

Notice To All Intending Tenderers

This Notice To All Intending Tenderers must be read in conjunction with the Request for Tender ("RFT") for a **Total cost review of CityRail's regular passenger services**.

Details of the services the Tribunal requires, the timing and terms and conditions of the RFT are set out in that document.

The RFT is a legally binding document that sets out the conditions you must understand if you are to submit a tender in response to the RFT. These conditions will apply regardless of whether you are the successful tenderer. Your participation in any stage of the tender will be at your own risk, cost and expense.

Please read the RFT carefully. If you have any queries, or requests for further information please contact the person named in item 3 of Schedule 1 of the RFT.

Schedule 3 of the RFT sets out the procedures you are to follow and the format and substance you must consider when preparing your tender. The assessment criteria the Tribunal will apply to evaluate your tender are set out in Schedule 3.

The Tribunal may make changes to the RFT before the closing date for tenders and it will be assumed you have tendered on the basis of the RFT as at the date of the close of tenders. You have the choice of either:

- (a) keeping your own watch on the Tribunal's web site to keep yourself informed of any changes the Tribunal may make to the RFT; or
- (b) providing an email address to the person named at item 3, Schedule 1 of the RFT who will let you know if the Tribunal makes any changes to the RFT or if the Tribunal will hold a formal briefing for tenderers.

Note clause 5 of the RFT which describes the copies of your tender to be provided to the Tribunal. The opening of tenders is not a public process.

The form of the Consultancy Agreement is set out in Schedule 4 of the RFT and may be changed by the Tribunal at its absolute discretion prior to the tenderer and the Tribunal executing a form of the Consultancy Agreement.

The selection of the successful tenderer is at the Tribunal's absolute discretion and the Tribunal reserves the right not to accept any tender.

We look forward to receiving your tender.

Yours sincerely,

General Manager, Support Services



Request for Tender

**RFT No 2/2007
("RFT Reference")**

Total cost review of CityRail's regular passenger services

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1. Introduction

- (1) The Independent Pricing and Regulatory Tribunal (the "**Tribunal**") is a body corporate established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) and its role is described on the Tribunal's web site at <http://www.ipart.nsw.gov.au/>.
- (2) This document, including the Schedules, is a Request for Tender ("**RFT**") and is an invitation to suitably qualified persons or organisations to tender to provide the Services in Schedule 1.
- (3) Anyone who receives a copy of this RFT is referred to in this RFT as a tenderer whether or not they submit a tender in response to this RFT.
- (4) The conditions of Tender are set out in this RFT.
- (5) Tenderers must complete Schedule 2 and address the requirements of Schedule 3 in submitting their Tender.
- (6) Tenders must be lodged with the Tribunal by no later than the closing date set out in **Item 2 of Schedule 1** ("**Closing Date**").
- (7) The criteria used by the Tribunal to evaluate tenders are set out in Schedule 3.

2. Application of these Conditions of Tender

- (1) Tenderers must make themselves familiar with all of the conditions of this RFT at the Closing Date and are deemed to have tendered on the basis of any changes which may be made to the RFT up to the Closing Date.
- (2) Tenderers will be deemed to have accepted all of the conditions of tender in this Request for Tender and must ensure that they comply with them in all respects.

3. Communications with Tenderers

- (1) Tenderers may be invited to attend a briefing by the Tribunal on this RFT.
- (2) The Tribunal will only provide notices and address correspondence under this RFT to tenderers at the addresses notified in writing to the Tribunal.
- (3) The Tribunal will not be responsible for any correspondence or notices not received by any tenderer.

4. Format of Tender

Each tender must be in writing and must comply with the requirements of this RFT.

5. Lodgement and Opening of Tenders

- (1) Tenderers must submit three hardcopies and one electronic "soft" copy (in a format compatible with Microsoft Word XP Professional) of its tender. One set of the hardcopy documents must be marked "ORIGINAL" and the other copies must be marked "COPY". The electronic "soft" copy should be sent by email to the General Manager, Support Services at the following email address: meryl_mccracken@ipart.nsw.gov.au. If any inconsistency arises between the copies, including the electronic "soft" copy, the hardcopy tender marked "ORIGINAL" will prevail.
- (2) The tenders in hardcopy must be submitted in a sealed envelope marked with the RFT reference number so that it is received by the Closing Date.
- (3) All documentation must be in the English language and, if relevant, refer to Australian dollars.
- (4) All information must be printed without alterations or erasures (unless each amendment is signed in ink).
- (5) Tenders must be addressed to:

General Manager, Support Services
Independent Pricing and Regulatory Tribunal

and delivered to the following address by no later than the Closing Date:

At P O Box Q290
QVB Post Office
NSW 1230

Or The Tender Box, Level 2
44 Market Street
SYDNEY NSW 2000

- (6) Tenders will be secured in the Tender Box at the Tribunal on Level 2 of 44 Market Street, Sydney until after the Closing Date.
- (7) The opening of tenders is not a public process and neither tenderers nor their representatives are entitled to attend the opening of tenders.
- (8) All tenders must be provided free of charge to the Tribunal.

6. Non-Compliance/Late Tenders

- (1) Any tender not complying with this RFT.
- (2) Any tender received after the Closing Date will be registered as a late tender.
- (3) The Tribunal reserves the right at its absolute discretion to accept or not accept late and/or non-complying tenders.

7. Consultancy Agreement

- (1) The successful tenderer will enter into a consultancy agreement with the Tribunal, in the form set out in Schedule 4.
- (2) Any consultancy agreement arising from this RFT will be between the Tribunal and the tenderer whose tender is accepted by the Tribunal.
- (3) Each tenderer is required to identify in its tender any clauses of the Consultancy Agreement with which it does not agree. The tenderer should propose alternative clauses for consideration by the Tribunal and the rationale for the proposed amendment.
- (4) If a tenderer does not indicate disagreement in its tender with a clause of the Consultancy Agreement, that tenderer will be deemed to have agreed with that clause. The tenderer is precluded from raising any objection to, or amendment of, any clauses of the Consultancy Agreement with which the tenderer has not disagreed in its tender.
- (5) Any standard printed conditions of contract of, or provided by, the tenderer will be rejected by, and will not be binding on the Tribunal.
- (6) The Tribunal reserves the right at its absolute discretion to accept, reject or agree to modifications or amendments proposed by tenderers to the Consultancy Agreement, or any part thereof.

8. Validity and Withdrawal

- (1) All tenders will remain valid for a period of 6 calendar months from the Closing Date.
- (2) A tender must not be withdrawn without the prior written consent of the Tribunal.

9. Clarification of Tenders

The Tribunal may seek clarification or request further information from tenderers after the Closing Date, as part of the selection process.

10. The Negotiation Stage

- (1) This clause is subject to clause 22.
- (2) The Tribunal may commence negotiations at its absolute discretion with the tenderers whose tenders are acceptable to the Tribunal.
- (3) The Tribunal reserves the right to negotiate with any tenderer until a satisfactory conclusion is reached for the Tribunal.
- (4) The negotiation by the Tribunal with any tenderer will not create any rights of any kind in favour of any tenderer in relation to, or for the purposes of, any agreement with the Tribunal or at all.

11. Award of Agreement

- (1) This clause is subject to clause 22.
- (2) No rights of any kind accrue to a tenderer whose tender is acceptable to the Tribunal until the tenderer and the Tribunal execute a form of the consultancy agreement in Schedule 4.

12. Amendments to RFT

- (1) If the Tribunal considers it necessary to make a change to the RFT before the Closing Date, the amendments will be posted on the web site of the Tribunal and is deemed to be a communication of the change to the RFT to tenderers. No oral explanation or change to any part of this RFT by any officer or agent of the Tribunal will be deemed to constitute an addendum.
- (2) The Tribunal may in its absolute discretion, by notice posted on the web site of the Tribunal before the Closing Date, do all or any of the following:
 - (a) vary or deviate from the processes as set out in this RFT;
 - (b) terminate or vary the RFT process;
 - (c) add to, vary or amend this RFT and the conditions in this RFT;
 - (d) require additional information from any tenderer;
 - (e) change the structure and timing of the RFT; and
 - (f) amend the scope of the Services required by the Tribunal in Schedule 1.

13. Tenderers to bear own costs and risk

- (1) Participation in any stage of the RFT will be at the tenderer's sole risk, cost and expense.
- (2) The Tribunal and its advisers, employees and contractors will not be responsible for any loss, damage or claim (whether direct, indirect or consequential) to the tenderer or any person arising out of this RFT, tendering to the RFT, the RFT process, the negotiation with tenderers, or awarding or not awarding of the tender or any other associated matter. In no event will the Tribunal be responsible for any loss of profits.
- (3) This clause 13 will survive the conclusion of all processes arising from the RFT.

14. Acceptance of Tenders

While the Tribunal may have regard to the requirements set out in Schedules 2 and 3, it retains an absolute discretion as to how it will assess the tenders.

15. No obligation to accept tenders and part tenders

- ▲ The Tribunal will be under no obligation to accept any tender or part tender.
- ▲ The Tribunal will be under no obligation to accept the lowest priced tender.

16. Access to further information

The Tribunal may decide to provide further information concerning this RFT before the Closing Date. If the Tribunal decides to provide further information it will notify all tenderers by notice posted on the web site of the Tribunal.

17. Contact of Referees

The Tribunal reserves the right to contact the referees of each tenderer.

18. Interviews

The Tribunal reserves the right to conduct interviews of one or more tenderers after the Closing Date. If an interview is required, the Tribunal will give reasonable notice to the tenderer.

19. Confidentiality and Privacy

(1) In this document:

"**confidential information**" means all information of the Tribunal, in any form or media, including, without limitation, trade secrets, know-how processes, techniques, source and object codes, software, computer records, business and marketing plans and projections, details of agreements and arrangements with third parties, customer information and lists, designs, plans, drawings and models, but does not include:

- (a) information which is at the date of this RFT, or which subsequently becomes into the public domain other than as a result of disclosure by a tenderer, or a person receiving the confidential information from the tenderer, in breach of the conditions of this RFT;
- (b) information which a tenderer can establish by written records is at the date of this document already known to that person; or
- (c) information which a tenderer can establish to the Tribunal's satisfaction, was developed independently of the Tribunal or any agent or employee of the Tribunal.

(2) In consideration of the Tribunal agreeing to disclose confidential information to a tenderer under or as part of this RFT, the tenderer:

- (a) acknowledges and agrees that any confidential information is secret and confidential and that any confidential information disclosed by the Tribunal to the tenderer is disclosed to the tenderer only for the purpose of this RFT and in reliance on, and pursuant to, the terms of the conditions of this RFT;
- (b) agrees to keep the confidential information secret and confidential at all times;
- (c) must not, without the prior written approval of the Tribunal, use, disclose, divulge or deal with any confidential information, nor cause, permit or allow any act, matter or thing to be done, omitted or occur whereby any confidential information may become known or be used by, or be disclosed or communicated to, any other person, except strictly in accordance with the terms of the conditions of this RFT; and
- (d) must return to the Tribunal or destroy all copies of the confidential information upon written demand by the Tribunal or upon the withdrawal of the tenderer from the RFT;

- (3) The tenderer acknowledges and agrees that the Tribunal may publish the following details of the Consultancy Agreement, if any, awarded under this RFT:
 - (a) details of the Consultancy Agreement (including a description of Services to be completed, the term of the Consultancy Agreement, the commencement date and anticipated completion date);
 - (b) the full identity of the successful tenderer;
 - (c) the price payable by the Tribunal and the basis for future changes in this price; and
 - (d) the significant evaluation criteria and the weightings used in this RFT.
- (4) If a tenderer includes information in its tender that it does not wish to be disclosed, it must identify that information in writing to the Tribunal and provide written reasons for such request prior to or on the Closing Date. Where the Tribunal does not agree with the tenderer's request the Tribunal will advise the tenderer accordingly and that decision will be binding on the tenderer.
- (5) This clause 19 will not merge with the execution of the Consultancy Agreement.

20. Intellectual property

- (1) Nothing in the RFT constitutes a transfer of intellectual property rights of the Tribunal (including intellectual property rights in the RFT) to any tenderer.
- (2) The Tribunal may, in its absolute discretion, by written notice, require that all written information provided to tenderers (and copies of the information) be returned to the Tribunal at any time.

21. Disclaimer

- (1) The Tribunal has taken reasonable care in the preparation of the RFT, however the information contained in this RFT and the information upon which it is based has not been independently verified or audited. Tenderers are encouraged to seek independent verification on any information about which they are unclear.
- (2) The statements, opinions, projections, forecast or other information contained in this RFT may change. Where any such information relates to future matters, no steps have been taken to verify that that information is based upon reasonable grounds. Actual future events may vary significantly from the forecast.
- (3) Neither this RFT nor any agreement made on the basis of this RFT, may under any circumstances be taken to create an implication that

there will be no material change in the affairs of the Tribunal from the date of issue of this RFT.

- (4) The provisions of this disclaimer apply in relation to this RFT and also in relation to any other oral or written communications or disclosures to the tenderer or to any other person.

22. Other Reservations

- (1) By issuing this RFT the Tribunal is not required to negotiate or to enter into an agreement for the provision of the Services for tender with any person.
- (2) The Tribunal may elect to withdraw from the process described in the RFT and may terminate the RFT altogether.
- (3) The Tribunal has no obligation to consider and no obligation in respect of the manner, timing or basis of consideration of, any tender.
- (4) The Tribunal may at its absolute discretion, withdraw, change or suspend the RFT and its consideration of tenders and any part thereof.
- (5) Any decision to shortlist tenderers is for the convenience of the Tribunal and does not create any rights in any person. The Tribunal reserves the right at its absolute discretion to invite persons who do not respond to this RFT to participate in any subsequent tender for the Services.
- (6) The Tribunal may at its absolute discretion approve or reject any sub-contractors the tenderer may wish to appoint.

23. Tenderer's duty to inform themselves fully

- (1) Any person contemplating the submission of a tender and who is in doubt as to the true meaning of any part of the specification/requirements, requires further information or finds discrepancies in, or omissions from, the RFT may submit a written request for an explanation or correction no later than 14 days before the Closing Date. The Tribunal or its agents will respond to each written request and reserve the right to advise in similar terms all tenderers save that the source of the inquiry will not be disclosed.
- (2) In order to maintain equity in the tendering, Tenderers are advised that they should not seek information in regard to this RFT directly from staff and contractors employed by the Tribunal other than via the mechanism detailed in this clause.
- (3) Tenderers must only rely on written advice from the Tribunal.

24. Briefing for interested persons

- (1) The Tribunal may provide a formal briefing for tenderers. Tenderers attending are required to register at the briefing. The register of

tenderers will be distributed to all tenderers within 2 working days after the briefing. If a tenderer has a query or requires further information that is not addressed at the briefing, the tenderer must make a request for information in writing and that request will be registered. The request and such answer as the Tribunal is able to provide will be sent to all registered persons who registered at the briefing.

- (2) Questions may be submitted in advance of the briefing to be answered at the meeting. The originator of the question will not be disclosed. Advance questions must be submitted in writing seven days prior to the briefing.

25. Supporting material

Supporting material is material additional to the tender which elaborates on or clarifies the tender but does not alter it in any material respect. Material presented as supporting material, which effectively alters the formal tender in any material respect, may not be accepted. Supporting material may be provided at the initiative of the tenderer or at the request of the Tribunal. Supporting material must be received by the Tribunal on or before the Closing Date unless specifically requested by the Tribunal subsequent to that date. The Tribunal reserves the right to disregard any unsolicited supporting material dispatched after the Closing Date. Supporting material must be clearly labelled (identifying this RFT and its subject matter). The intention to submit supporting material in this manner must be clearly stated in the tender.

26. Improper assistance in Tender preparation

- (1) Tenders which have been compiled with improper assistance of employees of the Tribunal, ex-employees of the Tribunal, and/or contractors or ex-contractors of the Tribunal or that are found to have been compiled utilising information unlawfully obtained from the Tribunal will be excluded from further consideration.
- (2) The emphasis above is on improper assistance. It does not preclude tenderers using former Tribunal employees or former contractors of the Tribunal, provided they have not been involved in the development of the RFT. If anyone has any concern regarding the employment of former Tribunal employees or former contractors of the Tribunal they should raise their concern in writing.

27. Conflict of interest

- (1) Tenderers must warrant that to the best of their knowledge at the date of submitting the tender no conflict of interest exists by itself, by its employees or any sub-contractors or is likely to arise in relation to this RFT during the RFT selection process.
- (2) If during the course of the selection process a conflict or potential conflict of interest arises tenderers undertake to notify the Tribunal immediately in writing of that conflict or potential conflict of interest.
- (3) Tenderers must not, and must use their best endeavours to ensure that any employee, agent or sub-contractor of the tenderer does not, during the course of the selection process, engage in any activity or obtain any interest likely to conflict with or restrict the tenderer in being considered under this RFT and must immediately disclose to the Tribunal such activity or interest if it occurs.
- (4) In this clause 27 a conflict of interest includes, but is not be limited to, an employee of the tenderer being related to or having a close association with or influence over an employee of the Tribunal which may have the effect of influencing, or giving the appearance of influencing, the review of the tenders to the RFT.

28. Collusive bidding

Tenderers and their officers, employees, agents, sub-contractors and advisers must not engage in any collusive bidding, anti-competitive conduct or any other similar conduct with any other tenderer, or any other person in relation to the preparation or lodgement of tenders.

29. Use of documents and information provided

- (1) The Tribunal will have permanent and unrestricted use of all documents submitted in a tender, subject to any constraints set out in the RFT.
- (2) Despite clause 29(1), intellectual property (including confidential information) owned by the tenderer or third parties and contained in the documents will not pass to the Tribunal. However, the Tribunal will be licensed to use or copy that intellectual property to the extent necessary to conduct an efficient selection process.

30. Freedom of Information

- (1) The *Freedom of Information Act 1989* and provisions of the *Independent Pricing and Regulatory Tribunal Act 1992* extend, as far as possible, to the right of the Australian community to access information in documentary form in the possession of the Tribunal, limited only by considerations of the protection of essential public interest and of the private and business affairs of persons in respect of whom

information is collected and held by departments and public authorities.

- (2) Should a request for access to RFT documents be received, the Tribunal will consult with the tenderer before making any decision to grant access, subject to its obligations under the *Freedom of Information Act 1989* and the *Independent Pricing and Regulatory Tribunal Act 1992*.
- (3) The Tribunal will not disclose, the following information about any contract awarded under this tender unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* and the *Independent Pricing and Regulatory Tribunal Act 1992* or is otherwise legally required:
 - (a) the tenderer's financing arrangements;
 - (b) the tenderer's cost structure and profit margins; and
 - (c) items of the tenderer having an intellectual property (including confidential information) characteristic but excluding ideas, concepts or know-how pertaining to the subject matter of the RFT.
- (4) The information included in an unsuccessful tender is treated as commercial-in-confidence material and will not be disclosed unless the tenderer agrees, or release is determined under the *Freedom of Information Act 1989* and the *Independent Pricing and Regulatory Tribunal Act 1992* or is otherwise legally required. However the Tribunal may use ideas, concepts or know-how obtained from the tenders in any manner the Tribunal deems appropriate.

31. Assignment

This RFT is personal to and not assignable or transferable by the tenderer without the prior written consent of the Tribunal, which consent may be declined at the Tribunal's absolute discretion.

32. Whole Agreement

To the extent of any inconsistency between the conditions of this RFT and:

- (1) any correspondence or oral exchanges between the tenderer and the Tribunal; or
- (2) any Schedule, appendix or annexure to this RFT,

the conditions of this RFT will prevail.

33. Relationship

The relationship between the Tribunal and tenderers is that of independent contractors and no partnership, employment, agency or joint venture may be implied into the relationship.

34. Warranty to the Tribunal

Tenderers who submit a tender to this RFT are deemed to have warranted to the Tribunal that statements, representations and claims made in the tender are true and correct and are not misleading or deceptive or likely to mislead or deceive.

35. Assistance to the Tribunal in regard to enquiries and due diligence

By submitting a tender, tenderers acknowledges that the Tribunal may make enquiries of any person to assist in establishing the suitability of the tenderer and to undertake a due diligence review. Tenderers must provide all reasonable assistance to the Tribunal to undertake these tasks.

36. Electronic document

The Tribunal may provide an electronic copy of documents and material. While the Tribunal will use its reasonable endeavours to ensure that the electronic copy is "virus free", the Tribunal does not expressly or by implication warrant that the electronic copy will not contain viruses. Tenderers who choose to receive the electronic copy supplied do so entirely at their own risk.

Schedule 1 Services required

1. Services

The Tribunal is seeking to engage a suitably qualified consultant to provide assistance in estimating the efficient cost of providing CityRail's regular passenger services and to forecast its efficient operating and capital costs for each of the next five financial years.

CityRail is part of Rail Corporation New South Wales (RailCorp) and is responsible for providing regular passenger services in Sydney and the surrounding regions. CityRail's network comprises three sub-networks – Suburban, InterCity and Regional.

The Tribunal is only interested in costs relating to CityRail's network. It does not require cost information for other parts of RailCorp's operations such as its CountryLink services or its provision of freight rail access.

Purpose of consultancy

Pursuant to Section 12A of the IPART Act the Tribunal will review the form of regulation for CityRail's regular passenger services. The review will establish a framework for the Tribunal's future annual fare decisions for CityRail.

The Tribunal is now seeking to establish a transparent framework for identifying CityRail's efficient costs and is seeking a suitably qualified consultant to:

- provide an asset class inventory that identifies which of CityRail's assets directly relate to the provision of its regular passenger services;
- review recent benchmarking studies previously undertaken by CityRail and, if necessary, undertake further benchmarking to overcome any information gaps;
- undertake extensive consultation with CityRail to provide a detailed analysis of CityRail's cost structure and the allocation of its costs;
- develop a methodology for allocating costs between the different CityRail sub-networks;
- estimate the efficient operating and capital costs associated with the provision of CityRail's regular passenger services;
- identify causes of cost inefficiency;
- identify technical or managerial constraints that may prevent CityRail achieving efficient costs;
- indicate the scope for a forward-looking productivity adjustment; and
- indicate a transition strategy that would enable CityRail to move toward a more efficient cost structure.

The emphasis of the consultancy is on identifying CityRail's efficient operating and capital costs and the scope for improvements in cost efficiency over the next five financial years. Costs and any 'cost efficiency gaps' should be identified for each cost category and, where possible, for each of CityRail's sub-networks. Equally important is identifying measures that would enable CityRail to transition toward cost efficiency over the medium term (three to five years).

For the purposes of this Review, a test of efficiency requires an assessment of operating and maintenance and capital expenditure from a least-cost perspective over the life-cycle of the assets.

Scope of Work

The consultant is required to:

- provide a draft methodology report to the Tribunal for approval. The report should provide a detailed outline of the consultant's approach for each component of the consultancy. In particular, the draft methodology should indicate the consultant's approach for providing an asset class inventory, a benchmarking study and estimating the efficient operating and capital costs for CityRail.

The consultant should indicate if they intend to use any specific methodology(ies) in undertaking the efficient cost analysis or other aspects of the consultancy. The consultant should ensure that they provide appropriate reasons for their choice of methodology(ies) and outline any associated requirements.

- prepare an asset class inventory that:
 - identifies asset classes required for the efficient provision of CityRail's regular passenger services. At the very least, the inventory would need to identify the following asset categories: track, stations, other buildings, land, and other assets related to the operation of regular rail passenger services.
 - identifies other CityRail asset classes that are not required for the provision of CityRail's regular passenger services. For example, such classes might include retail space in stations or other asset classes that CityRail earns non-passenger related revenue on.

The Tribunal will use the inventory to determine what assets are to be included in the review of CityRail's efficient costs (and, in future, the regulation of CityRail's services). A valuation of CityRail's assets is not part of this consultancy.

- consult with CityRail and analyse its financial information to identify appropriate cost categories (for example station operations, train crewing, or track maintenance). The cost categories should include all relevant operating and capital costs. The Tribunal will also be interested in analysing the cost efficiency of the CityRail Suburban network relative to the whole CityRail network.
- provide a benchmarking report analysing CityRail's costs against Australian (which at a minimum should include, Melbourne and Brisbane) and

comparable international suburban or metropolitan rail systems. Where possible, the benchmarking analysis should consider CityRail's cost efficiency for each identified cost category.

RailCorp has informed the Tribunal that it has recently undertaken a comprehensive international benchmarking study which analyses technical efficiency across most aspects of its operations. In some instances, the study also benchmarks CityRail's cost efficiency. Subject to signing a confidentiality agreement, the consultant may draw on the benchmarking study to complete this task.

The benchmarking component, while important, is only intended to provide the Tribunal with a preliminary view about the cost efficiency of CityRail's operations;

- undertake extensive consultation with CityRail and detailed analysis of CityRail's financial and non-financial information to provide a comprehensive review of CityRail's current cost structure. The review should analyse each of CityRail's cost categories and identify each category's performance. As part of the analysis, the consultant should identify cost drivers for each category and the linkages between different cost categories.

The Secretariat will facilitate initial contact with key personnel from CityRail's management. The consultant should outline a strategy for ongoing engagement with CityRail.

- develop a methodology for allocating CityRail's costs between its Suburban, InterCity and Regional sub-networks. Use the allocation to analyse differences between cost drivers for each of the different sub-networks.
- provide efficient operating and capital cost estimates for each of CityRail's cost categories for each of the next five financial years from 2008/09 to 2012/13. Where possible, the estimates should distinguish between CityRail's three sub-networks. The efficient cost estimates may be based on the benchmarking analysis or derived using other analytical techniques.

Efficient costs should be considered with respect to CityRail meeting its defined safety, reliability and other service benchmarks. The consideration of efficient costs should also allow CityRail to meet its obligations with respect to Government policy (for example, as a result of the State Plan or the Urban Transport Statement).

The consultant should quantify the size of any 'cost efficiency gap' (that is, the difference between efficient costs and current costs) within different elements of CityRail's operations.

- based on its consultation with CityRail, the consultant should identify:
 - any causes of inefficiency in specific parts of CityRail's operations,
 - technological, managerial or other constraints on CityRail moving toward efficiency, and
 - the scope for improving CityRail's cost efficiency over the short, medium and long term given its existing constraints.
- identify a transition path, incorporating a suite of tangible measures that are capable of being implemented, which may enable CityRail to move from its

present cost structure towards an efficient cost structure over the medium term (five years). The consultant should provide a list of cost saving measures and robust estimates that indicate the potential cost saving associated with each measure. The consultant should indicate how each cost saving estimate was calculated. The consultant should also indicate the amount of capital and operating expenditure required in each of the five years under the transition path.

The consultant should identify key priority areas for improving CityRail's cost efficiency in the long term (more than five years). Identification of key priority areas may be based on any parts of the cost saving measures that cannot be fully implemented in the medium term.

The consultant should also identify any cost efficiency measures that would lead to a significant improvement in CityRail's service standards.

Data

RailCorp have informed the Tribunal that they will cooperate with the successful consultant. The Tribunal has prepared a preliminary list of information that RailCorp will be able to provide to the consultant (see the Attachment to Schedule 1).

The consultant should identify any additional data requirements it will need to undertake this consultancy. It should identify any instances where lack of data may inhibit it from delivering parts of its offer.

Output

At a minimum, the consultant's output and involvement is to include the following:

- A public draft methodology paper outlining the consultant's approach to estimating efficient costs and other aspects of the consultancy.
- Presentation of the consultant's draft methodology to the Tribunal.
- A confidential short paper describing the asset class inventory, which clearly identifies the appropriate asset class types required to provide CityRail's regular passenger services.
- The consultant will be required to liaise with RailCorp and other stakeholders (for example, Transport Infrastructure Development Corporation).
- A confidential draft benchmarking report by 18 October 2007 that clearly identifies CityRail's cost performance against other providers of metropolitan passenger rail services.
- A confidential presentation to the Tribunal of the consultant's preliminary views on CityRail's cost efficiency.
- A public draft report by 7 December 2007 on the efficient cost of providing CityRail's regular passenger services. The report may incorporate non-confidential elements of the draft benchmarking report. The report should clearly set out its assumptions and any preliminary conclusions in a format

that is suitable for publication. If necessary, a separate confidential report should be presented to the Tribunal.

- Presentation of the draft report on efficient costs to the Tribunal.
- Presentation at the public roundtable discussion (February 2008).
- Consideration of submissions received on the draft report on efficient costs.
- A public final report by 6 March 2008, that incorporates comments from stakeholders on the draft reports and sets out final assumptions and recommendations in a format suitable for publication and, if necessary, a confidential report to the Tribunal.
- A public copy of the models used for the benchmarking analysis and the determination of efficient costs as well as all inputs and outputs for calculations contained in the final report.

Interaction with the Tribunal, the Secretariat and involvement in consultation

As indicated in the outputs, the consultant will be required to interact closely with the Secretariat and other stakeholders involved in this review. In particular, the Tribunal expects that the consultant will be required to work closely with RailCorp throughout the project.

The consultant must also attend Tribunal meetings as required, to discuss the issues addressed in the reports and participate in relevant public forums held by the Tribunal (for example, the consultant will be required to present key issues at a roundtable discussion). The consultant may also be required to attend meetings with specific stakeholders.

The consultant will be required to provide informal weekly updates to the Secretariat. The consultant should also inform the Secretariat of meetings between it and RailCorp. In most circumstances, a member of the Secretariat will attend such meetings.

Items to be addressed in consultant's tender documents

Approach

- The proposed methodology, explaining the consultant's reasoning behind the approach.
- Discussion of data requirements and any data held by the consultant to facilitate its work.
- Discussion on issues that will require input and decision by the Tribunal.
- Discussion on consultant's view on how its approach compares to previous work undertaken in other jurisdictions or other industries.
- Indication of how the consultant proposes to validate its conclusions and/or recommendations.
- Indication of the consultant's quality assurance procedures.

Team and personnel

- The proposed team, including the individual responsible for day-to-day contact with IPART, other team members and quality assurance personnel.
- The consultant must demonstrate that each member of the proposed team has expertise in managerial or technical matters relating to passenger rail operations or undertaking cost reviews of major infrastructure providers. Preferably, members of the consultant's team should have experience in both matters.

Work plan and timetable

- Demonstrate ability to meet the deadlines and timetable proposed (see table below) and/or identify any areas that would require amending the timetable.
- Provide a detailed work plan for the project, including identifying any milestones involving the Secretariat and the Tribunal.

Indicative timetable

Task	Timeframe*
Request for Tender issued	6 August 2007
RFT submissions close	20 August 2007
Successful tenderer announced	29 August 2007
Draft methodology paper	13 September 2007
Asset class inventory and associated documentation	27 September 2007
Confidential draft benchmarking paper	18 October 2007
Presentation to the Tribunal of preliminary views on CityRail's cost efficiency	31 October 2007
Draft paper on CityRail's efficient costs	7 December 2007
Tribunal discussion of draft paper on CityRail's efficient costs	13 December 2007
Finalisation of draft paper of CityRail's efficient costs	21 December 2007
Public consultation on draft paper on CityRail's efficient costs	7 January 2008 – 22 February 2008
Final paper on CityRail's costs	6 March 2008

* Please note that these dates are indicative only and the consultant may propose an alternative timetable.

Other matters

- If required, provide suggestions on how the approach and timetable should be amended to better meet the Tribunal's objectives for the review.
- Demonstrate an understanding of the scope and objectives of the Tribunal's review.

2. Closing dates for quotes

Quotes to this RFT must be lodged with the Tribunal by no later than **5:00pm** on **20 August 2007**.

3. Further Information

All enquires in relation to this RFT must specify the RFT Reference and must be directed in writing in hard copy format or facsimile to:

Name/Title	Aaron Murray Program Manager, Transport Independent Pricing and Regulatory Tribunal of NSW
	Fiona Towers Director , Transport Independent Pricing and Regulatory Tribunal of NSW
Telephone	Aaron: (02) 9290 8440 Fiona: (02) 9290 8420
Facsimile	(02) 9290 2061
Address	Level 2 44 Market Street SYDNEY NSW 2000

Attachment Data

RailCorp have indicated to the Tribunal that they have the following information and will cooperate with the consultant in providing such information:

- operating cost information by cost centre for RailCorp;
- an allocation methodology for splitting RailCorp's costs between CityRail and CountryLink for each of its cost centres;
- RailCorp's budget and forward estimates by major expense items;
- information on employees by cost centre;
- an asset register;
- asset management plans;
- business cases (put to Government) for capital expenditure programs;
- international benchmarking study of CityRail's performance;
- list of station categories and resource requirements by station;
- general network information (track length, number of stations, number of trains per day, etc);
- information on passengers by line and by station; and
- Statements of Corporate Intent (for recent years).

Please note that RailCorp, which formed in late 2003, may not have detailed financial or non-financial information prior to 2004/05.

Schedule 2 Tenderer Information

Tenderer's Name	
Registered Office	
ACN or ARBN	
Principal Contact Officer's Full Name	
Position/Title	
Address	
Telephone Number(s)	
Fax Number	
E-mail Address	
Names and Contact Details of Two Referees	

Schedule 3 Evaluation Requirements

1. In order for the Tribunal to adequately assess tenders, tenderers must provide detailed information on the following:
 - (a) the names, addresses and curriculum vitae, including details and evidence of experience and qualifications, of all personnel, including the tenderer's officers, employees, agents and contractors ("**Nominated Personnel**"), who the tenderer proposes to involve in providing the Services;
 - (b) evidence that the tenderer and its Nominated Personnel have the necessary skills and experience to provide the Services and that it will provide the Services with all due care and skill;
 - (c) sufficient details to enable the Tribunal to determine whether the tenderer is financially viable and will remain financially viable for the anticipated term of the Consultancy Agreement;
 - (d) any circumstances that may create a conflict of interest for the organisation or individuals who are to provide the Services;
 - (e) guarantee that the tenderer is legally entitled to:
 - (i) agree to a contract with the Tribunal; and
 - (ii) complete the Services.
 - (f) The names, addresses and contact details of referees whom the tenderer agrees may be approached by the Tribunal or its officers.
 - (g) Any past litigation the tenderer has been involved in.

2. Pricing Information

The tenderer must set out clearly the price for the performance of the Services and the basis, if any, for any change in the price. If no price is specified, the charges applicable and the basis for any proposed variations in the charges.

The tenderer must also set out the basis on which the price or charges would be varied for additional services that the tenderer may provide or which the tenderer believes arise from the requirements of complying with the terms of the Consulting Agreement.

Assessment Criteria

The Tribunal will evaluate the tenders based upon the Tribunal's assessment of:

- (a) the experience of the tenderer in providing Services of a similar nature including any prior work undertaken for the Tribunal;
- (b) the ability of the tenderer to perform the required Services in the timeframe;

Total cost review of CityRail's regular passenger services

- (c) the total cost to the Tribunal of the performance of the Services by the tenderer;
- (d) the timeframe within which the tenderer will perform the Services; or
- (e) any other matters the Tribunal considers appropriate.

Schedule 4 Form of Consultancy Agreement

Total cost review of CityRail's regular passenger services



Consultancy Agreement

Between

**Independent Pricing and Regulatory Tribunal
of New South Wales**

And

[Name of Consultant]

Total cost review of CityRail's regular passenger services

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Consultancy Agreement

This Agreement is between the **Independent Pricing and Regulatory Tribunal of New South Wales**, a body corporate established under the *Independent Pricing and Regulatory Tribunal Act 1992* and the person defined as the Consultant.

1 Definitions

Agreement means this consultancy agreement.

Commencement Date means the earlier of:

- (1) the date of this Agreement;
- (2) the date that the Consultant commences to perform the Services.

Completion Date means the date this Agreement ends as set out in **Item 5 of Schedule 2**.

Consultant means the person(s) described in **Item 1 of Schedule 2** engaged by the Tribunal to perform the Services and includes officers, employees, agents and sub-contractors (and their employees and agents) utilised by the Consultant, as permitted by this Agreement.

Consultant's Personnel means the person(s) described and named in **Item 2 of Schedule 2**.

Consultant's Proposal means the Consultant's response to the Request for Tender or Request for Quote, as the case may be, (whether in writing or otherwise) setting out among other things, the Consultant's interest in performing the Services and the terms on which the Consultant is prepared to perform the Services.

Consultant's Representative means the person(s) described and named in **Item 3 of Schedule 2**.

Contract Material means all material brought into existence as part of, or for the purpose of performing the Services, including but not limited to documents, equipment, information and data stored by any means and including Intellectual Property in relation to them.

Fee means the fee (inclusive of GST) payable by the Tribunal to the Consultant under clause 6 for the performance of the Services.

GST means the same as in the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

Intellectual Property includes all rights in copyright, patents, registered and unregistered trademarks, registered designs, know-how, techniques, methods, trade secrets and all other rights of a secret or proprietary nature.

Minister means the Minister having responsibility for the Tribunal.

Reimbursable expenses means the costs, expenses, fees or charges the Tribunal agrees to reimburse to the Consultant and for which the Consultant obtains the prior written approval of the Tribunal to incur.

Services means the services described in Schedule 3.

Tax invoice means the same as in the GST Law.

Term means the term of this Agreement and is the period described in clause 3(2).

Tribunal means the Independent Pricing and Regulatory Tribunal of New South Wales, a body corporate established under the *Independent Pricing and Regulatory Tribunal Act 1992*.

Tribunal's Materials means any documentation, information or material supplied by the Tribunal to the Consultant in connection with this Agreement by whatever means.

Tribunal's Representative means the person described and named in **Item 4** of **Schedule 2**.

2. Interpretation

Unless the context otherwise requires:

- (1) headings are for convenience only and do not affect the interpretation of this Agreement.
- (2) the reference to a statute, or ordinance, code, legislation or law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them.
- (3) a schedule means a schedule to this Agreement.
- (4) words importing the singular include the plural and visa versa.
- (5) where a word is defined in this Agreement, other grammatical forms of that word have corresponding meanings.
- (6) a reference importing a natural person includes a corporation, association, governmental agency, department, Tribunal or body corporate.
- (7) the reference to a party means a party to this Agreement.

- (8) a reference to person or a party includes a reference to that persons or that party's executors, administrators, successses, substitute, substitutes and permitted assigns.
- (9) a reference to a law means any applicable law in force in the Commonwealth of Australia, a State or Territory and the common law.

3 Engagement and Term

- (1) The Tribunal engages the Consultant to perform the Services in accordance with this Agreement.
- (2) This Agreement will commence on the Commencement Date and will terminate on the Completion Date ("Term").
- (3) The Tribunal may, by written notice to the Consultant, extend the Term of this Agreement by a period specified in such notice and the Term shall be deemed to have been extended in accordance with the Tribunal's written notice.

4 Consultant's Obligations

- (1) The Consultant agrees to perform the Services under this Agreement in the manner, to the standard and by the time stipulated in this Agreement, particularly Schedule 3.
- (2) If the Consultant fails to perform any of the Services in the manner, to the standard or by the time stipulated in Schedule 3, each failure will be regarded as a breach of this Agreement and the Tribunal may, at its absolute discretion, do any of the following in relation to each failure of the Consultant:
 - (a) terminate this Agreement by notice in writing to the Consultant;
 - (b) vary the scope of the Services and Fees under the Agreement without the consent of the Consultant; or
 - (c) vary the Agreement in writing with the consent of the Consultant.
- (3) The Tribunal may exercise its rights to terminate the Agreement under clause 4(2) despite the fact that some of the Services required to be performed have not been performed or if the exercise of the Tribunal's rights will prevent their performance.
- (4) Clause 9 does not apply to a variation under clauses 4(2)(b) or 4(2)(c).
- (5) This clause does not purport to limit the grounds on which the Tribunal may otherwise be lawfully entitled to terminate this Agreement.

- (6) The Consultant must use its best endeavours to inform itself and to remain informed of the requirements of the Tribunal in performing the Services under this Agreement.
- (7) The Consultant must ensure that only the persons named in **Item 2 of Schedule 2** are engaged in the performance of the Services, unless agreed in writing with the Tribunal.
- (8) The Consultant accepts all responsibility for the secure guardianship of the Tribunal's Materials and must put in place all reasonable measures to ensure the security of the Tribunal's Materials.
- (9) The Consultant agrees that personal information collected, held or used for the purpose of performing the Services will be treated in accordance with the *Privacy and Person Information Protection Act 1998 (NSW)*.
- (10) The Consultant must not amend or alter the Tribunal's Materials or the Contract Material without the written consent of the Tribunal.
- (11) The Consultant must consult, co-operate and confer with the Tribunal and others as is necessary for the proper performance of this Agreement and as directed by the Tribunal.
- (12) The Consultant must obtain, at its cost, all necessary approvals, licences, permits and consents which may be required by law for the provision of the Services.
- (13) The person named in **Item 3 of Schedule 2** is responsible on behalf of the Consultant for the provision of the Services and is the initial point of contact for the Tribunal with the Consultant. Any substituted representative of the Consultant must have the prior written consent of the Tribunal.
- (14) The Consultant must not assign or sub-contract any part of the Services without the prior written consent of the Tribunal which consent may be withheld or given subject to conditions or unconditionally. If the Consultant desires to sub-contract any part of the Services it must provide the following information without which the Tribunal will not give its written consent to any assignment or sub-contracting proposed by the Consultant:
 - (a) the services to be provided by the sub-contractor and the need for retaining the sub-contractor;
 - (b) details of the sub-contractor;
 - (c) the fees proposed to be charged by the sub-contractor; and
 - (d) any other information the Tribunal may reasonably request.

- (15) The Consultant is engaged as an independent contractor and is not an employee or agent of the Tribunal for any purpose. The Consultant, its employees and agents must not represent that they or the Consultant are employees or agents of the Tribunal. The Consultant must not bind the Tribunal in any respect and has no authority to do so.
- (16) The Consultant must ensure the Services and all work done in connection with the Services, complies with all applicable laws, codes of conduct, directions and all relevant standards applicable to the Services.
- (17) Upon reasonable notice from the Tribunal the Consultant must provide access to the Consultant to allow the Tribunal to inspect, discuss or assess the provision of the Services.
- (18) If a report, paper or other document is required by the Services to be prepared or made available by the Consultant to the Tribunal, the Consultant must, unless otherwise directed by the Tribunal in writing, provide to the Tribunal:
 - (a) Two bound copies;
 - (b) One unbound copy; and
 - (c) an electronic copy in Word format readable in Word XP.

5 Tribunal's Obligations

- (1) The Tribunal will as soon as practicable, or as required by this Agreement
 - (a) make available to the Consultant so much of the Tribunal's Materials required for the performance of the Services; and
 - (b) liaise and assist the Consultant as reasonably required so that the Consultant may competently perform the Services under this Agreement.
- (2) The person named in **Item 4 of Schedule 2** or any other person the Tribunal nominates in writing, will act as the Tribunal's representative in connection with this Agreement and will be the initial point of contact for the Consultant with the Tribunal.

6 Fees and Expenses

- (1) In return for providing the Services, the Tribunal will pay the Consultant the Fee listed in **Item 6 of Schedule 2**.
- (2) The Tribunal may deduct from the Fee (and any associated GST) any amount due from the Consultant to the Tribunal in connection with the provision of the Services.
- (3) Payment, in part or in total, of the Fee under this Agreement does not constitute acceptance by the Tribunal of the Services and does not amount to a waiver of any rights either under this Agreement or at law which the Tribunal may otherwise have at any time against the Consultant.
- (4) The Tribunal will only reimburse the Consultant for Reimbursable expenses incurred by the Consultant under this Agreement for which the Consultant provides supporting receipts or other documents acceptable to the Tribunal.

7 Goods and Services Tax

- (1) Words defined in the GST Law have the same meaning in this clause, unless it is clear that a different meaning is intended.
- (2) The Consultant is solely responsible for all taxes duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement.
- (3) All Fees and prices are inclusive of Goods and Services Tax (GST) on the Services and any other supplies made under this Agreement to the extent they are taxable supplies within the meaning of the GST Law.
- (4) The consultant (and not the Tribunal) is responsible for payment to the Australian Tax Office of any GST collected from the Tribunal in respect of GST.
- (5) The Consultant must, within 20 days of request from the Tribunal, issue a tax invoice (or an adjustment note) to the Tribunal for any supply under or in connection with this Agreement.
- (6) The Consultant must promptly create an adjustment note for, apply to the Australian Tax Office for a refund, and refund to the Tribunal, any over payment by the Tribunal for GST. The Consultant's obligation to make a refund to the Tribunal arises as soon as the Consultant has received a refund or credit from the Australian Tax Office for any or all of the overpayment by the Tribunal of GST.

- (7) The Consultant must provide to the Tribunal:
 - (a) satisfactory evidence that it is registered for the purpose of GST; and
 - (b) its Australian Business Number.
- (8) Until it has provided its Australian Business Number to the Tribunal, the Tribunal is entitled to withhold from any payment made to the Consultant such amounts as are required for the Tribunal to comply with the provisions of the GST Law and related legislation.
- (9) If a payment to satisfy a claim or a right to claim in connection with this Agreement (for example a claim for damages for breach of contract) gives rise to a liability to pay GST the payer must also pay and indemnify the payee against the amount of that GST.
- (10) If a party to this Agreement has a claim in connection with this Agreement:
 - (a) for a cost on which that party must pay GST, the party's claim is for the cost plus all GST (except any GST for which that party is entitled to an input tax credit);
 - (b) and the amount of the claim depends upon an actual or estimated revenue or lost revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

8 Fees invoicing

- (1) The Consultant must lodge with the Tribunal an invoice for the Services performed (and for approved Reimbursable expenses, if any, incurred) at the times specified in **Item 7 of Schedule 2**.
- (2) The invoice must be in the form of a tax invoice and must specify;
 - (a) the Fee due to the Consultant and the basis of the calculation;
 - (b) the amount of GST payable, if any
 - (c) a description of the Services performed;
 - (d) appropriate receipts for Reimbursable expenses and an itemisation of the GST paid by the Consultant in respect of each of them; and
 - (e) any other information that the Tribunal may require or that may be required to comply with the requirements for a tax invoice under the GST Law.

- (3) The Tribunal may require that the Consultant provide clarification or further information regarding the invoice. Subject to this clause the Tribunal will pay the amount of the invoice:
 - (a) within 28 days of receiving the invoice; or
 - (b) if clarification or further information is sought under this clause – within 28 days of receiving clarification or the further information from the Consultant.
- (4) Subject to this clause, the total consideration payable will be the amount of the invoice less amounts already paid, and amounts the Tribunal is entitled to set off under clauses 6 or 7.
- (5) The Tribunal is entitled to withhold payment of an invoice, or part of it, if:
 - (a) the Consultant fails to clarify or provide further information within 7 days of a request under clause 8(3);
 - (b) the invoice is not a tax invoice or is otherwise manifestly incorrect ;or
 - (c) the Consultant has not performed the Services claimed to have been performed in its invoice as required by this Agreement to the reasonable satisfaction of the Tribunal.

9 Variations

- (1) The parties may vary or amend this Agreement as agreed by them.
- (2) No variation or amendment to this Agreement is binding on either party unless and until it is agreed in writing and signed by both the Tribunal and the Consultant.

10 Warranties and Indemnity by the Consultant

- (1) The Consultant warrants:
 - (a) it has the capacity to perform the Services;
 - (b) it will perform the Services in a diligent manner with all due care and skill;
 - (c) it will perform the Services in accordance with all express or implied representations or warranties made by the Consultant or by law;
 - (d) it is not aware of any matter that will prevent or restrict its ability to provide the Services;
 - (e) the Consultant's Proposal is accurate and not misleading or deceptive; and

- (f) its performance of clause 13 and the performance of every other person who enters into (or who is required to enter into) a confidentiality undertaking under clause 13.
- (2) The Consultant represents and warrants that at the Commencement Date no conflict of interest exists in its performance of the Services. If at any time the Consultant becomes aware of a conflict of interest or potential conflict of interest in it performing the Services, the Consultant warrants it will advise the Tribunal in writing of the circumstances of the conflict of interest or potential conflict of interest.
- (3) The Consultant agrees to indemnify and keep indemnified the Tribunal, its employees, agents or contractors from and against all actions, claims, costs, expenses and damages (including all legal costs) arising from:
 - (a) the performance of the Services by or on behalf of the Consultant;
 - (b) any acts, defaults or negligence of the Consultant, its employees, agents or sub-contractors;
 - (c) death, injury, loss or damage to the Consultant, its employees, agents, or sub-contractors or the property of any of them; and
 - (d) any breach of this Agreement by the Consultant its employees, agents or sub-contractors.
- (4) The warranties and indemnities in this clause will survive the expiration or termination of this Agreement.

11 Liability of the Tribunal

- (1) The Tribunal provides no representations or warranties in relation to this Agreement. The Tribunal excludes all express or implied warranties to the extent permitted by law.
- (2) Anything done by the Tribunal or a member of the Tribunal or any person acting under the direction of the Tribunal does not, if the thing was done in good faith for the purpose of performing this Agreement, subject the member or the person so acting personally to any action, liability, claim or demands.
- (3) The Tribunal will not be liable to the Consultant for any loss or damage of any kind (including loss of profits of the Consultant) that may arise from any act or omission including a negligent or wilful or reckless act of the Tribunal, its members, employees or agents.

12 Intellectual Property

- (1) The Consultant acknowledges the Tribunal is the owner or licensee of the Tribunal's Materials and the Consultant must use the Tribunal's Materials only for the purposes of this Agreement unless it has obtained the prior written approval of the Tribunal to do otherwise.
- (2) Subject to clause 12(3), ownership of Intellectual Property in or in relation to the Contract Material vests upon creation in the Tribunal. The Consultant must, at its own cost, do all things necessary to vest ownership and title of the Intellectual Property in the Tribunal.
- (3) If ownership of or title in Intellectual Property in relation to Contract Material is not capable of being vested in the Tribunal under clause 12(2) because the Consultant does not own that Intellectual Property, the Consultant must at its own cost use its best endeavours to ensure the owner of the Contract Material grants the Tribunal an irrevocable royalty free licence to use that Contract Material or that Intellectual Property in a manner and for the period as is reasonably required by the Tribunal.
- (4) The Consultant must ensure all licence fees and consents required under law are obtained and paid by the Consultant as a result of any reproduction, adaptation or use of any Intellectual Property or Contract Material necessary for the provision of the Services.
- (5) Upon completion of the Services or termination of this Agreement, if the Tribunal requests the consultant to do so, the Consultant must deliver to the Tribunal as soon as practicable all Contract Material and the Tribunal's Materials.
- (6) Subject to the Consultant complying with clause 13 in respect of the Contract Material, Clause 12(5) does not operate to prevent the Consultant from keeping a bona fide copy of the Contract Material solely for its internal records.

13 Confidential Information

- (1) In this clause, "Confidential Information" means:
 - (a) the Tribunal's Materials;
 - (b) the Contract Materials;
 - (c) any information marked confidential or information which the Tribunal stipulates (in writing or otherwise) is information of a confidential nature or which may reasonably be understood to be of a confidential nature; and
 - (d) any information in connection with the Services or this Agreement.

- (2) The Consultant agrees it will:
 - (a) not disclose the Confidential Information other than as permitted by this clause;
 - (b) not make use of or take advantage of the Confidential Information for any purpose other than for the purpose of performing the Services;
 - (c) ensure the Confidential Information in its possession is kept confidential and protected against unauthorised use or access;
 - (d) return to the Tribunal on request from the Tribunal any copies of Confidential Information in the possession of the Consultant or its employees; and
 - (e) procure the return to the Tribunal on request from the Tribunal of any copies of Confidential Information in the possession of any third party who obtained the Confidential Information from the Consultant or its employees.
- (3) The obligation of confidentiality in this clause does not extend to Confidential Information:
 - (a) already in the public domain, other than as a result of a breach of this Agreement; or
 - (b) required to be disclosed by law.
- (4) Subject to clause 13(5), the Consultant may disclose Confidential Information:
 - (a) to its employees, solely for the purposes of performing the Services; or
 - (b) to any other person, solely for the purposes of performing the Services and subject to the Consultant first obtaining the written approval of the Tribunal. The Tribunal may give its approval subject to conditions.
- (5) Before making a disclosure of Confidential Information under clause 13(4) the Consultant must first obtain from the person who is to receive the Confidential Information a confidentiality undertaking in the form of **Schedule 1** of this Agreement and comply with any other reasonable requirements of the Tribunal.
- (6) The Consultant agrees that a breach of this clause by the Consultant, its employees or any other person who obtains Confidential Information from the Consultant may cause the Tribunal irreparable harm and for which damages may not be an adequate remedy. The Consultant agrees to take no exception to the Tribunal seeking such equitable relief as the Tribunal deems appropriate to remedy a breach of this clause in addition to any legal remedies the Tribunal may seek.

- (7) The obligations of confidentiality in this clause survive the expiration or termination of this Agreement.

14 Insurance

- (1) The Consultant must hold and maintain a policy of professional liability and indemnity insurance with a reputable insurer for an amount of \$10 million (or if there is an alternative amount specified at **Item 8 (a) of Schedule 2** of this Agreement, that amount) in respect of any single occurrence, on terms approved by the Tribunal (which approval will not be unreasonably withheld) for the Term of this Agreement and for a period of 3 months after the Term of this Agreement.
- (2) The Consultant must maintain a suitable and adequate workers compensation insurance policy with a reputable insurer, in accordance with any relevant legislation for the Term of this Agreement.
- (3) The Consultant must maintain a policy of public liability insurance with a reputable insurer in terms approved by the Tribunal (which approval will not be unreasonably withheld) for the Term of this Agreement and a period of 3 months after the Term of this Agreement.
- (4) The public liability insurance policy must be for an amount not less than \$10 million (or if there is an alternative amount specified at **Item 8 (b) of Schedule 2** of this Agreement, that amount) in respect of any single occurrence on terms approved by the Tribunal (which approval will not be unreasonably withheld) for the Term of this Agreement and for a period of 3 months after the Term of this Agreement.
- (5) Prior to commencing the Services, or on request by the Tribunal, the Consultant must provide the Tribunal with certificates of currency of all insurance required to be maintained by the Consultant under this Agreement.

15 Records and audit

- (1) The Consultant must keep proper accounts, records and timesheets (including information stored by computer and other devices) in accordance with current Australian accounting principles in respect of Fees, charges, billing, and Reimbursable expenses payable under this Agreement and that data, information and records relating to this Agreement or its performance are maintained in such a form and manner as to facilitate access and inspection under this clause.

- (2) Within a reasonable time of any request by the Tribunal, the Consultant must give the Tribunal access to, or provide to the Tribunal verified copies of, any information the Tribunal may reasonably require to allow any Fees, charges, billing or Reimbursable expenses to be substantiated or verified.
- (3) For the purposes of this clause 15, the Consultant must grant, and where relevant must ensure that its subcontractors grant, the Tribunal and its nominees access as required by the Tribunal, to the Consultant's premises and data, records, accounts and other financial material or material relevant to the performance of this Agreement.
- (4) In the case of documents or records stored on a medium other than in writing, the Consultant must make available on request at no additional cost to the Tribunal such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (5) The Consultant must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 15 with respect to the subcontractor's premises, data, records, accounts, financial material and information of its personnel.
- (6) At its absolute discretion the Tribunal may audit:
 - (a) the accounts, records and timesheets (including information stored by computer and other devices) of the Consultant to satisfy itself that the Fees, charges, billings or Reimbursable expenses paid or payable by the Tribunal to the Consultant have been calculated, incurred or paid by the Consultant in accordance with the provisions of this Agreement;
 - (b) any other matters reasonably determined by the Tribunal to be relevant to the performance of the Consultant's obligations under this Agreement.
- (7) The Consultant must participate promptly and cooperatively in any audits conducted by the Tribunal or its nominee.
- (8) Subject to any express provisions in this Agreement to the contrary, each party must bear its own costs associated with any audits.
- (9) The requirement for, and participation in, audits does not in any way reduce the Consultant's responsibility to perform its obligations in accordance with this Agreement.
- (10) The Tribunal must use reasonable endeavours to ensure that audits do not unreasonably delay or disrupt the Consultant's performance of its obligations under this Agreement in any material respect.
- (11) The Consultant must promptly take, at no additional cost to the Tribunal, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Consultant has:

- (a) provided the Services; or
 - (b) calculated Fees, charges, Reimbursable expenses or any other amounts, billed to the Tribunal.
- (12) This clause 15 survives the termination of this Agreement.

16 Termination

- (1) The Tribunal may terminate this Agreement immediately by written notice to the Consultant if the Consultant:
- (a) being a partnership, company, trust or other body undergoes a change in its structure which in the reasonable opinion of the Tribunal limits the ability of the Consultant to perform the Services; or
 - (b) being a company, trust or other body goes into liquidation or a receiver or receiver and manager or voluntary administrator or mortgagee's or chargee's agent is appointed to any part of its business or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual becomes bankrupt or enters into a scheme or arrangement with creditors.
- (2) The Tribunal may terminate this Agreement immediately by written notice to the Consultant if:
- (a) the Minister gives the Tribunal a direction requiring that it terminate the Agreement; or
 - (b) the Agreement or the Tribunal's rights and obligations under the Agreement conflict with any statutory duties owed by the Tribunal or is contrary to law.
- (3) If the Consultant:
- (a) fails to perform any part of the Services as required by this Agreement;
 - (b) without the consent of the Tribunal suspends the carrying out of the Services; or
 - (c) breaches any term of this Agreement, regardless of the nature of the term or the extent of the breach;

the Tribunal may send a written notice to the Consultant to remedy the default to the satisfaction of the Tribunal within 14 days (or such longer period as the Tribunal may specify) from the date of service of the notice by the Tribunal on the Consultant specifying the default and the action required by the Tribunal to remedy the default.

- (4) If the Consultant does not remedy the default as required by clause 16(3) and within the period specified in the written notice, the Tribunal may terminate this Agreement immediately.
- (5) If the Tribunal no longer requires performance of the whole or part of the Services the Tribunal may terminate the performance of the whole or part of the Services at any time by providing the Consultant with written notice of the extent of the termination of the Services and the Tribunal will not be liable for any claim for damages by reason of the termination of the whole or part of the Services.
- (6) If the Tribunal:
 - (a) fails to pay the Fee to the Consultant (other than in the circumstances permitted by this Agreement), or
 - (b) commits a substantial breach of this Agreement,the Consultant may send a written notice addressed to the Tribunal to remedy the default to the satisfaction of the Consultant within 14 days (or such longer period as the Tribunal may specify) from the date of service of the notice by the Consultant on the Tribunal specifying the default and the action required by the Consultant to remedy the default.
- (7) If the Tribunal does not remedy the default as required by clause 16(6) and within the period specified in the written notice, the Consultant may terminate this Agreement immediately.
- (8) The Tribunal will pay the Consultant for the Services performed by the Consultant as at the date of termination but will not otherwise be liable to the Consultant for that termination.
- (9) Subject to clause 16(5), termination by either party does not release either party from liability in respect of any breach of, nor non-performance of any obligation under this Agreement. This clause does not purport to limit the grounds on which either party may otherwise be lawfully entitled to terminate this Agreement. Termination of this Agreement by either party is without prejudice to any accrued rights or remedies of each party.

17 Dispute resolution

- (1) The Consultant and the Tribunal will endeavour to resolve any dispute speedily by negotiation. If a dispute between the Consultant and the Tribunal is not resolved by negotiation, the parties may agree to (but are not obliged to) submit the dispute to mediation prior to commencing proceedings in a court or tribunal. The parties agree to share equally in the costs of the mediation.
- (2) If the parties agree to submit the dispute to mediation, they will cooperate with each other and the mediator (including by providing

documents and information) to ensure the timely and efficient resolution of the dispute.

- (3) Each party must continue to perform its obligations under this Agreement, despite the existence of a dispute.

18 Severability

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

19 Discontinuance by Tribunal

Subject to any contrary legislative intention:

- (a) if any party is reconstituted, renamed or replaced or if its powers or functions are transferred to another entity, this Agreement is deemed to refer to that new entity; and
- (b) if any party ceases to exist, this Agreement is deemed to refer to that entity which serves substantially the same purpose or object as the former entity.

20 No Assignment

The Consultant must not assign its rights under this Agreement without the consent of the Tribunal. The Tribunal may withhold its consent in its absolute discretion or give its consent unconditionally or subject to such conditions as it may require.

21 Entire Agreement

This document and its schedules constitutes the entire agreement between the Tribunal and the Consultant in relation to the Services.

22 Notices

- (1) The addresses of the parties for purposes of giving any notice is set out in **Item 9 of Schedule 2** or as may from time to time be specified in writing by the parties. All notices or documents to be served or delivered under this Agreement may be served or delivered by delivering them or sending them by pre-paid post, pre-paid courier or by facsimile.
- (2) A notice or document will be taken to have been delivered or served as follows:
 - (a) in the case of delivery in person, when delivered;
 - (b) in the case of delivery by post, two working days after the date of posting;

- (c) in the case of facsimile transmission, on receipt by the sender of a transmission report from the senders facsimile machine showing that the facsimile has been successfully transmitted.

23 Applicable law

The Agreement will be subject to and construed in accordance with the laws of New South Wales and the Commonwealth of Australia and the parties submit to the jurisdiction of the courts of New South Wales and the Commonwealth of Australia.

Schedule 1 Confidentiality Undertaking

1. I have been provided with, and have read clause 13 of the Consultancy Agreement ("Agreement") between parties described as the "Tribunal" and the "Consultant" and which **annexed**.
2. I accept as a condition of my employment with the Consultant, or my engagement by the Consultant to assist in the provision of the Services, as the case may be, that I am bound by clause 13 of the Agreement as if I was the Consultant.
3. I acknowledge clause 13 of the Agreement prevents the Consultant from disclosing Confidential Information to any person unless that person first signs a Confidentiality Undertaking.
4. I have been requested by the Consultant to assist the Consultant in connection with the Services and I will require access to the Confidential Information. The Consultant has requested, and I have agreed, to sign this Confidentiality Undertaking.
5. I agree to use the Confidential Information to assist the Consultant in connection with the Services and for no other purpose. I will maintain the confidentiality of the Confidential Information and will not disclose it to any person unless that person has also signed a Confidentiality Undertaking in the form of this document.
6. I will return the Confidential Information immediately upon completion of my employment with the Consultant, my engagement by the Consultant to assist in the provision of the Services or my involvement in the Services (as the case may be), or upon request by the Consultant.
7. I understand that if I breach this Confidentiality Undertaking, I will be liable to the Consultant for that breach and the Consultant will also be liable to the Tribunal for that breach.
8. By signing this Confidentiality Undertaking, I acknowledge the seriousness of the commitments I make and which I now bind myself to perform.

Signed by the person providing this undertaking, in the presence of a witness:

Dated

Signature of witness

Signature of person making the undertaking

Name of signatory

Annexure to Confidentiality Undertaking

13 Confidential Information

- (1) In this clause, "Confidential Information" means:
 - (a) the Tribunal's Materials;
 - (b) the Contract Materials;
 - (c) any information marked confidential or information which the Tribunal stipulates (in writing or otherwise) is information of a confidential nature or which may reasonably be understood to be of a confidential nature; and
 - (d) any information in connection with the Services or this Agreement.
- (2) The Consultant agrees it will:
 - (a) not disclose the Confidential Information other than as permitted by this clause;
 - (b) not make use of or take advantage of the Confidential Information for any purpose other than for the purpose of performing the Services;
 - (c) ensure the Confidential Information in its possession is kept confidential and protected against unauthorised use or access;
 - (d) return to the Tribunal on request from the Tribunal any copies of Confidential Information in the possession of the Consultant or its employees; and
 - (e) procure the return to the Tribunal on request from the Tribunal of any copies of Confidential Information in the possession of any third party who obtained the Confidential Information from the Consultant or its employees.
- (3) The obligation of confidentiality in this clause does not extend to Confidential Information:
 - (a) already in the public domain, other than as a result of a breach of this Agreement; or
 - (b) required to be disclosed by law.
- (4) Subject to clause 13(5), the Consultant may disclose Confidential Information:
 - (a) to its employees, solely for the purposes of performing the Services; or
 - (b) to any other person, solely for the purposes of performing the Services and subject to the Consultant first obtaining the written approval of the Tribunal. The Tribunal may give its approval subject to conditions.
- (5) Before making a disclosure of Confidential Information under clause 13(4) the Consultant must first obtain from the person who is to receive the Confidential Information a confidentiality undertaking in the form of Schedule 1 of this Agreement and comply with any other reasonable requirements of the Tribunal.
- (6) The Consultant agrees that a breach of this clause by the Consultant, its employees or any other person who obtains Confidential Information from the Consultant may cause the Tribunal irreparable harm and for which damages may not be an adequate remedy. The Consultant agrees to take no exception to the Tribunal seeking such equitable relief as the Tribunal deems appropriate to remedy a breach of this clause in addition to any legal remedies the Tribunal may seek.
- (7) The obligations of confidentiality in this clause survive the expiration or termination of this Agreement.

Schedule 2 Items

Item 1: Name and address of Consultant

Item 2: Consultant's Personnel

Item 3: Consultant's Representative

Item 4: Tribunal's Representative

Item 5: Completion Date

This Agreement ends:

- (a) on completion of the Services by the Consultant, or
- (b) on **[specify date]** unless extended as provided for in the Agreement,
(the "**Completion Date**")

Item 6: Fee payable to Consultant (including GST)

Item 7: Date(s) for submitting Fee invoices

Item 8: Insurance

- (a) The agreed amount of professional indemnity insurance per single occurrence under clause 14(1) is \$10 million.
- (b) The agreed amount of public liability insurance per single occurrence under clause 14(4) is \$10 million.

Item 9: Notices

Tribunal The Chief Executive Officer
Independent Pricing and Regulatory Tribunal of New South Wales
Level 2
44 Market Street
Sydney 2000

Ph: (02) 9290 8484

Fax: (02) 9290 2061

Consultant (Insert details)

Schedule 3 Services

Services to be performed	Date by which Services must be performed

Signed as an Agreement.

Signed for and on behalf of
the **Tribunal** by a duly authorised
person, in the presence of a witness:

Signature of witness

Signature

Name of signatory

THE COMMON SEAL of the
Consultant was affixed by resolution
of its Board of Directors:

Signature of Director

Signature of Secretary

Name of Director
OR

Name of Secretary

Signed by the **Consultant** in
the presence of a witness

Signature of witness

Signature

Name of signatory

Date of Agreement _____