by the Evaluation Committee by consensus in response to each criterion and then weighted as detailed above.

17.3 Quantitative criteria

The quantitative (price) assessment will be undertaken by applying the rates provided by Tenderers to the anticipated activity under the contract (based on average activity under the current contract).

A comparative assessment will be undertaken in order to identify which tender offers the lowest overall cost to the Government. Price will be ranked in order to reflect the proportionate cost difference between tenders.

17.4 Value for Money

Qualitative and Quantitative Criteria will be separately assessed and a normalised score shall be calculated for each category. The resulting normalised scores are added to deliver an overall ranking of Tenders which will be used to determine best value for money. The Qualitative Criteria and the Quantitative Criteria are weighted as follows:-

CRITERIA	WEIGHTING %
Qualitative Criteria	70
Quantitative Criteria (price)	30
TOTAL %	100

17.5 Shortlisting/setting aside of Tenders

In the event that a significant number of Tenders are received, those which are clearly non-competitive and have no reasonable prospect of exhibiting the best value for money compared to other tenders, will be excluded from detailed evaluation.

The Department reserves the right at its absolute discretion to shortlist Tenders following the Qualitative Criteria and/or Price Criteria assessment and eliminate Tenders from further consideration where it considers that an acceptable standard has not been achieved or insufficient information has been provided to enable a full assessment to be undertaken.

During the evaluation process, the Tenderer may be required to provide additional information or clarification. The Tenderer must comply with any such requests within the timeframe specified.

17.6 Additional clarification

During the evaluation process, the Tenderer may be required to provide clarification of its Tender.

18 Right to negotiate

18.1 Variation of Tender

During the evaluation process, the Department may negotiate with any Tenderer to vary their Tender.

18.2 Department may negotiate with several Tenderers

The Department reserves the right to negotiate with several Tenderers to settle the commercial terms to form a contract.

19 Formation of contract

19.1 Formal agreement required

The successful Tenderer must sign a formal agreement containing the terms in the Conditions of Contract supplemented by relevant information, requirements or variations:

- (a) contained in the Specification;

- (b) contained in the successful Tender;
- (c) arising during the Tender evaluation; and
- (d) arising out of negotiations after the Tender evaluation.

19.2 Exchange of signed counterparts required

Subject to clause 13.3 and 14.10 no contractual relationship or other obligation arises between the Department and a Tenderer, for the supply of the Department's Requirements, until the Department and the successful Tenderer formally exchange signed counterparts of the Conditions of Contract. This clause applies despite any oral or written advice to a Tenderer that their Tender is successful or has been, or will be, accepted.

20 Government procurement policies

The Tasmanian Government has purchasing policies that form part of these Conditions of Tender.

20.1 Tasmanian and Australian industry development

The Tasmanian Government is committed to enhancing opportunities for Tasmanian industry development. Tenderers are encouraged to use the free and confidential services of the Industry Capability Network Tasmania (ICNTAS) to assist in identifying local sources of goods and services and, where applicable, to assist in forming consortia and developing Industry involvement and other local industry proposals. All responsibility in the selection of any supplier identified by the ICNTAS rests with the Tenderer. Tenderers are also encouraged to promote ICNTAS services by including this clause in their own agreements with subcontractors.

The Tasmanian Government does not warrant the performance of any supplier identified by the ICNTAS.

20.2 Australia New Zealand Government Procurement Agreement

The Tasmanian Government is a party to the Australia New Zealand Government Procurement Agreement ("ANZGPA"). It is therefore committed to the application of the ANZGPA principles which ensure that Australian and New Zealand suppliers are given equal consideration and opportunities to supply goods and services to Commonwealth, State and Territory Governments.

20.3 Australia-United States Free Trade Agreement

The Tasmanian Government is a participant in the Government Procurement Chapter of the Australia-United States Free Trade Agreement (AUSFTA). It is therefore committed to the application of the AUSFTA principles which ensure that United States suppliers are treated on a basis which is no less favourable than the most favourable treatment provided to suppliers of goods and services from Tasmania, Australia or New Zealand.

20.4 Confidentiality in Government contracts

The Tasmanian Government is committed to ensuring that Government contracting is conducted in an open and transparent manner and that unnecessary confidentiality provisions do not fetter scrutiny of contracts. The Tasmanian Government's policy in relation to confidentiality provides that in any contract between the Crown and any other party, confidentiality requirements in relation to the provisions of the contract are not to be included. An exemption from this position may be approved by the Crown Contracts Confidentiality Standing Committee if it is determined that confidentiality is in the public interest.

21 Debriefing

21.1 Request for debriefing

Unsuccessful Tenderers are encouraged to request a debriefing from the Department to discuss the reasons for their non-selection. A Tenderer who would like a debriefing should contact the Contact Officer.

21.2 Timing for debriefing

If requested to do so, the Department will provide a debriefing for an unsuccessful Tenderer after either:

- (a) a contract has been exchanged for the supply of the Department's Requirements; or
- (b) the Department decides not to award a contract for the supply of the Department's Requirements.

22 Complaints process

A Tenderer may lodge a complaint if the Tenderer believes the Department's tender process has not complied with the Tasmanian Government's procurement policies. Further information on the formal complaints process is available from the Tasmanian Government website at <<www.purchasing.tas.gov.au>>, or may be obtained in hard copy from the Contact Officer.

23 Special conditions

23.1 Provisions about the *Professional Standards Act 2005*

(c) Conditions of appointment

The Department will only appoint, as successful Tenderer, a Tenderer who agrees to the following conditions, when relevant.

(d) No Scheme in force

If no Scheme applies to the Tenderer, the Tenderer must waive all present and future rights, against the Crown, to claim any limitation of liability provided by a future Scheme in relation to future legal liability, claims or proceedings arising from, or attributable to, the Tenderer delivering the Department's Requirements including a wrongful (including negligent) act or omission.

(e) Scheme in force

If a Scheme applies to the Tenderer, the Tenderer must obtain an approval under Section 27 of the *Professional Standards Act 2005* for a level of liability not less than the level described in the Specification.

23.2 Provisions about the Crown's policy on confidentiality of information in Government contracts

(f) Conditions if application for exemption is made

Only the Department may apply for an exemption from the Crown's policy on confidentiality. If, before the award of a contract to a Tenderer, the Department determines it appropriate, whether on the basis of its own requirements or in response to a request from the Tenderer, to apply to the Crown Contracts Confidentiality Standing Committee for an exemption, of all or part of that contract from the Crown's policy on confidentiality, a condition of the award of that contract to the Tenderer is that the Department and the Tenderer accept the Committee's determination.

(g) Condition if application for exemption is not made

If the Department declines to apply for exemption from the Crown's policy on confidentiality, in response to a request from the Tenderer, then:

- (i) if the Department wishes to proceed with that Tender, the Tenderer must, strictly within the time the Department allows, either:
 - (A) withdraw from this tender process; or
 - (B) waive all confidentiality requirements in writing; or
- (ii) if the Department does not wish to proceed with the Tender, the Department may reject it and consider other Tenders.

(h) Non-Satisfaction of condition

If the condition under either clause 23.2(a) or clause 23.2(b)(i) is not satisfied, the Department may reject the Tender and consider other Tenders.

23.3 Other special conditions

Other special conditions applying to this RFT may be attached as an Annexure to the Conditions of Tender or the Specification.

Part Three

Specification

1 Introduction

The Department of Treasury and Finance (Treasury) is seeking tenders from suitably capable and experienced companies interested in providing actuarial services to the Tasmanian Risk Management Fund.

The purpose of this Part (being Part Three) of this Request for Tender is to specify the services to be provided by the Actuary.

The contract between the Crown and the successful Tenderer will be executed by signing the attached Conditions of Contract which will form the basis of this agreement. The Contract Management Unit of the Procurement and Property Branch of the Department will be the Contract Manager, on behalf of the Crown.

2 Scope

2.1 Required services

The Fund requires the services of an Actuary to provide the following:

- provision of a report as at 31 December each year on the calculation of the total contributions pool and agency contributions for the following financial year, including options for excess reductions;
- provision of a report on the Fund's outstanding liabilities and financial position as at 30 June each year feeding into Treasury's annual Financial Statements; and
- provision of miscellaneous reports on additional contributions and coverage provided by the Fund.

2.2 Contract Period

The contract will be awarded for a three year period from 1 September 2009 with an option to extend for an additional three years at the sole discretion of the Crown.

2.3 Evaluation of Tenders

Tenders will be assessed against the evaluation criteria outlined in clause 17 of Part Two ("Conditions of Tender") of the RFT. Tenderers must complete the attached Tenderer Response Form and Pricing Schedules to enable the Department to assess the extent to which the Tenderer meets its Requirements.

3 Background

3.1 Establishment and purpose of the Tasmanian Risk Management Fund

The Tasmanian Risk Management Fund (the Fund) is the Tasmanian Government's self-insurance fund and was established on 1 January 1999 to provide a whole-of-government approach to funding and managing agencies' liabilities.

Fund's Mission

The Fund's mission is to minimise the cost of risk to government through an efficient self-insurance arrangement.

Fund's objectives

The Fund's objectives are to:

- ensure adequate financial provision is made for the cost of risk;
- be responsive to changing conditions in the insurance environment; and
- provide an efficient and effective claims administration service to agencies.

3.2 Fund participants

All inner-budget agencies are required to participate in the Fund and, subject to their date of joining, are covered for the majority of insurable risks to which they are exposed or for which they choose to accept responsibility and which the Fund agrees to cover.

The inner-Budget agencies are:

- Department of Economic Development and Tourism
- Department of Education
- Department of Environment, Parks, Heritage and the Arts
- Department of Health and Human Services (including Housing Tasmania)
- Department of Infrastructure, Energy and Resources
- Department of Justice
- Department of Police and Emergency Management
- Department of Premier and Cabinet (including TMD)
- Department of Primary Industries and Water
- Department of Treasury and Finance
- House of Assembly
- Legislative Council
- Legislature-General

- Office of the Governor
- Tasmanian Audit Office

In addition, the following entities are presently covered by the Fund:

- The Tasmanian Polytechnic: fully covered by the Fund;
- The Tasmanian Academy: fully covered by the Fund;
- The Skills Institute: fully covered by the Fund;
- Inland Fisheries Service: workers compensation only;
- Port Arthur Historic Site Management Authority: workers compensation cover only;
- Private Forests Tasmania: workers compensation cover only;
- Retirement Benefits Fund: workers compensation cover only;
- Royal Tasmanian Botanical Gardens: workers compensation cover only; and
- Marine and Safety Tasmania (MAST): professional indemnity cover only.

The Fund does not provide cover to other statutory authorities, State-owned Companies or Government Business Enterprises.

Generally, the Fund does not provide cover for other government entities such as Boards and Committees unless they are closely aligned with an inner-Budget agency and a determination has been made to provide cover.

3.3 Cover provided

The Fund provides unlimited level of cover for losses under each of the following risks, except where entitlements are provided for under legislation, such as workers compensation.

The risk categories covered by the Fund are:

Personal injury

Personal injury includes workers compensation, personal accident and aero-medical retrieval.

The Fund commenced providing workers' compensation benefits under the *Workers Rehabilitation and Compensation Act 1988* on 1 July 2001, when it merged with the Tasmanian State Service Workers' Compensation Scheme. The Scheme had previously managed whole-of-government workers compensation liabilities and operated on a fully funded basis. The provisions accumulated under the Scheme to meet workers compensation liabilities were transferred to the Fund under the new arrangement. Agencies have the option of selecting different excess levels for a discounted contribution under this category of risk.

The Fund provides no-fault personal accident cover for nominated agency volunteers, some board members, Parliamentarians and students involved in workplace learning. The Fund also provides personal accident benefits in

addition to benefits payable under the *Workers Rehabilitation and Compensation Act 1988* for Department of Health and Human Services employees engaged in aero-medical retrievals on fixed wing aircraft.

General Liability

General liability includes public (general), directors and officers, product and professional indemnity. The Fund does not split contributions into the different categories under liability. The Fund commenced providing cover for general liability from 1 July 1999. Agencies have the option of selecting different excess levels for a discounted contribution under this category of risk.

Medical Liability

The Fund commenced providing cover for medical liability for post 1 July 2001 claims on 1 July 2001. The Fund commenced providing cover for pre 1 July 2001 claims from 1 July 2002. The outstanding liabilities for pre 1 July 2001 claims are being offset by an annual additional contribution to the Fund from the Consolidated Fund.

Property

Property includes buildings and contents, business interruption, fraud/fidelity and transit. The Fund does not split contributions into the different categories under property. The Fund commenced providing cover for property from 1 July 2001. Agencies have the option of selecting different excess levels for a discounted contribution under this category of risk.

The Fund also covers damage to, and loss of, Housing Tasmania properties under an 'aggregate stop loss arrangement'. Housing Tasmania is required to pay the total cost of all losses and damage to housing properties up to a selected excess in a financial year. The Fund meets the costs of any losses/damage above the excess. In 2008-09 the excess is \$7.5 million.

Motor Vehicle

The Fund commenced providing cover for motor vehicles from 1 July 1999. The Fund covers fleet vehicles leased through **sgfleet** Australia, agency owned vehicles and miscellaneous vehicles.

External Insurances

Marine hull and travel are currently insured in the private sector: the former due to cost efficiencies, the latter in order to benefit from a worldwide emergency assistance scheme. The marine hull premium is split down to agency level by the insurer. The Actuary calculates the travel premium across agencies. The Fund has also placed external insurance for the Tasmanian Museum and Art Gallery collection for losses in excess of \$5 million to a limit of \$50 million for any loss.

3.4 Administration of the Fund

The Fund is administered by the Department of Treasury and Finance. An inter-departmental Steering Committee serves as a consultative forum through which agencies can provide input and feedback on the operation of the Fund.

The services of a Fund Administration Agent, Marsh Pty Ltd, are retained on a

contract basis for claims administration, provision of advice in relation to claims management and for the placement of insurance as required. The Fund Administration Agent liaises with the Fund's Actuary to assist in the preparation of the Actuary's six monthly reports.

The Fund also engages an Auditor to prepare the Fund's Financial Statements and a Statement of Findings Report. The main objective of the Statement of Findings is to verify the figures used in the Fund's Financial Statements and to review the controls and processes in place for the management of claims for the Fund.

Financial Statements will be prepared by Treasury from 2009-10 onwards.

3.5 General Operation of the Fund

The Fund operates on a cost-recovery basis. All participating agencies pay annual contributions to meet claim costs, administration expenses, and where applicable, insurance premiums and reinsurance costs. The level of agencies' contributions reflects their risk profile, claims experience and nominated excess amounts.

In setting agency contributions, the Fund aims to achieve:

- the collection of sufficient monies each year to fund claims costs and protect against large, unexpected events;
- equity for user agencies with minimal cross subsidisation;
- stability in contributions over time; and
- incentives for risk management, through recognition of claims experience.

3.6 Claims Administration System

The Fund Administration Agent uses a claims administration system called STARS, which contains information on historical and current claims data. The data contained in the system includes:

- numbers of claims, split by type of risk, agency, accident quarter, cause of loss;
- claim payments made, split by type of risk, agency, accident quarter, payment quarter, cause of loss; and
- estimates of outstanding claims payments on open claims at the reporting date, by type of risk and agency.

The data provided allows the Actuary to analyse the claims payments, and estimates of future payments, by nature of expense (eg own loss, third party damage, legal costs etc) as well as excess/deductible amounts.

The data is accessible in both a summary form for each risk category and in more detail, down to individual claim level.

The Fund Administration Agent provides the Actuary with:

- a STARS licence (free of charge);

- access to the FAA's reporting system which enables the Actuary to create ad hoc reports as required;
- reports electronically or in hard copy, where appropriate;
- training on STARS (at no cost to the Consultant);
- online access to a reporting tool that provides all current and historical data across all types of risk;
- support by developing and providing the Actuary with reports as required and/or providing expertise to assist the Actuary to develop its own online reports within 30 days of request; and
- easy-to-use download facilities to Microsoft Office products (in particular Microsoft Excel 2000 onwards) to facilitate further manipulation of data.

3.7 Further information on the Fund

Further information on the Fund, including detailed information on the cover provided by the Fund, how contributions are calculated, electronic copies of Annual Reports, claim processes and administration guidelines and the Policy and Disclosure Document of the Tasmanian Risk Management Fund, are available on the Tasmanian Risk Management Fund website at www.treasury.tas.gov.au/trmf.

Document(s)	Is/are available at ...
Tasmanian Risk Management Fund Annual Reports	www.treasury.tas.gov.au/trmf (under 'Annual Reports')
Policy and Disclosure Document of the Tasmanian Risk Management Fund, agency excess levels, method of calculating contributions	www.treasury.tas.gov.au/trmf (under 'About the Fund')
TRMF cover, legislation	www.treasury.tas.gov.au/trmf (under 'Incident Management')

4 Statement of Requirements

4.1 Services to be provided by the Consultant

The following services are required in respect of the tasks specified in Section 2.1.

4.2 Contributions Report

The main purpose of the contributions report is to provide Treasury with recommendations on the total contribution pools and individual agency contributions for the different categories of risk self insured by the Fund for the following financial year. The report also provides recommendations on the values to be placed on outstanding liabilities as at the reporting date.

The Consultant will provide the report as at 31 December of the previous calendar year on contributions of the Tasmanian Risk Management Fund for the 2010-11, 2011-12 and 2012-13 years. All figures in the report must be GST exclusive and GST should not be included in any calculation of contribution pools. The report must comply with professional actuarial standards issued by the Institute of Actuaries of Australia.

The report shall include a section on each category of risk self insured by the Fund and an executive summary.

Each section shall include:

- an estimate of outstanding liabilities taking into account:
 - claims that are incurred but not yet paid;
 - claims that are incurred but not yet reported;
 - claims that are incurred but not enough reported; and
 - the anticipated direct and indirect costs of settling these claims.
- an aggregate contribution pool based on Fund data where appropriate, including the methodology to formulate the basis and disclosures of any changes in actuarial determination/model of the calculation pool from the system previously used;
- a summary of variations from previous year's contribution pools;
- the allocation of the contribution pool between agencies, recognising claims experience of individual agencies where justified/possible;
- level of excesses, including reductions in contributions for higher optional excesses in relation to workers' compensation, property, liability and medical liability risk categories;
- summary of trends/factors and variations from previous years; and
- summary of known external occurrences/issues that may impact on the contribution pools including any industry developments and known legislative changes.

The executive summary shall include:

- a summary of significant trends in each major category of risk;
- a three year comparative summary of the recommended contribution pools;
- an overview of the aggregate contribution, agency contributions and excess discount for each category of risk;
- a six month comparative table of outstanding liabilities as at 31 December including commentary on significant movements;
- a table outlining five financial year projections for outstanding liabilities, claims payments and contributions for each category of risk.

Calculations and data must be included in appendices to the report.

Draft report due: 5 business days after the end of January.

Final report due: 7 business days after the due date of the draft report.

Information on how contributions are currently calculated is available on the Tasmanian Risk Management Fund website: www.treasury.tas.gov.au/trmf (under 'About the Fund').

An edited version of the 2008-09 Contributions Report is available upon request, subject to the Tenderer returning the report by the tender closing date or with the tender submission.

4.3 Outstanding Liabilities Report

The main purpose of the outstanding liabilities report is to provide Treasury with the values of outstanding liabilities of the Fund as at 30 June each year for inclusion in the Fund's Financial Statements. The report also provides a brief overview of the financial position of the Fund.

The Consultant will provide the report as at 31 May projected to 30 June. Outstanding liabilities calculations must be GST exclusive. The report must comply with professional actuarial standards issued by the Institute of Actuaries of Australia and be prepared in accordance with Australian Accounting Standards.

The report shall include a section on each category of risk self insured by the Fund and an executive summary.

Each section shall include:

- an estimate of the Fund's outstanding liabilities, current and non-current, using Fund data where appropriate, and taking into account:
 - claims that are incurred but not yet paid;
 - claims that are incurred but not yet reported;
 - claims that are incurred but not enough reported; and
 - the anticipated direct and indirect costs of settling these claims.
- a summary on the financial position of the Fund;
- a review of the contributions reported as at 31 December for the following financial year; and

- a summary of movements in the provision of outstanding liabilities from the previous year.

The executive summary shall include:

- a summary of significant movements in the provision of outstanding liabilities in each category of risk from the previous year;
- a three year comparative summary of the outstanding liabilities of the Fund for each category of risk; and
- a summary of the financial position of the Fund.

Calculations and data must be included in appendices to the report. The report must also contain an appendix summarising the information required for the notes section of the Tasmanian Risk Management Fund Financial Statements.

Draft report due: 5 business days after the end of June.

Final report due: 7 business days after the due date of the draft report.

Information on how outstanding liabilities are currently calculated is included in the Financial Statements in the TRMF Annual Report which is available on the Tasmanian Risk Management Fund website: www.treasury.tas.gov.au/trmf (under 'Annual Reports')

An edited version of the Outstanding Liabilities Report as at 30 June 2008 is available upon request, subject to the Tenderer returning the report by the tender closing date or with the tender submission.

4.4 Ad hoc reports

The Consultant will provide ad hoc reports on various issues related to the management of the Fund including the calculation of additional contributions and coverage provided by the Fund.

4.5 Preparing for the report

The Consultant is to liaise with Treasury staff before preparation of the contributions and outstanding liability reports commences to discuss any format and/or content changes from the previous year's reports.

Prior to the commencement of any reports the Consultant is required to provide an estimate on the number of hours involved and estimated cost of preparing the report.

4.6 Timetable for the delivery of reports

A timetable has been specified for the major reports, which aligns with current Treasury deadlines for the State Budget, the Fund's Financial Statements and financial reporting. It is not anticipated that there will be major variances from these timeframes. Any changes to the timetable will be made in consultation with the Consultant.

Ad hoc reports are to be requested in writing by the Tasmanian Risk Management Fund and are to be responded to by the Consultant within three working days of receiving the request, unless otherwise agreed.

4.7 Transition arrangements at the beginning of the Agreement

The new Consultant is required to commit to working closely and cooperatively with the existing actuarial provider to ensure a smooth transition of responsibility. Tenderers are invited to suggest any changes to the transition arrangements outlined in Section 4.8.

The new Consultant is responsible for any set up costs that they incur during the transition-in period.

4.8 Transition arrangements at the end of the Agreement

The Consultant is required to commit to providing appropriate transition out arrangements at the expiry of the Contract (should they not be successful in retaining the contract) or if the contract is terminated prior to expiry. On the termination or expiration of the contract, the Consultant will be required to provide:

- all reasonable assistance to ensure a smooth transition;
- a briefing with the new Consultant on reports created in STARS for extracting data;
- calculation formulae for all risk categories for both contributions and outstanding liabilities (including restructures);
- calculation data for both contributions and outstanding liabilities reports for the period of the contract (including data relating to restructures);
- electronic copies of previous contributions and outstanding liabilities reports; and
- a briefing with the new Consultant on contribution and outstanding liabilities calculation processes.

4.9 Performance

During the period of the Contract, the Consultant's performance will be measured in relation to:

- delivery to timetable (as specified above or as may be agreed from time to time)
- completeness, accuracy, clarity and quality of advice and reports; and
- the ability to meet the target audience requirements.

4.10 Insurance Requirements

The Consultant will be required to take out appropriate insurance in relation to:

- public liability insurance to cover liability for personal injury, death or property damage for at least an amount of \$10 million for any one claim or series of claims arising out of a single occurrence;

- workers compensation insurance to cover the Tenderer against any liability imposed by statute; and
- professional indemnity cover for at least an amount of \$5 million for the term of the contract and for a period of six years after the termination of the contract.

The Crown will require a member of a Scheme established in Tasmania under the *Professional Standards Act 2005* to obtain an approval under section 27 of the Act, for a level of liability under the Scheme not lower than \$5 million for loss or damage arising from a single cause of action.

4.11 Environmental initiatives

The Tasmanian Government is committed to minimising the impact of climate change and reducing its carbon footprint. Consideration will be given to climate change initiatives and environmental credentials of Tenderers.

4.12 Innovation and value added services

The Department encourages innovation in the delivery of this service, and the provision of value added services. Tenderers are encouraged to advise on innovative proposals, initiatives or ideas.

4.13 Meetings

The Consultant is required to attend face-to-face meetings in Hobart, Tasmania with Treasury officers from time to time. Tenderers are required to specify a list of reasonable fees for air travel (economy class), accommodation and incidentals which may be incurred by the Consultant in the provision of actuarial services to the TRMF.

5 Fees

To enable direct comparisons to be made between tenders, Tenderers are required to submit their proposed fees using the structure specified in the Tenderer's Response Form attached to Part Five.

The fees quoted will be fixed for the initial twelve month period of the contract. Indexation will be permitted on the annual anniversary of the contract. Tenderers should indicate, if appropriate, the index to be used for any increases in the pricing schedule.

6 Implementation Timetable

Request for Tender Advertised:	28 February 2009
Tender closing date:	27 March 2009
Successful and unsuccessful Tenderers to be advised of tender outcome before:	30 June 2009
Contract commencement date:	1 September 2009

7 Information to be provided by the Tenderer

The following information must be provided by the Tenderer:

- Completed Tender Form – Part 5; and
- Submission of one original and three hard copies, and an electronic copy on CD, of their tender submission, including Appendix 1 – Tenderer's Response Form.

8 Attachments

Appendix 1 – Tenderer's Response Form

Part Four
Conditions of Contract
Details

Parties	Crown, Contractor	
Crown	Name	The Crown in Right of Tasmania represented by the Department of ("Crown")
	Address	
	Telephone	
	Fax	
	Attention	
Contractor	Name	("Contractor")
	Incorporated in	
	ACN/ABN	
	Address	
	Telephone	
	Fax	
	Attention	
Recitals	A	The Crown has accepted a tender from the Contractor to deliver the Department's Requirements (defined in clause 1) for the Department of Treasury and Finance (" Department ").
	B	It is a condition of the tender, made by the Contractor and accepted by the Crown, that the parties will enter into this Agreement.
Date of agreement	See Signing page	

General Terms

1 Definitions and interpretation

1.1 Definitions

In this Agreement unless the contrary intention is expressed:

"Agreement" means this Agreement including all schedules and annexures;

"Business Day" means any day on which authorised deposit-taking institutions, as defined in the *Banking Act 1959* (Cwlth), are open for business in Hobart;

"Contractor", where the context admits, includes the Contractor's employees, authorised sub-contractors and agents;

"Contract Material" means all material brought, or required to be brought, into existence as part of, or for the purposes of, providing the Department's Requirements including documents, information and data stored by any means;

"Crown" includes the Crown's employees, authorised sub-contractors and agents;

"Crown Material" means any material provided by or on behalf of the Crown to the Contractor for the purpose of this Agreement including documents, equipment, information and data stored by any means;

"Delegate" means the person for the time being holding, occupying or performing the duties of the office of Director, Procurement and Property Branch of the Department;

"Department" means the Tasmanian Government Department referred to above;

"Department's Requirements" means the services described in Schedule 1;

"Fee Proposal" means a written proposal described in clause 18.3(b) (*Change to scope of Contracted Services*);

"Insurance" means all policies of insurance required to be taken out or entered into under clause 9 (*Insurance*);

"Intellectual Property" means all copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know-how and all other intellectual property rights resulting from intellectual activity;

"Legislative Requirements" means Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth or the State applicable to the delivery of the Department's Requirements;

"Moral Rights" means:

- (a) a right of attribution of authorship;
- (b) a right not to have authorship falsely attributed; or
- (c) a right of integrity of authorship;

granted to creators under the *Copyright Act 1968* (Cwlth);

"Request for Tender" means the document inviting the Contractor to offer to supply services to the Crown, a copy of which, excluding only the Conditions of Contract, is annexed and marked "Annexure A";

"Scheme" means a scheme in force under the *Professional Standards Act 2005* for limiting the occupational liability of members of an occupational association;

"Specified Personnel" means the people described as "Specified Personnel" in Schedule 2;

"Tender" means:

- (a) the documents constituting an offer to supply services to the Crown under the Request for Tender, a copy of which is annexed and marked "Annexure B"; and
- (b) any supplemental document of clarification or variation of the Tender agreed to in writing by the parties;

"Term" means the term of this Agreement as fixed or extended under clause 4;

"Variation Notice" means a notice referred to in clause 18.1 (*Crown may give variation notice*).

1.2 Interpretation

In this Agreement, unless the contrary intention is expressed:

- (a) a reference to this Agreement includes its schedules, appendices, annexures and attachments, and any variation or replacement of any of it;
- (b) a reference to a statute, ordinance, code or other legislative instrument includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (c) the singular includes the plural and conversely;
- (d) a reference to a gender includes reference to each other gender;
- (e) a reference to a person includes:
 - (i) an individual, a firm, a body corporate, an unincorporated association or a statutory or responsible authority or other authority, as constituted from time to time; and
 - (ii) the person's executors, administrators, successors and permitted assigns;
- (f) an agreement, representation or warranty by, or for, two or more persons binds, or is for their benefit, together and separately;
- (g) a covenant forbidding a person from doing something, also forbids that person from authorising or allowing another person to do it;
- (h) a reference to anything (including an amount) is a reference to all or any part of it, and a reference to a group of persons is a reference to any one or more of them;
- (i) a reference to a clause, paragraph, schedule, annexure or appendix, is a reference to a clause, paragraph, schedule, annexure or appendix in or to it;
- (j) a reference to "writing" includes a reference to printing, typing, lithography, photography and other methods of representing or reproducing words, figures, diagrams and symbols in a tangible and visible form;
- (k) a reference to a day is to be interpreted as the period of time starting at midnight and ending twenty-four (24) hours later;
- (l) a reference to a month or a year means a calendar month or a calendar year respectively;
- (m) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (n) a term of inclusion is not to be interpreted to be a term of limitation;
- (o) all references to monetary sums are to Australian currency;
- (p) a reference to the payment of money within a specified time, means the full crediting and clearance of any cheque or electronic transfer into the payee's account within that time;
- (q) it operates under Tasmanian time;

- (r) if the day on or by which an act, matter or thing is to be done under it is not a Business Day, then that act, matter or thing must be done no later than the next Business Day;
- (s) an uncertainty or ambiguity in the meaning of a provision is not to be interpreted against a party only because that party prepared the provision; and
- (t) headings are included for convenience only, do not form part of it, and are not to be used in its interpretation.

2 Delivery of the Department's Requirements

The Contractor must:

- (a) complete the delivery of the Department's Requirements with the due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in providing services similar to those being delivered to satisfy the Department's Requirements; and
- (b) comply with all Legislative Requirements about the delivery of the Department's Requirements.

3 Contract fee

3.1 Fee

The Crown must pay to the Contractor the contract fee specified in Schedule 2.

3.2 Periodical payments

If Schedule 2 provides that the Contractor is to be paid by any sort of periodical payments, then the Crown is entitled to defer any of those payments until the Contractor has completed the delivery of the Department's Requirements to which the payment relates, to the Crown's satisfaction.

3.3 Time for payment

Payments by the Crown must be made within 20 Business Days of the completion of the delivery of the Department's Requirements unless otherwise specified in Schedule 2.

3.4 Fee Variation

The Contractor may vary the contract fee in accordance with the formula described in Schedule 2. The varied fee takes effect as the new contract fee on the date the Delegate receives written notice of the variation.

4 Term of Agreement

4.1 Term

Delivery of the Department's Requirements is to commence (or has commenced) on 1 September 2009 and must be completed on or before 31 August 2012.

4.2 Early commencement

If the delivery of the Department's Requirements commenced before the date of this Agreement, then the Term will be taken to have commenced from the earlier date and all dealings between the parties as from that earlier date relating to the delivery of the Department's Requirements will be taken to have been carried out on the terms of this Agreement.

4.3 Services not complete

If the delivery of the Department's Requirements has not been completed by the expiration date of this Agreement, then the Crown may extend the Term by written notice to enable the delivery to be completed.

5 Personal performance

The Department's Requirements are to be personally undertaken by either the Specified Personnel, or by another person or other persons approved of in writing by the Delegate.

6 Liaison and reporting

The Contractor must liaise with, and report to, the Delegate as the Delegate reasonably requires during the Term.

7 Waiver of rights of recovery from the Crown

The Contractor waives all present and future rights to claim against the Crown for:

- (a) personal injury to, or death of, the Contractor; or
- (b) either or both loss of, or damage to, any of the Contractor's property; and
- (c) financial loss to the Contractor;

arising from, or attributable to, the delivery of the Department's Requirements. This waiver does not operate to release the Crown from liability arising from, or attributable to, a wrongful (including negligent) act or omission of the Crown.

8 Indemnities

8.1 Contractor indemnifies Crown

The Contractor indemnifies the Crown against all present and future legal liability, claims or proceedings for:

- (a) personal injury to, or death of, a third party; or
- (b) either or both loss of, or damage to, property of a third party; and
- (c) financial loss of a third party;

arising from, or attributable to the delivery of the Department's Requirements, to the extent that the injury, death, damage or loss is not caused by a wrongful (including negligent) act or omission of the Crown.

8.2 Nature of indemnities

The indemnities in clause 8.1:

- (a) are continuing obligations of the Contractor, separate and independent from any other obligations; and
- (b) survive the termination of this Agreement.

9 Insurance

9.1 Contractor to insure

The Contractor must hold and keep current throughout the Term, contracts of insurance with a reputable insurer lawfully carrying on insurance business in Australia, indemnifying:

- (a) the Contractor's liability for:
 - (i) personal injury to, or death of, a third party; and
 - (ii) either or both loss of, or damage to, the property of a third party;for at least \$10,000,000 for each individual claim or series of claims arising out of a single occurrence, or for such other sum as the Delegate reasonably determines;
- (b) the Contractor's liability for workers' compensation; and
- (c) the Contractor's liability for professional negligence, for at least the amount stipulated in Schedule 3, for any one claim or series of claims arising out of a single occurrence, and for the term stipulated in clause 9.5.

The liability to be insured against under paragraph (a) is liability arising from, or attributable to, the Contractor carrying out the Department's Requirements, to the extent that the injury, death, damage or loss is caused by a wrongful (including negligent) act or omission of the Contractor or the Contractor's employees or agents.

9.2 Crown to be named as principal

Insurance under clause 9.1(a) must cover "the Crown in right of Tasmania" as principal under the insurance contract.

9.3 Contractor to notify Delegate

The Contractor must notify the Delegate in writing as soon as practicable:

- (a) if an insurance contract referred to in clause 9.1 lapses, is cancelled or is materially altered; or
- (b) if the Contractor claims, or becomes entitled to claim, under such an insurance contract for something related to delivering the Contracted Services.

9.4 Evidence of insurance

The Contractor must give the Delegate evidence of:

- (a) the terms of; and
- (b) payment of the premium for;

each insurance contract taken out under clause 9.1,

- (c) before the Contractor starts to carry out the Department's Requirements; and
- (d) before each due date for renewal of each such insurance contract.

9.5 Professional indemnity insurance

The Contractor must maintain the professional indemnity insurance required under clause 9.1, for six years after this Agreement expires or terminates, to provide indemnity against claims:

- (a) based on anything done, omitted, or that happened, while the Department's Requirements were being provided; and
- (b) made during those six years.

This clause 9.5 survives any termination of this Agreement.

9.6 Crown may insure

If the Contractor fails to hold or renew each insurance contract required under clause 9.1, then without being obliged to do so, the Crown may:

- (a) take out or renew each such insurance contract that the Contractor has not taken out or renewed; and
- (b) pay any unpaid premium.

The Contractor must pay to the Crown, on demand, all money that the Crown expends for this purpose, together with interest on it, at the rate of ten percent per year, from the date of outlay to the date of payment.

9.7 Contractor not to prejudice insurance

The Contractor must not do anything that may result in insurance taken out under clause 9.1, or any part of it, becoming invalid or unenforceable.

10 Contract Material

10.1 Title to, and property in, Contract Material

The title to, and property (including all Intellectual Property) in, all Contract Material vests in the Crown upon its creation, but that material will remain readily available to the Contractor to the extent necessary to enable the Contractor to perform its duties under this Agreement.

10.2 Contractor must return Contract Material

On the expiration or earlier termination of this Agreement the Contractor must immediately deliver all Contract Material in its possession or control to the Delegate and, if necessary, transfer any Intellectual Property forming part of that material to the Crown.

10.3 Use of Contract Material restricted

The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Agreement.

10.4 Pre-existing Intellectual Property rights

The Crown agrees that any pre-existing Intellectual Property right owned by the Contractor in material used to produce Contract Material is not affected by this Agreement.

10.5 No third party rights in Contract Material

The Contractor warrants that the Crown's use of the Contract Material will not infringe the Intellectual Property rights of any third party.

10.6 Crown indemnifies Contractor

The Crown indemnifies the Contractor from and against any claim for damages made against the Contractor arising directly or indirectly from the use of the Contract Material by the Crown or a third party, where that use was not authorised by the Contractor.

10.7 Moral Rights consent from Contractor

The Contractor unconditionally consents to any infringement of its Moral Rights resulting from any use, by or on behalf of the Crown, of the Contract Material described in Schedule 1 for the purposes of:

- (a) the project described in Schedule 1; or
- (b) any other project undertaken by the Crown.

10.8 Moral Rights consent from third party authors

To the extent that any third party has Moral Rights, the Contractor warrants that:

- (a) for pre-existing materials that form part of the Contract Material described in Schedule 1, it has obtained; and
- (b) for new materials coming into existence for the purpose of this Agreement and that form part of the Contract Material described in Schedule 1, it will obtain before or immediately on creation,

the third party's unconditional consent to any use of those Contract Materials by or on behalf of the Crown for the purposes of:

- (i) the project described in Schedule 1; or
- (ii) any other project undertaken by the Crown.

10.9 Supply of documentary evidence

If the Delegate so requests, the Contractor must promptly provide to the Crown all Moral Rights consents required by clause 10.8.

11 Crown Material

11.1 Crown Material remains property of the Crown

Crown Material remains the property of the Crown and on the expiration or earlier termination of this Agreement the Contractor must immediately return all the Crown Material to the Delegate. The cost of delivery must be paid by the Contractor.

11.2 Third party rights in Crown Material

The Delegate must inform the Contractor of any Crown Material in which third parties hold Intellectual Property and any conditions or limitations attaching to the use of that Crown Material as a result of that Intellectual Property. The Contractor must use Crown Material only under the conditions and limitations to which it is subject.

11.3 Contractor must keep Crown Material safe

The Contractor is responsible for the safe keeping and maintenance of Crown Material.

12 Confidentiality

12.1 Parties may disclose contract provisions

Despite any confidentiality or Intellectual Property right subsisting in this Agreement or a tender giving rise to it, either party may publish, without reference to the other, all or any part of this Agreement, except those parts identified in Schedule 4 ("Confidential Material").

12.2 Limited confidentiality for Confidential Material

- (a) The Crown Contracts Confidentiality Standing Committee has determined that the Confidential Material is exempt from the Crown's policy on confidentiality in Government contracts.
- (b) The parties must maintain confidentiality of the Confidential Material for the period of the exemption, so far as the law allows, except to the extent that:
 - (i) the Confidential Material is available to the public generally, other than by breach of this Agreement;
 - (ii) a law requires a party to file, record or register something that includes Confidential Material;
 - (iii) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
 - (iv) it is necessary or advisable to disclose the Confidential Material to a taxation or fiscal authority;
 - (v) it is necessary to disclose the Confidential Material in answer to a question asked of a Minister in the Parliament or otherwise to comply with a Minister's obligations to Parliament;
 - (vi) the Confidential Material is disclosed confidentially to a party's professional advisers:

- (A) to get professional advice about this Agreement; or
- (B) to enforce this Agreement; or
- (vii) the parties agree otherwise in writing.

12.3 Contractor must not disclose other material

Subject to clause 12.1, the Contractor must not publicly disclose, or use for a purpose other than this Agreement, any information or material acquired or produced in connection with, or by performing, this Agreement, including Crown Material or Contract Material (“Private Material”), without the Delegate’s prior written consent, except to the extent that:

- (a) the Private Material is available to the public generally, other than by breach of this Agreement;
- (b) a law requires the Contractor to disclose, file, record or register something that includes Private Material;
- (c) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (d) it is necessary or advisable to disclose the Private Material to a taxation or fiscal authority;
- (e) the Private Material is disclosed confidentially to professional advisers:
 - (i) to get professional advice about this Agreement; or
 - (ii) to enforce this Agreement; or
 - (iii) the parties agree otherwise in writing.

12.4 Employees to comply

The parties must ensure that their respective employees who have access to Confidential Material, Private Material, or both, are aware of, and comply with, all confidentiality obligations affecting it.

12.5 Privacy obligations preserved

Nothing in this clause derogates from a party’s obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

13 Security and access

13.1 Contractor to comply with security regulations

When using any of the Crown’s premises or facilities, the Contractor must comply with all security and office regulations in effect at those premises or in regard to those facilities as notified by the Crown or the Delegate.

13.2 Delegate may inspect

At all reasonable times, the Contractor must:

- (a) give to the Delegate, or to any persons authorised in writing by the Crown, access to any premises where the delivery of the Department's Requirements is being undertaken; and
- (b) must allow those persons to inspect the delivery of the Department's Requirements and any Crown Material, Contract Material or other material relevant to the Department's Requirements.

14 Negation of employment and agency

14.1 No representation by Contractor, sub-contractors etc

The Contractor:

- (a) must not represent itself; and
- (b) must ensure that its sub-contractors, employees and agents do not represent themselves;

as being sub-contractors, employees or agents of the Crown or the Department.

14.2 Contractor remains independent contractor

- (a) Despite the degree of direction, control or supervision which the Crown directly or indirectly exercises over the Contractor, or the Contractor's employees, agents or sub-contractors in the discharge of duties, obligations, and covenants under this Agreement, the Contractor is taken to be and remain an independent contractor.
- (b) The Contractor's sub-contractors, employees and agents are taken to be and always to have been, and to remain, sub-contractors, employees or agents of the Contractor.

15 Termination by the Crown

15.1 Crown may terminate without showing cause

The Crown may terminate this Agreement without showing cause, by giving the Contractor 10 Business Days written notice.

15.2 Crown may terminate for default

- (a) The Crown may terminate this Agreement by giving the Contractor a written notice ("Termination Notice") if, 10 Business Days after receipt of a written notice ("Default Notice") requiring the Contractor to do so, the Contractor:

- (i) has not remedied each default in the performance of its obligations; or
- (ii) continues to be in breach of any of the provisions of this Agreement;

identified in the Default Notice.

- (b) The Termination Notice will be effective immediately the Contractor receives it and the Crown may then recover from the Contractor any loss or damage suffered by the Crown because of the Contractor's default.
- (c) The recovery may be effected by way of set-off against any moneys owed by, or which become due from, the Crown to the Contractor under this Agreement.

15.3 Crown may terminate for insolvency

The Crown may terminate this Agreement immediately, by written notice, if any one of the following occurs:

- (a) if the Contractor is a corporation:
 - (i) an order is made, or a resolution is passed, winding up the Contractor;
 - (ii) a receiver or a receiver and manager is appointed over all or any part of the Contractor's assets;
 - (iii) a provisional liquidator or an administrator is appointed for the Contractor;
 - (iv) a scheme of arrangement is submitted for approval;
 - (v) the Contractor convenes a meeting, or enters, or proposes to enter, into any arrangements or composition with its creditors;
 - (vi) the Contractor becomes insolvent;
 - (vii) the Contractor ceases, or threatens to cease, to carry on its operations, or threatens to dispose of all, or a substantial part of its undertakings;
 - (viii) a mortgagee of the Contractor's property takes possession of any of that property.
- (b) if the Contractor is an individual or a partnership:
 - (i) the Contractor commits an act of bankruptcy;

- (ii) the Contractor enters into an arrangement or composition with creditors;
- (iii) a receiver is appointed for the assets of the partnership.

15.4 Termination without cause

If the Crown terminates this Agreement under clause 15.1, then the Crown must pay the Contractor within a reasonable time:

- (a) for the Department's Requirements rendered before the effective date of termination; and
- (b) if the Contractor is not then in breach of this Agreement, a fair and just proportion of other liabilities or expenses that the Contractor:
 - (i) has reasonably and properly incurred to provide the Department's Requirements; and
 - (ii) cannot otherwise recover or avoid.

The Crown is not liable to make any other payment for terminating under clause 15.1.

15.5 Termination for default or insolvency

If this Agreement is terminated under clause 15.2 or clause 15.3 then, subject to its right of set-off, the Crown is liable only to make payments under clause 3 for services rendered before the effective date of termination, and is not liable to make any other payments.

15.6 Partial Termination

If there is a partial termination of this Agreement, then the Crown's liability to pay any amounts under it will abate proportionally to the reduction in the Department's Requirements unless there is an agreement to the contrary.

15.7 Contractor to reserve a right of termination in sub-contracts

The Contractor must in each sub-contract or order placed with any subcontractor for the purposes of this Agreement, reserve a right of termination to take account of the Crown's right of termination under clause 15.1.

16 Reduction

Upon receipt of notice to terminate this Agreement, the Contractor must:

- (a) stop work as specified by that notice; and
- (b) take all reasonable steps to minimise its loss resulting from the termination and to protect Crown Material and Contract Material.

17 Delay and extension of time

If it becomes evident to a party that anything, including an act or omission of the Crown, may delay the delivery of the Department's Requirements, then that party must promptly notify the other party in writing, with details of the possible delay and the cause. If the cause of the delay is an act or omission of the Crown, then the Crown must pay the Contractor the extra costs necessarily incurred by the Contractor because of the delay. Nothing in this clause:

- (a) obliges the Crown to pay extra costs for delay or disruption which have already been included in the value of a payment under this Agreement; or
- (b) limits the Crown's liability for damages for breach of contract.

18 Variations changing the scope of the Department's Requirements

18.1 Crown may give variation notice

The Crown may direct a variation to the Department's Requirements by giving a written notice to the Contractor ("Variation Notice").

18.2 Contractor may refuse

The Contractor is not obliged to comply with a Variation Notice if the Contractor gives a written notice to the Delegate, under clause 18.3, within five Business Days of receipt of the Variation Notice.

18.3 Change to scope of Contracted Services

If the Crown issues a Variation Notice that the Contractor considers would change the general scope of the Department's Requirements, then the Contractor may so advise the Delegate in writing within five Business Days, stating:

- (a) whether or not the Contractor agrees to comply with the Variation Notice; and
- (b) if the Contractor agrees to comply with the Variation Notice, a fee proposal ("Fee Proposal") for carrying out the direction.

Each time the Crown accepts a Fee Proposal, the Contractor must act upon the variation under the Fee Proposal.

18.4 If no agreement, parties are in dispute

If the Crown either:

- (a) does not agree, within five Business Days of receipt of the Contractor's notice given under clause 18.3, that the Variation Notice changes the general scope of the Department's Requirements; or
- (b) does not accept the Fee Proposal;

then the parties will be taken to be in dispute and clause 22 (*Resolution of disputes*) applies, if the Crown directs the Contractor to proceed with the variation.

18.5 Fee for variation

The Contractor is to be paid an additional fee to cover the value of a variation to the Department's Requirements. Unless otherwise agreed, the value of a variation to the Department's Requirements must be determined using the basis on which the fees and expenses described in clause 3 (*Contract fee*) are determined, or if that is not possible, then reasonable rates and prices will apply.

18.6 Variation caused by Legislative Requirement

If a new Legislative Requirement, or a change in a Legislative Requirement, after the date of this Agreement, necessitates:

- (a) a change to the Department's Requirements;
- (b) has effect after the date of this Agreement; and
- (c) could not reasonably have been anticipated at that date;

then the extent to which the Department's Requirements are changed by that Legislative Requirement are taken to be a variation to the Department's Requirements under this clause.

19 Frustration and circumstances beyond control

19.1 Frustration of Agreement

If this Agreement is frustrated, then the Crown must pay the Contractor:

- (a) for work executed up to the date of frustration - the amount not then paid, but which would then have been payable had the Agreement not been frustrated; and
- (b) costs reasonably incurred by the Contractor to that date in the expectation of delivering the Department's Requirements and not included in any prior payment by the Crown.

19.2 Contractor obligations following frustration

Upon payment of those amounts to the Contractor, the Contractor must, subject to any rights of the Contractor under this Agreement, deliver to the

Delegate, all Contract Material produced by the Contractor up to the date of frustration, regardless of its stage of completion but without any liability in respect of the Contract Material that is incomplete only because of the frustration of the Agreement.

19.3 Circumstances beyond control

A party is excused from performing its obligations to the extent it is prevented by circumstances beyond its reasonable control (except the lack of funds for any reason), such as acts of God, natural disasters, acts of war, riots and strikes outside the party's organisation. If these circumstances arise, the affected party will give notice of them to the other as soon as possible, identifying the effect they will have on its performance, and must make all reasonable efforts to minimise the effects. If non-performance or diminished performance by the affected party continues for a period which the other party regards as commercially unreasonable, the other party may terminate this Agreement. If this Agreement is terminated in these circumstances, each party will bear its own costs and neither party will incur further liability to the other.

20 Waiver and variation

- (a) No failure by a party to exercise, nor delay in exercising, a right, power or remedy operates as a waiver.
- (b) A single or partial exercise of a right, power or remedy does not preclude any other, or further, exercise of that, or any other right, power or remedy.
- (c) A waiver is neither valid nor binding on the party granting it, unless made in writing signed by the party to be bound by the waiver.

21 Governing law

21.1 Law of Tasmania

This Agreement is governed by the law of Tasmania and the parties submit to the jurisdiction of the Courts of Tasmania.

21.2 Proceedings issued under or about this Agreement

Any proceedings issued against the Crown under, or about, this Agreement, must be instituted either:

- (a) in a Tasmanian court; or
- (b) in the Federal Court, from the Tasmanian Registry of that court.

22 Resolution of disputes

22.1 Resolution of dispute

If a dispute arises between the parties under this Agreement then, (except in the case of action required to be taken under statute), the parties undertake in good faith to use all reasonable endeavours to resolve the dispute between them by negotiation.

22.2 Notice of dispute

If one party has given a written notice of a dispute to the other party and the parties are unable to resolve the dispute by means of meetings between them within 20 Business Days after receipt of the notice, then the dispute must be submitted for resolution under the following sub-clauses.

22.3 Reference for determination

The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience agreed between the parties. Failing agreement, the matter in dispute must be determined under the provisions of the *Commercial Arbitration Act 1986*.

22.4 Final and binding decision

The independent expert's or arbitrator's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.

22.5 Parties not to commence legal action

Except to enforce this clause, or to seek an urgent interim determination, a party must not commence or maintain an action by way of legal proceedings relating to the dispute until it has been dealt with as provided in this clause.

23 Sub-contracting and assignment

23.1 Contractor not to sub-contract or assign

Without the Delegate's prior written consent, the Contractor must not sub-contract, assign part with or be relieved from, any rights, powers and obligations arising under this Agreement.

23.2 Contractor remains responsible

Unless the Delegate agrees otherwise in writing, the Contractor remains responsible for the delivery of the Department's Requirements despite that the Contractor has sub-contracted or assigned the performance of any part of the delivery of the Department's Requirements.

23.3 Sub-contractors must have insurance

If the Delegate gives written consent under clause 23.1, then, the Contractor must ensure that all sub-contractors have in place, before carrying on any part of the delivery of the Department's Requirements, and keep current, the same insurances as the Contractor is required to have in place under clause 9 (*Insurance*).

24 Conflict of interest

The Contractor warrants that at the date of this Agreement, no conflict of interest exists, or is likely to arise, in the delivery of the Department's Requirements and that if, during the Term, a conflict of interest arises, then the Contractor will notify the Delegate immediately in writing, of that conflict or risk.

25 Notices

25.1 How to give a notice

A notice or other communication given or made under this Agreement must be in writing and addressed to the recipient party at the address in Schedule 2.

25.2 How to serve a notice

A notice or other communication is taken to have been duly served:

- (a) in the case of hand delivery - when delivered;
- (b) if sent by prepaid post - on the third Business Day after the date of posting;
- (c) if sent by facsimile transmission (only if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) - upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 am on the next Business Day in that place.

25.3 Sufficiency of notice etc

A notice or other communication to be given or made under this Agreement, is sufficient if:

- (a) in the case of the Crown, it is under the hand of the Crown (by the Minister responsible for the Department or a duly authorised officer of the Department), the Delegate, or the Crown's solicitors;
- (b) in the case of the Contractor, it is under the hand of the Contractor or its agent or solicitors.

25.4 Signatures

A printed or copied signature is sufficient for the purposes of sending any demand, written consent or other communication by facsimile transmission.

26 Severance

26.1 Reading down, severance

- (a) If any provision of this Agreement or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, then so far as possible, the provision will be read down to the extent necessary to ensure that it is not illegal, invalid or unenforceable.
- (b) If any provision or part of it cannot be so read down, then the provision or part of it will be taken to be void and severable and the remaining provisions of this Agreement will not be affected or impaired in any way.

26.2 Altering the basic nature of this Agreement

Clause 26.1 has no effect if the severance alters the basic nature of this Agreement, or is contrary to public policy.

27 Crown's rights

An express statement of a right of the Crown under this Agreement is without prejudice to any other right of the Crown expressly stated in this Agreement or arising at law.

28 Inconsistency

If something in a schedule or an attachment to this Agreement is inconsistent with a clause of this Agreement, then the latter prevails.

29 Goods and Services Tax

29.1 GST exclusive

Subject to any other provision of this Agreement expressing a contrary intention, if GST is imposed on a supply made under it, then the party paying for the supply must pay the amount of the GST to the party making the supply, at the same time as, and in addition to, the amount payable for the supply.

29.2 Tax invoice

A party making a taxable supply under this Agreement must give the recipient a tax invoice for the taxable supply when that supply is made.

29.3 Terms defined in GST Act

In this clause "GST" refers to goods and services tax under *A New Tax System (Goods and Services) Act 1999* (Cwlth) ("GST Act") and the terms used have the meanings as defined in the GST Act.

30 Continuing obligations

The termination or expiration of this Agreement does not act to extinguish a debt, obligation or liability of either of the parties which has accrued under the Agreement and in particular the provisions, rights and obligations described in the following clauses will survive and continue to apply:

- 7 (*Waiver of rights of recovery from the Crown*),
- 8 (*Indemnities*),
- 9 (*Insurance*) (to the extent that it relates to professional indemnity cover),
- 10.3 (*Use of Contract Material restricted*),
- 10.5 (*No third party rights in Contract Material*),
- 10.7 (*Moral Rights consent from Contractor*),
- 10.8 (*Moral Rights consent from third party authors*),
- 10.9 (*Supply of documentary evidence*),
- 12 (*Confidentiality*),
- 15 (*Termination by the Crown*),
- 22 (*Resolution of disputes*),
- 24 (*Conflict of interest*),
- 29 (*Goods and Services Tax*);
- 30 (*Continuing obligations*);
- 31 (*Non-reliance*);
- 32 (*Totality of Contractor's obligations and inconsistency of Tender*); and
- 36 (*Operation of a Scheme*).

31 Non-reliance

The Contractor:

- (a) warrants that when entering this Agreement, it did not in any way rely upon any information, representation or statement forming part of the Request for Tender or otherwise provided by the Department;
- (b) warrants that it enters into this Agreement relying exclusively on its own investigations, interpretations and determinations;

- (c) agrees it will obtain, or will be taken to have obtained, its own independent advice in relation to the Request for Tender, the information provided in connection with the Request for Tender and any relevant risks, contingencies and other circumstances having an effect on its Tender, including the impact of any relevant legislation on its Tender;
- (d) agrees the Crown will not be liable to it in relation to any claim arising out of, or in any way connected with, any errors in or omissions from the Request for Tender or any other information provided to or received by it from any person in connection with the Tender process; and
- (e) acknowledges that the Crown has entered into this Agreement relying upon the Contractor's warranties and agreements in this clause 31.

32 Totality of Contractor's obligations and inconsistency of Tender

32.1 Totality of Contractor's obligations

The Contractor acknowledges that all of its obligations to the Crown are comprised in this Agreement, the Request for Tender and the Tender, which documents are taken to form part of this Agreement.

32.2 Inconsistency of Tender and other parts of Agreement

In the absence of written agreement to the contrary, if any ambiguity arises as to the intent of the Contractor's obligations due to an inconsistency between the Tender and any other parts of this Agreement, then the other parts of this Agreement will prevail.

33 Counterparts

- (a) This Agreement may be executed in any number of counterparts.
- (b) All counterparts will be taken to constitute one agreement.
- (c) The parties agree that, if necessary, they may exchange faxed copies of counterparts, and those faxed copies will be taken to constitute one agreement. The parties must exchange originals as soon as possible afterwards.

34 Personal Information protection

34.1 Application of clause

This clause 34 applies only if the Contractor deals with Personal Information in the course of delivering the Department's Requirements.

34.2 Personal Information Custodian

If the Contractor is a Personal Information Custodian then the Contractor must:

- (a) notify the Delegate immediately if the Contractor becomes aware of a breach, or possible breach, of the PIP Act; and
- (b) ensure that the Contractor's employees, agents or subcontractors who are required to deal with Personal Information in the course of delivering the Department's Requirements are aware of, and comply with, the Contractor's obligations under this clause.

34.3 Breach of PIP Act

A breach of the PIP Act by the Contractor is a breach of this Agreement that entitles the Crown to terminate it under clause 15.2 (*Crown may terminate for default*).

34.4 Terms defined in PIP Act

In this clause "Personal Information" and "Personal Information Custodian" have the same meanings as in the *Personal Information Protection Act 2004* (Tas) ("PIP Act").

35 Industrial relations and occupational health and safety requirements

35.1 Compliance with the Legislative Requirements

In the course of delivering the Department's Requirements, the Contractor must comply with:

- (a) the *Industrial Relations Act 1984*;
- (b) the *Workplace Health and Safety Act 1995*; and
- (c) all Legislative Requirements about industrial relations and occupational health and safety.

35.2 Contractor's obligation to notify the Delegate

The Contractor must notify the Delegate immediately the Contractor becomes aware of a breach, or possible breach, of the Legislative Requirements described in clause 35.1.

36 Operation of a Scheme

36.1 No Scheme in force

If no Scheme applies to the Contractor, the Contractor waives all present and future rights, as against the Crown, to claim any limitation of liability provided

by any future Scheme, in relation to future legal liability, claims or proceedings arising from, or attributable to, the Contractor delivering the Department's Requirements including a wrongful (including negligent) act or omission.

36.2 Scheme in force

If a Scheme applies to the Contractor at any time during the Term, then:

- (a) subject to clause 36.2(b), the level of the Contractor's liability under this Agreement will be limited by the Scheme; and
- (b) if required by the Delegate, the Contractor will immediately obtain an approval, under Section 27 of the *Professional Standards Act 2005*, for a level of liability under the Scheme not lower than the level described in Schedule 1.

Executed as an Agreement.

Signing page

Dated:

200

Signed for and on behalf of **The Crown in Right of Tasmania** by (a duly authorised person) in the presence of:)
)
)
)
)

.....
Signature of witness

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation

[If the other party is a company that will execute under common seal]

The Common Seal of)
(ACN) fixed in the)
presence of:)
)

.....
Director

.....
Director/Secretary

[If the other party is a sole director company that will execute under common seal]

The Common Seal of)
(ACN) fixed in the)
presence of:)
)

.....
Sole Director/Sole Secretary

.....
(Print full name)

[If the other party is a company that will execute by directors' signatures]

Executed for and on behalf of)
(ACN) under section)
127(1) of the *Corporations Act 2001*)
(Cwlth):)

.....
Director

.....
Director/Secretary

[If the other party is a sole director company that will execute by director's signature]

Executed for and on behalf of)
(ACN) under section)
127(1) of the *Corporations Act 2001*)
(Cwlth):)

.....
Sole Director/Sole Secretary

.....
(Print full name)

[If the other party is a natural person(s)]

Signed by and)
in the presence of:)
)

.....
Signature

.....
Signature of witness

.....
Signature

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation

[If the other party is a partnership]

Signed for and on behalf of [redacted])
(a partnership) by [redacted] (Partner))
who, by executing this Agreement,)
warrants authority to do so on)
behalf of all the partners, in the)
presence of:)

.....
Signature

.....
Signature of witness

.....
Name of witness (block letters)

.....
Address of witness

.....
Occupation

[If the other party is an incorporated association]

The Common Seal of [redacted] **Inc**)
(A.B.N. [redacted]) fixed in the)
presence of:)
)

.....
Committee Member

.....
Committee Member/Public Officer

Schedule 1

Department's Requirements

The services to be provided are as follows:

To be specified

Limitation of Liability Level (Clause 36.2(b))

The following higher maximum level of liability will apply for the classes of liability covered by the Scheme:

\$5 million for loss or damage arising from a single cause of action.

Schedule 2

Contract Fee

[] (\$) payable within [] Business Days of completion of the delivery of the Department's Requirements, subject to submission to the Delegate of a correctly rendered invoice in a form satisfactory to the Delegate.

No other moneys are payable.

Specified Personnel

To be specified

Fee Variation Formula

To be specified

Addresses for delivery of notices

1. **The Crown**

As in the Details

2. **The Contractor**

As in the Details

Schedule 3

Insurance

The Contractor has entered into professional indemnity cover under clause 9.1(c) for the following amount of cover:

\$5 million

Schedule 4

Confidential Material

There is no Confidential Material.

Annexure “A”

Request for Tender

The relevant RFT (excluding only the Conditions of Contract) is to be an annexure to this Agreement.

Annexure “B”

Tender

The relevant Tender is to be an annexure to this Agreement.

Part Five Tender Form

RFT Number: TRMF 2009-1

Date: 28 February 2009

Department of Treasury and Finance 21 Murray Street HOBART TASMANIA 7000
--

CLOSING TIME for
submission of Tenders 27 March 2009 at 2.00PM (Eastern Standard Time)

Request for Tender “Tasmanian Risk Management Fund – Actuarial Services”

I/we submit this offer, by way of tender, to deliver the Department’s Requirements specified in the above-mentioned Request for Tender (“RFT”). This Tender comprises:

- (1) this Tender Form; and
- (2) the attached Tenderer’s Response Form.

Also attached are copies of the edited version of the TRMF 2008-09 Contributions report and Outstanding Liabilities Report as at 30 June 2008.

The Tenderer:

- (a) agrees to the Conditions of Tender (and in particular, clause 13.3 and 14.10 of the Conditions of Tender); and
- (b) declares that the information and particulars provided as part of this Tender are accurate and correct.

Name of Tenderer: **[Insert full name]**

Address of Tenderer: **[Insert address]**

(Include fax no. & telephone no.)

ABN of Tenderer: **[Insert ABN]**

(If this Tender is signed by a person for and on behalf of the Tenderer)

Signed for and on behalf of the Tenderer

by **[Insert Name]**

(who by his/her signature duly warrants his/her authority to bind the Tenderer):

Signature of Witness

Full Name

Address

Occupation