

## Notice To All Intending Tenderers

This Notice To All Intending Tenderers must be read in conjunction with the Request for Tender ("RFT") for Total Cost Review of Sydney Ferries.

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 T1/2011  
("RFT Reference")**

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**Total cost review of Sydney Ferries**

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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.

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## 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.

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## 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.

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#### 4. Format of Tender

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

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#### 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](mailto: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 8  
1 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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.



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### **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.

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### **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.

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### **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.

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### **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.

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### **17. Contact of Referees**

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

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### **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## 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.

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## 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.

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## 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.

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## 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.

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### **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.

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### **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.

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### **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.

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### **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.

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### **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.

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### **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

#### Overview of Services

The Tribunal is seeking to engage a suitably qualified consultant to provide assistance in, and prepare a report, estimating the efficient costs of providing contracted ferry services on the routes operated by Sydney Ferries and to forecast efficient operating and capital costs for each of the five financial years 2011/2012 to 2015/16 (inclusive).

In the process of establishing efficient costs, the consultant should:

- identify causes of cost inefficiency
- identify technical, managerial constraints or Government policy that may prevent Sydney Ferries achieving efficient costs
- indicate a transition strategy that would enable Sydney Ferries to move toward a more efficient cost structure
- identify opportunities for patronage growth and changes to timetabling/ services to drive cost efficiencies.

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.

A reference to 'consultant' in this Schedule is a reference to a tenderer appointed in accordance with this Request for Tender.

We note that the NSW Government will franchise the operations of Sydney Ferries and that a new private sector operator will be appointed. IPART determines maximum fares for Sydney Ferries which will apply to services operated by Sydney Ferries.

#### Output

The consultant's output and involvement is to include the following:

Key output	Description
A draft methodology paper Due date: 23 June 2011	The report will provide a detailed outline of the consultant's approach for each component of the consultancy including the consultant's approach to estimating efficient operating and capital costs (ex-GST)

	<p>In particular, the draft methodology will detail the consultant's approach to :</p> <ul style="list-style-type: none"> <li>• Undertaking relevant benchmarking of Sydney Ferries' costs. Benchmarking should include the two private operators who provide fast ferry services between Circular Quay and Manly (without subsidy and at prices equal to or below current Sydney ferry fares)</li> <li>• Identifying opportunities for patronage growth and changes to timetabling/services to drive cost efficiencies.</li> </ul> <p>The consultant will ensure that it provides appropriate reasons for its choice of methodology(ies).</p> <p>The consultant will be required to present the draft methodology report to the Tribunal for its approval.</p>
<p>A confidential draft report Due date: 20 July 2011</p>	<p>The confidential draft report will:</p> <ul style="list-style-type: none"> <li>• recommend forecast efficient operating and capital costs for Sydney Ferries for the five financial years to 2015/16;</li> <li>• clearly identify cost performance against other relevant providers; and</li> <li>• recommend additional cost efficiencies associated with opportunities for patronage growth and changes to timetabling/services.</li> </ul> <p>The consultant will be required to present the confidential draft report to the Tribunal.</p> <p>The consultant may be required to present the draft report to other key stakeholders (subject to confidentiality requirements).</p>
<p>A final report (public version and confidential version) Due date: 31 August 2011</p>	<p>The report must incorporate the Tribunal's comments on the draft report and set out final assumptions and recommendations.</p>

**Output requirements**

In preparing the methodology report and the draft and final report, the consultant is required to:

- Ensure that its findings are consistent with the final report of the Tribunal's review of Regulatory tests of past and future capital expenditure. This includes a summary in flow chart form of processes, tests and information requirements for assessments of capital expenditure.
- Undertake consultation with Department of Transport, Sydney Ferries and other relevant stakeholders. The Secretariat will facilitate initial contact with key personnel. The consultant will outline a strategy for ongoing stakeholder engagement.
- Provide benchmarking analysis with the 2 private operators of the Manly fast ferries and any other relevant Australian ferry operators and comparable relevant international services.
- Provide to the Tribunal a 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.
- Present all data ex-GST.

In preparing the draft report and final report, the consultant is required to:

- Estimate efficient costs based on the current operator of Sydney Ferries efficiently meeting its contract obligations including safety, reliability and other service benchmarks using its existing fleet (business as usual).
- Estimate efficient costs where the current operator can procure new fleet efficiently either through purchase or leasing arrangements and increase patronage via improved service levels/timetabling and route design.
- Quantify the size of any 'cost efficiency gap' (that is, the difference between efficient costs and current costs).
- Identify a transition path, incorporating a suite of tangible measures that are capable of being implemented, which may enable Sydney Ferries to move from its present cost structure towards an efficient cost structure over the medium term (five years). In identifying a transition path, the consultant will:
  - provide a list of cost saving measures and estimates that indicate the potential cost saving associated with each measure;
  - indicate how each cost saving estimate was calculated; and
  - indicate the amount of capital and operating expenditure required in each of the five years under the transition path.

- Estimate the fixed costs of operating a Sydney ferry and the variable costs of operating a Sydney ferry.
- Based on its consultation with Sydney Ferries and other relevant stakeholders, the consultant will identify:
  - any causes of inefficiency
  - technological, managerial or Government policy constraints on Sydney Ferries moving toward efficiency, and
  - the scope for improving Sydney Ferries' cost efficiency over the short, medium and long term given its existing constraints
  - the scope for increasing patronage through changes to timetables and the network.

### **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 Sydney Ferries and the Department of Transport throughout the project.

The consultant must also attend Tribunal meetings as required, to discuss the issues addressed in the reports and participate in relevant forums held by the Tribunal (for example, the consultant may 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 weekly updates to the Secretariat. The consultant will also inform the Secretariat of meetings between it and Sydney Ferries and the Department of Transport. A member of the Secretariat will attend such meetings.

### **Items to be addressed in tenderer's tender documents**

#### **Approach**

- The proposed methodology, explaining the tenderer's reasoning behind the approach.
- Discussion of data requirements and any data held by the tenderer to facilitate its work including identifying any additional data requirements the tenderer will need to undertake this consultancy and any instances where lack of data may inhibit it from delivering parts of its offer.

- Discussion on issues that will require input and decision by the Tribunal.
- The tenderer’s view on how its approach compares to previous work undertaken in other jurisdictions or other industries.
- How the tenderer proposes to validate its conclusions and/or recommendations.
- Details of the tenderer’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 tenderer must demonstrate that each member of the proposed team has expertise in undertaking cost reviews of major infrastructure and or utility service providers. Preferably, members of the tenderer’s team should have experience in both infrastructure cost reviews and technical or operational matters relating to regular passenger ferry services.

**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.

**Table Error! No text of specified style in document..1 Indicative timetable**

<b>Work item</b>	<b>Date</b>
Issue RFT	11 May 2011
Tenders from potential consultants due	31 May 2011
Select consultant	3 June 2011
Consultant begins work	6 June 2011
Draft methodology paper due	23 June 2011
Consultant draft report due	27 July 2011
Consultant final report due	31 August 2011

\* 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 date for tenders**

Tenders to this RFT must be lodged with the Tribunal by no later than **5pm** on 31 May 2011 ("**Closing Date**").

**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	<b>Fiona Towers</b> Independent Pricing and Regulatory Tribunal of NSW
Telephone	(02) 9290 <b>8420</b>
Facsimile	(02) 9290 2061
Address	Level 8 1 Market Street SYDNEY NSW 2000

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**Schedule 2 Tenderer Information**

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

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## **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.

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;



- (c) the total cost to the Tribunal of the performance of the Services by the tenderer;
- (d) any other matters the Tribunal considers appropriate.

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**Schedule 4 Form of Consultancy Agreement**



**Consultancy Agreement**

**Dated "[eg, 12 June 2007]"**

Independent Pricing and Regulatory Tribunal  
of New South Wales ("**IPART**")

**And**

**"[ name of Consultant]" ("**Consultant**")**

**"[ insert title of Consultancy]"**

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Engagement and Term</b>	<b>2</b>
<b>2 Consultant's Obligations</b>	<b>2</b>
<b>3 IPART's Obligations</b>	<b>4</b>
<b>4 Fees and Expenses</b>	<b>4</b>
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<b>12 Insurance</b>	<b>10</b>
<b>13 Records and audit</b>	<b>10</b>
<b>14 Termination</b>	<b>12</b>
<b>15 Dispute resolution</b>	<b>14</b>
<b>16 Severability</b>	<b>14</b>
<b>17 Discontinuance by IPART</b>	<b>14</b>
<b>18 No Assignment</b>	<b>14</b>
<b>19 Entire Agreement</b>	<b>14</b>
<b>20 Notices</b>	<b>15</b>
<b>21 Applicable law</b>	<b>15</b>
<b>22 Definitions</b>	<b>15</b>

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<b>23</b>	<b>Interpretation</b>	<b>16</b>
	<b>Schedule 1 - Confidentiality Undertaking</b>	<b>18</b>
	<b>Schedule 2 - Items</b>	<b>20</b>
	<b>Schedule 3 - Services</b>	<b>22</b>
	<b>Schedule 4 - Amendments to this Consultancy Agreement</b>	<b>23</b>
	<b>Signing page</b>	<b>24</b>

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# Details

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## Parties

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Name	<b>Independent Pricing and Regulatory Tribunal of New South Wales</b> , a body corporate established under the <i>Independent Pricing and Regulatory Tribunal Act 1992</i> (“ <b>IPART</b> ”).
Address	P.O. Box Q290 QVB Post Office, NSW 1230 Level 8, 1 Market Street, Sydney NSW 2000
Telephone	02 9290 8400
Fax	02 9290 2061

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Name	<b>[#3 Insert details of consultant]</b> <b>(“Consultant”)</b>
ABN/ACN/ARBN	
Address	
Telephone	
Fax	
Attention	

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**Date of Agreement** "[eg 12 June 2007]"

# General terms

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## 1 Engagement and Term

- (a) IPART engages the Consultant to perform the Services in accordance with this Agreement.
- (b) This Agreement will commence on the Commencement Date and will terminate on the Completion Date.
- (c) IPART 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 IPART's written notice.

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## 2 Consultant's Obligations

- (a) 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.
- (b) The Consultant must use its best endeavours to inform itself and to remain informed of the requirements of IPART in performing the Services under this Agreement.
- (c) The Consultant must ensure that only the Consultant's Personnel are engaged in the performance of the Services, unless agreed in writing with IPART. If any of the Consultant's Personnel cease employment with the Consultant, the Consultant must notify IPART in writing.
- (d) The Consultant accepts all responsibility for the secure guardianship of IPART's Materials and the Contract Material and must put in place all reasonable measures to ensure the security of IPART's Materials and the Contract Material.
- (e) 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)*.
- (f) The Consultant must not amend or alter IPART's Materials or, other than in the ordinary course of its creation, the Contract Material without the written consent of IPART.
- (g) The Consultant must consult, co-operate and confer with IPART and others as is necessary for the proper performance of this Agreement and as directed by IPART.

- (h) 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.
- (i) The Consultant's Representative is responsible on behalf of the Consultant for the provision of the Services and is the initial point of contact for IPART with the Consultant. Any substituted representative of the Consultant must have the prior written consent of IPART.
- (j) The Consultant must not assign or sub-contract any part of the Services without the prior written consent of IPART. Such consent may be withheld, given subject to conditions or given unconditionally. IPART will not consider whether it will consent to any assignment or sub-contracting proposed by the Consultant until the Consultant provides the following information:
  - (i) the services proposed to be provided by the sub-contractor and the reason for retaining the sub-contractor;
  - (ii) details of the sub-contractor;
  - (iii) the fees proposed to be charged by the sub-contractor; and
  - (iv) any other information IPART may reasonably request.
- (k) The Consultant is engaged as an independent contractor and is not an employee or agent of IPART for any purpose. The Consultant, its employees and agents must not represent that they or the Consultant are employees or agents of IPART. The Consultant must not attempt to bind IPART in any respect and has no authority to do so.
- (l) 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.
- (m) Upon reasonable notice from IPART the Consultant must provide access to the Consultant to allow IPART to inspect, discuss or assess the provision of the Services.
- (n) If as part of the Services, a report, paper or other document is required to be prepared or made available by the Consultant to IPART, the Consultant must, unless otherwise directed by IPART in writing, provide to IPART:
  - (i) two bound copies;
  - (ii) one unbound copy; and
  - (iii) an electronic copy in Word format readable in Microsoft Word 2003.



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### **3 IPART's Obligations**

- (a) IPART will as soon as practicable, or as required by this Agreement:
  - (i) make available to the Consultant any materials reasonably required by the Consultant for the performance of the Services; and
  - (ii) liaise with and assist the Consultant as reasonably required so that the Consultant may competently perform the Services under this Agreement.
- (b) IPART's Representative will be the initial point of contact for the Consultant with IPART in connection with this Agreement. Provided it does so in writing, IPART may nominate another person to be the IPART Representative.

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### **4 Fees and Expenses**

- (a) In return for providing the Services, IPART will pay the Consultant the Fee.
- (b) IPART may deduct from the Fee (and any associated GST) any amount due from the Consultant to IPART in connection with the provision of the Services.
- (c) Payment, in part or in total, of the Fee under this Agreement does not constitute acceptance by IPART of the Services and does not amount to a waiver of any rights either under this Agreement or at law, which IPART may otherwise have at any time against the Consultant.
- (d) IPART will reimburse the Consultant for Reimbursable Expenses incurred by the Consultant under this Agreement, provided that the Consultant provides supporting receipts or other documents acceptable to IPART. IPART will not reimburse the Consultant for any other expenses.

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### **5 Goods and Services Tax**

- (a) Words and expressions which are defined in the GST Law have the same meaning in this clause 5 as in the GST Law, unless indicated to the contrary.
- (b) 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.
- (c) Unless expressly stated otherwise, the Fee and all other consideration to be provided under this Agreement is expressed on a GST inclusive basis
- (d) The Consultant (and not IPART) is responsible for payment to the Australian Tax Office of any GST collected from IPART.

- (e) The Consultant must, issue a Tax Invoice (or an adjustment note) to IPART in respect of the Consultant's supply of services at or before the time that the consideration for the supply is to be provided under this Agreement.
- (f) If an adjustment event arises which reduces the GST payable by the Consultant on its supply of the services, the Consultant must issue an adjustment note and repay to IPART an amount equal to the amount by which the Consultant's GST liability is reduced as soon as the Consultant becomes aware of the adjustment event.
- (g) The Consultant must provide to IPART:
  - (i) satisfactory evidence that it is registered for the purpose of GST; and
  - (ii) its Australian Business Number.
- (h) Until it has provided its Australian Business Number to IPART, IPART is entitled to withhold from any payment made to the Consultant such amounts as are required for IPART to comply with the provisions of the GST Law and related legislation.
- (i) 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.
- (j) If a party to this Agreement has a claim in connection with this Agreement:
  - (i) 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);
  - (ii) 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).

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## **6 Fees invoicing**

- (a) The Consultant must invoice IPART for the Services performed (and for approved Reimbursable Expenses, if any, incurred) at the times specified in **Item 6 of Schedule 2**.
- (b) The invoice must be in the form of a Tax Invoice and must specify:
  - (i) the amount due to the Consultant and the basis of the calculation;
  - (ii) the amount of GST payable, if any;
  - (iii) a description of the Services performed;

- (iv) any amounts claimed as Reimbursable Expenses and an itemisation of the GST paid by the Consultant in respect of each of them (copies of appropriate receipts for any Reimbursable Expenses claimed should accompany the invoice); and
  - (v) any other information that IPART may require or that may be required to comply with the requirements for a Tax Invoice.
- (c) IPART may require that the Consultant provide clarification or further information regarding the invoice. Subject to this clause, IPART will pay the amount of the Tax Invoice:
- (i) within 28 days of receiving the Tax Invoice; or
  - (ii) if clarification or further information is sought under this clause – within 28 days of receiving clarification or the further information from the Consultant.
- (d) Subject to this clause, the total consideration payable will be the amount of the invoice less amounts already paid, and amounts IPART is entitled to set off under clauses 4 or 5.
- (e) IPART is entitled to withhold payment of a Tax Invoice, or part of it, if:
- (i) the Consultant fails to clarify or provide further information within 7 days of a request under clause 6(c);
  - (ii) the invoice is not a Tax Invoice;
  - (iii) the invoice is manifestly incorrect; or
  - (iv) the Consultant has not performed the Services as required by this Agreement to the reasonable satisfaction of IPART.

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## **7 Variations**

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

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## **8 Warranties and Indemnity by the Consultant**

- (a) The Consultant warrants:
  - (i) it has the capacity to perform the Services;
  - (ii) it will perform the Services in a diligent manner with all due care and skill;

- (iii) it will perform the Services in accordance with all express or implied representations or warranties made by the Consultant or implied at law;
  - (iv) it is not aware of any matter that will prevent or restrict its ability to provide the Services;
  - (v) the use, adaptation, reproduction or publication by IPART of the Contract Material will not infringe the Intellectual Property of any third party; and
  - (vi) the Consultant's Proposal is accurate and not misleading or deceptive.
- (b) 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 undertakes immediately to advise IPART in writing of the existence of the conflict of interest or potential conflict of interest.
- (c) The Consultant indemnifies, and shall keep indemnified, IPART, its employees, agents or contractors from and against all actions, claims, costs, expenses and damages (including all legal costs) arising from:
- (i) any negligent acts, defaults or wilful misconduct of the Consultant, its employees, agents or sub-contractors;
  - (ii) death, injury, loss or damage to the Consultant, its employees, agents, or sub-contractors or the property of any of them; and
  - (iii) any breach of clause 11 of this Agreement by the Consultant its employees, agents or sub-contractors.
- (d) The warranties and indemnities in this clause will survive the expiration or termination of this Agreement.

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## **9 Liability of IPART**

IPART provides no representations or warranties in relation to this Agreement. IPART excludes all express or implied warranties to the extent permitted by law.

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## **10 Intellectual Property**

- (a) The Consultant acknowledges that IPART is the owner or licensee of IPART's Materials and any Intellectual Property therein and the Consultant must use IPART's Materials and any Intellectual Property therein only for the purposes of this Agreement unless it has obtained the prior written approval of IPART to do otherwise.

- (b) Subject to clause 10(c), ownership of Intellectual Property in or in relation to the Contract Material vests upon creation in IPART. At IPART's request the Consultant must, at its own cost, do all things necessary, including executing documents, to vest ownership of and title to the Intellectual Property in IPART.
- (c) If ownership of, or title in, the Intellectual Property in or in relation to the Contract Material is not capable of being vested in IPART under clause 10(b) because the Consultant would not, in the absence of clause 10(b), own that Intellectual Property, the Consultant must at its own cost ensure the owner of any Intellectual Property in or in relation to the Contract Material grants IPART an irrevocable royalty free licence to use, adapt, reproduce or publish that Contract Material in a manner and for the period as is reasonably required by IPART.
- (d) The Consultant must ensure that all licence fees and consents required under law are obtained and paid by the Consultant as may be required for any publication, reproduction, adaptation or use of any Contract Material necessary for the provision of the Services.
- (e) Upon completion of the Services or termination of this Agreement, if IPART requests the Consultant to do so, the Consultant must deliver to IPART as soon as practicable all Contract Material and IPART's Materials.
- (f) Subject to the Consultant complying with clause 11 in respect of the Contract Material, clause 10(e) does not operate to prevent the Consultant from keeping a bona fide copy of the Contract Material solely for its internal records.

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## **11 Confidential Information**

- (a) In this clause, "Confidential Information" means:
  - (i) IPART's Materials;
  - (ii) the Contract Material;
  - (iii) any information marked confidential or information which IPART stipulates (in writing or otherwise) is information of a confidential nature or which may reasonably be understood to be of a confidential nature; and
  - (iv) any information in connection with the Services or this Agreement.
- (b) The Consultant agrees it will:
  - (i) not disclose or disseminate the Confidential Information other than as permitted by this clause;
  - (ii) not make use of or take advantage of the Confidential Information for any purpose other than for the purpose of performing the Services;

- (iii) ensure the Confidential Information in its possession is kept confidential and protected against unauthorised use or access;
  - (iv) on request from IPART, return to IPART any materials embodying Confidential Information in the possession of the Consultant; and
  - (v) procure the return to IPART on request from IPART of any copies of Confidential Information in the possession of any third party who obtained the Confidential Information from the Consultant.
- (c) The obligation of confidentiality in this clause does not extend to Confidential Information:
- (i) already in, or which enters, the public domain, other than as a result of a breach of this Agreement or any other obligation of confidence owed to IPART or a third party;
  - (ii) which the Consultant can prove by contemporaneous written documentation was already known to it at the time it was disclosed or otherwise made available by IPART (unless such knowledge arose from disclosure of information in breach of an obligation owed to or by a third party); or
  - (iii) to the extent to which the Consultant is required by law to disclose it, provided that, before the Consultant discloses any Confidential Information under any law, the Consultant provides IPART with:
    - (A) sufficient notice to enable it to seek a protective order or other remedy; and
    - (B) all assistance and co-operation which IPART considers necessary to prevent or minimise that disclosure of the Confidential Information.
- (d) Subject to clause 11(e), the Consultant may disclose Confidential Information:
- (i) to its officers, principals and employees, solely for the purposes of performing the Services; or
  - (ii) to any other person, solely for the purposes of performing the Services and subject to the Consultant first obtaining the written approval of IPART. IPART may give its approval subject to conditions.
- (e) Before making a disclosure of Confidential Information under clause 11(d) 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 IPART.
- (f) The Consultant agrees that a breach of this clause by the Consultant, its officers, principals, employees, agents, sub-contractors or any other person

who obtains Confidential Information from the Consultant may cause IPART irreparable harm and for which damages may not be an adequate remedy. The Consultant agrees to take no exception to IPART seeking such equitable relief as IPART deems appropriate to remedy a breach of this clause in addition to any legal remedies IPART may seek.

- (g) The obligations of confidentiality in this clause survive the expiration or termination of this Agreement.
- (h) For the avoidance of doubt, IPART may publish all or any part of the Contract Material at its discretion, regardless of whether it includes any Confidential Information.

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## 12 Insurance

- (a) 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 7(a) of Schedule 2** of this Agreement, that amount) in respect of any single occurrence, on terms approved by IPART (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.
- (b) 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.
- (c) The Consultant must maintain a policy of public liability insurance with a reputable insurer in terms approved by IPART (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.
- (d) 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 7(b) of Schedule 2** of this Agreement, that amount) in respect of any single occurrence on terms approved by IPART (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.
- (e) Prior to commencing the Services, or on request by IPART, the Consultant must provide IPART with certificates of currency of all insurance required to be maintained by the Consultant under this Agreement.

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## 13 Records and audit

- (a) 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.

- (b) Within seven working days of any request by IPART, the Consultant must give IPART access to, or provide to IPART with verified copies of, any information IPART may reasonably require to allow any fees, charges, billing or Reimbursable Expenses to be substantiated or verified.
- (c) For the purposes of this clause 13, the Consultant must grant, and where relevant must ensure that its subcontractors grant, IPART and its nominees access as required by IPART, to the Consultant's premises and data, records, accounts and other financial material or material relevant to the performance of this Agreement.
- (d) 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 IPART such reasonable facilities as may be necessary to enable a legible reproduction to be created.
- (e) 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 13 with respect to the subcontractor's premises, data, records, accounts, financial material and information of its personnel.
- (f) At its absolute discretion IPART may audit:
  - (i) 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 IPART to the Consultant have been calculated, incurred or paid by the Consultant in accordance with the provisions of this Agreement;
  - (ii) any other matters reasonably determined by IPART to be relevant to the performance of the Consultant's obligations under this Agreement.
- (g) The Consultant must participate promptly and cooperatively in any audits conducted by IPART or its nominee.
- (h) Subject to any express provisions in this Agreement to the contrary, each party must bear its own costs associated with any audits.
- (i) 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.
- (j) IPART 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.



- (k) The Consultant must promptly take, at no additional cost to IPART, corrective action to rectify any error, non-compliance or inaccuracy identified in any audit in the way the Consultant has:
  - (i) provided the Services; or
  - (ii) calculated fees, charges, Reimbursable Expenses or any other amounts, billed to IPART.
- (l) This clause 13 survives the termination of this Agreement.

---

## 14 Termination

- (a) IPART may terminate this Agreement immediately by written notice to the Consultant if the Consultant:
  - (i) being a partnership, company, trust or other body undergoes a change in its structure which in the reasonable opinion of IPART limits the ability of the Consultant to perform the Services;
  - (ii) 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; or
  - (iii) ceases to employ any or all of the Consultant's Personnel.
- (b) IPART may terminate this Agreement immediately by written notice to the Consultant if:
  - (i) the Minister gives IPART a direction requiring that it terminate the Agreement; or
  - (ii) the Agreement or IPART's rights and obligations under the Agreement conflict with any statutory duties owed by IPART or is contrary to law.
- (c) If the Consultant:
  - (i) fails to perform any part of the Services as required by this Agreement;
  - (ii) without the consent of IPART suspends the carrying out of the Services; or
  - (iii) breaches any term of this Agreement, regardless of the nature of the term or the extent of the breach;

IPART may:

- (iv) send a written notice to the Consultant to remedy the default to the satisfaction of IPART within 14 days (or such longer period as IPART may specify) from the date of service of the notice by IPART on the Consultant specifying the default and the action required by IPART to remedy the default; and
  - (v) withhold some or all of the Fee until the breach is remedied by the Consultant.
- (d) If the Consultant does not remedy the default as required by clause 14(c) and within the period specified in the written notice, IPART may terminate this Agreement immediately.
- (e) If IPART no longer requires performance of the whole or part of the Services, IPART 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. IPART will pay the Consultant for the Services already performed by the Consultant as at the date of termination but will not otherwise be liable to the Consultant for that termination.
- (f) IPART may exercise its rights to terminate the Agreement under clause 14(d) despite the fact that the exercise of IPART's rights will prevent their performance.
- (g) If IPART:
- (i) fails to pay the Fee to the Consultant (other than in the circumstances permitted by this Agreement), or
  - (ii) commits a substantial breach of this Agreement,
- the Consultant may send a written notice addressed to IPART to remedy the default to the satisfaction of the Consultant within 14 days (or such longer period as the Consultant may specify) from the date of service of the notice by the Consultant on IPART specifying the default and the action required by the Consultant to remedy the default.
- (h) If IPART does not remedy the default as required by clause 14(g) and within the period specified in the written notice, the Consultant may terminate this Agreement immediately.
- (i) Subject to clause 14(e), 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.

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## **15 Dispute resolution**

- (a) The Consultant and IPART will endeavour to resolve any dispute speedily by negotiation. If a dispute between the Consultant and IPART 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.
- (b) If the parties agree to submit the dispute to mediation, they will co-operate with each other and the mediator (including by providing documents and information) to ensure the timely and efficient resolution of the dispute.
- (c) Each party must continue to perform its obligations under this Agreement, despite the existence of a dispute.

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## **16 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.

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## **17 Discontinuance by IPART**

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.

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## **18 No Assignment**

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

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## **19 Entire Agreement**

This document and its schedules constitute the entire agreement between IPART and the Consultant in relation to the Services.

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## 20 Notices

- (a) The addresses of the parties for purposes of giving any notice are set out in **Item 8 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.
- (b) A notice or document will be taken to have been delivered or served as follows:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two working days after the date of posting;
  - (iii) 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.

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## 21 Applicable law

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

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## 22 Definitions

**Agreement** means this consultancy agreement together with any amendments set out in Schedule 4.

**Commencement Date** means the earlier of:

- (a) the date of this Agreement; and
- (b) the date that the Consultant commences to perform the Services.

**Completion Date** means the date this Agreement ends as set out in **Item 4 of Schedule 2**.

**Consultant's Personnel** means the person(s) described and named in **Item 1 of Schedule 2**.

**Consultant's Proposal** means the Consultant's response to any documents provided to the Consultant by IPART, either inviting a tender or requesting a quotation in relation to the Services, (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 2 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.

**Fee** means the amount listed in **Item 5 of Schedule 2**.

**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** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, patents, inventions, discoveries, trade marks, designs, circuit layouts, know-how and confidential information and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

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

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

**Minister** means the Minister having responsibility for IPART.

**Reimbursable Expenses** means the costs, expenses, fees or charges IPART agrees to reimburse to the Consultant and for which the Consultant obtains the prior written approval of IPART before incurring.

**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 1(b).

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## **23 Interpretation**

Unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) 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;
- (c) a schedule means a schedule to this Agreement;
- (d) words importing the singular include the plural and visa versa;

- (e) where a word is defined in this Agreement, other grammatical forms of that word have corresponding meanings;
- (f) a reference importing a natural person includes a corporation, association, governmental agency, department, Tribunal or body corporate;
- (g) the reference to a party means a party to this Agreement;
- (h) a reference to person or a party includes a reference to that persons or that party's executors, administrators, successes, substitute, substitutes and permitted assigns;
- (i) a reference to a law means any applicable law in force in the Commonwealth of Australia, a State or Territory and the common law.

**EXECUTED** as an agreement

## Schedule 1 - Confidentiality Undertaking

I, "[ insert name ]" , undertake to the Independent Pricing and Regulatory Tribunal (IPART) in relation to the Confidential Information that, except as required by law,

- (a) I will not disclose the Confidential Information to anyone other than the officers, principals and employees of the Consultant who have signed an undertaking equivalent to this one without first obtaining consent in writing from IPART;
- (b) I will not use the Confidential Information for any purpose other than for assisting the Consultant in the provision of services to IPART;
- (c) I will keep the Confidential Information secure;
- (d) I will return any documents embodying the Confidential Information to the Consultant immediately once I finish assisting the Consultant in the provision of services to IPART, or at the request of the Consultant.

The restrictions in this undertaking shall not apply if, and to the extent that, the Confidential Information (a) is in, or enters, the public domain, or (b) was already known to the person giving this undertaking at the time it was made available by IPART; other than as a result of a breach of any undertaking to IPART or a third party.

The restrictions in this undertaking shall not prevent the person giving this undertaking from providing documents embodying the Confidential Information to secretarial or clerical staff, working under his or her supervision, for the purposes of copying or filing.

### Definitions:

**Confidential Information** means all information provided (in documents or otherwise) to the person giving this undertaking by IPART, the Consultant or anyone else for the purpose of assisting the Consultant in the provision of services to IPART;

**Consultant** means "[ Insert name of Consultant]" ], and any officers, principals or employees thereof (where applicable);

**document** means any record of information, and includes:

- (a) anything on which there is writing, or
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else,
- (d) a map, plan, drawing or photograph; or
- (e) any other material data or information stored or recorded by mechanical or electronic means.

**SIGNED** by the person giving this )  
undertaking, in the presence of a )  
witness: )

..... )  
*Signature of witness* )

..... )  
*Name of witness*

..... )  
*Signature of person making the*  
*undertaking*

..... )  
*Name of signatory*



## Schedule 2 - Items

**Item 1: Consultant's Personnel**

**Item 2: Consultant's Representative**

**Item 3: IPART's Representative**

**Item 4: Completion Date**

This Agreement ends:

- (a) on completion of the Services by the Consultant, or
  - (b) on "[ eg, 12 June 2009 ]" unless extended as provided for in the Agreement,
- (the "Completion Date")

**Item 5: Fee payable to Consultant (including GST)**

**[Amount payable to Consultant can be specified either in full, in instalments or as an hourly rate. Hourly rates will rarely be used.]**

**For example:**

The total fee payable to the Consultant is no more than \$ ,000, payable as follows:

- (a) \$ to be paid by IPART in full on final completion of the Services; or
- (b) \$ to be paid in monthly instalments on the last day of each month (or at certain milestones of the Services being provided)
- (c) The total fee payable to the Consultant is no more than \$ ,000 payable at the rate of \$ 00 per hour or \$ 00 per day.

**Item 6: Date(s) for submitting Fee invoices**

"[ eg, 12 June 2009 ]"  
"[ eg, 12 June 2009 ]"  
"[ eg, 12 June 2009 ]"

**[If Consultant to be paid regularly or by instalments, set out the dates [milestones] on which the Consultant must forward an invoice to IPART.]**

**Item 7: Insurance**

- (a) The agreed amount of professional indemnity insurance per single occurrence under clause 12(a) is \$10 million.
- (b) The agreed amount of public liability insurance per single occurrence under clause 12(d) is \$10 million.

**Item 8: Notices**

IPART            The Chief Executive Officer  
                    Independent Pricing and Regulatory Tribunal of New South Wales  
                    PO Box Q290  
                    QVB POST OFFICE NSW 1230  
                    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
Note: Be as specific as possible	

## Schedule 4 - Amendments to this Consultancy Agreement

Not applicable.

### **Instructions:**

If there are amendments, please delete 'Not applicable' and list the amendments (for example, if clause 13 (1) is to be deleted, please insert: "1. Delete clause 13.1")

Where additional text is to be inserted into a clause, please state that the relevant clause is to be deleted and set out an entire replacement clause to be inserted.

