

**TENDERING CONDITIONS  
AND  
STATEMENT OF REQUIREMENTS  
FOR  
PROVISION OF TRANSCRIPTION SERVICES**

**RFT Number: A19/0038**

**Tender Issue Date: Monday 1 April 2019**

**Closing Date: Friday 10 May 2019**

**Closing Time: 5:00pm**

## Contact Officer

Tenderers should refer requests for information or advice regarding this RFT to:

CONTACT NAME	Roy Waldon Solicitor to the Commission
CONTACT POSTAL ADDRESS	THE ICAC GPO Box 500 SYDNEY NSW 2001
CONTACT PHONE	(02) 8281 5999
CONTACT EMAIL ADDRESS	<a href="mailto:rwaldon@icac.nsw.gov.au">rwaldon@icac.nsw.gov.au</a>

Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenders if in the opinion of the Principal it would be unfair not to do so.

# RFT OVERVIEW

## 1. Scope of RFT

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### 1.1 Suppliers

- 1.1.1 This Request For Tender (RFT) seeks tenders from suppliers for the provision of a transcription service for the NSW Independent Commission Against Corruption (ICAC) described in the Statement of Requirements herein.

### 1.2 Contract and Duration

- 1.2.1 ICAC proposes to enter into a contract in the form of the Agreement with the successful tenderer.

- 1.2.2 The Agreement will be in place for a term of three (3) years, with provision for ICAC to exercise an option to extend the period of the Agreement for a period of one (1) year and provision for ICAC to exercise a further option to extend the period of the Agreement for a further period of one (1) year.

### 1.3 Current Expenditure

- 1.3.1 The current expenditure incurred by ICAC for the provision of a transcription service is in the range \$90,000 to \$230,000 per annum, depending on the number and duration of hearings. This estimate is provided for information only and does not constitute a guarantee that the same expenditure will be incurred in the future.

### 1.4 Selection of Suppliers

- 1.4.1 ICAC reserves the right to accept any or no tender or any part or parts of a tender. ICAC also reserves the right to select alternatives to those specified where such alternatives are deemed by ICAC to provide more satisfactory solutions ICAC's needs.

## 2. RFT Structure

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- 2.1 This RFT comprises the following:

### 2.2 Tendering Conditions and Statement of Requirements

- 2.2.1 The Tendering Conditions set out the terms, conditions and processes governing the tender phase of the RFT. The Statement of Requirements is a detailed description of the Services to be provided by the successful tenderer including technical specification, service levels and performance framework. Taken together with the accepted parts of the tenderer's response, it will form part of the Agreement.

### 2.3 Tender Response

- 2.3.1 This is the Response prepared by the tenderer to enable ICAC to evaluate the tenderer's offers.

### 2.4 Agreement

- 2.4.1 This is the document which contains the terms and conditions of the contractual arrangement proposed to be made between the successful tenderer and ICAC to enable the supply of the Services to ICAC.

## 3. Performance Framework

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- 3.1.1 ICAC is committed to engaging a Supplier who is able and willing to continually improve its performance during the term of the Agreement.

# TENDERING CONDITIONS

## 4. Tender Preparation

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### 4.1 Tenderer to inform itself

4.1.1 Before submitting its tender, a tenderer must:

4.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender; and

4.1.3 Satisfy itself:

(a) that the tender, including the price offered is correct; and

(b) that it is financially and practically viable for it to enter into and perform the proposed Agreement.

### 4.2 Assumptions made by Tenderer

4.2.1 Where a tenderer has made assumptions in preparing its tender, such assumptions must be set out in a supporting statement and submitted with the tender.

## 5. Eligibility to Tender

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### 5.1 Legal Entity of Tenderer

5.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. ICAC will only enter into an Agreement with such legal entity or entities.

5.1.2 ICAC may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within three (3) business days of the request.

### 5.2 Financial Capability of Tenderer

5.2.1 ICAC reserves the right to reject any tender if ICAC judges the tenderer not to have appropriate financial capability.

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

### 5.3 ABN Requirements

5.3.1 ICAC will not enter into an Agreement with a company that does not have an Australian Business Number (ABN) and is not registered for GST. Tenderers must be registered for GST and state their ABN in their tender.

## 6. Tender Process

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### 6.1 Provisional RFT Program

6.1.1 Given below is ICAC's provisional RFT program. ICAC may, at its absolute discretion, amend the provisional RFT program.

Milestone	Date
RFT issue	1/4/19
RFT Close Date	10/5/19
Execution of Agreement	August 2019
Transitioning requirements completed	30/9/19
Commencement of supply of service	1/10/19

## 6.2 Conformity of Tenders

ICAC seeks conforming tenders. Non-conforming tenders may be excluded from the tender process without further consideration at ICAC's discretion.

## 6.3 Alternative Tenders

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

## 6.4 Tender Lodgement

- 6.4.1 Tenders (including all supporting information, if any) must be fully received by 5:00pm on Friday 10 May 2019. Tenderers must complete and submit a Tender Response document responding to the Service Requirements and the clauses in the Agreement. The responses should set out sequentially each section, clause or subclause and a response as follows:

**Descriptive response** - A full description of the tender proposal. This must clearly and concisely cover all aspects of the issue being addressed.

**"NOTED"** - to indicate that information, as opposed to an obligation upon the Tenderer, has been read and fully understood and the Tenderer has no question or doubt as to its meaning.

**"AGREED"** - to be used where the Tenderer agrees to completely satisfy the stated conditions or requirements.

**"NOT AGREED – ALTERNATIVE"** - to be used where the Tenderer does not agree to completely satisfy the stated conditions or requirements, but proposes an alternative. This alternative must be described in full.

**"NOT AGREED"** - to be used where the Tenderer does not agree to meet the stated requirement, and no alternative is proposed.

No response to a clause or subclause will be deemed to mean "NOT AGREED".

- 6.4.2 Tenders must be securely sealed prior to postage or delivery and must be clearly identified with the name of the tenderer and labelled "RESPONSE TO TENDER A19/0038". If being mailed the tender should be addressed to ICAC at P O Box 500 Sydney NSW 2001. If being delivered, the tender should be delivered to ICAC at level 7, 255 Elizabeth Street, Sydney.

- 6.4.3 Tenders may be submitted electronically to ICAC at [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au).

**6.4.4** Tenders should include the name and contact details of a person whom ICAC may contact in relation to the tender.

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

## **6.5 Electronic Tenders**

**6.5.1** A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than tenders lodged by other means.

**6.5.2** Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. ICAC may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:

- (a)** to reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.
- (b)** a tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.

ICAC will not be responsible in any way for any loss, damage or corruption of electronically submitted tenders.

## **6.6 Tender Validity Period**

**6.6.1** The Tender will remain open for acceptance by ICAC for a period of three (3) months from the Closing Date and Closing Time for tenders.

## **6.7 Late Tenders**

**6.7.1** Late tenders will not be considered, unless ICAC is satisfied that the integrity and competitiveness of the tendering process has not been compromised. ICAC shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by ICAC.

## **6.8 Extension of Closing Date and Closing Time**

**6.8.1** ICAC may, in its discretion, extend the Closing Date and Closing Time.

## **6.9 Corruption or Unethical Conduct**

**6.9.1** It is ICAC policy that tenderers and contractors adhere to ethical work practices in their dealings with ICAC. Tenderers must comply with the requirements of the NSW Department of Finance and Services Business Ethics Statement (which is available at [www.Services.nsw.gov.au/about-us/business-ethics](http://www.Services.nsw.gov.au/about-us/business-ethics)) and the ICAC Code of Conduct and must disclose any actual or potential conflicts of interests in the Tender Response.

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

- (a)** offered any inducement or reward to any public servant or employee, agent or subcontractor of ICAC in connection with this RFT or the submitted Tender;
- (b)** committed corrupt conduct in the meaning of the *Independent Commission Against Corruption Act 1988*;
- (c)** a record or alleged record of unethical behaviour; or not complied with the requirements of NSW Department of Finance and Services Business Ethics Statement;

this will result in the tender not receiving further consideration.

**6.9.3** ICAC may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before ICAC excludes the tenderer on this basis.

**6.9.4** If ICAC becomes aware of any undisclosed, incompletely disclosed or improper conflict of interest by a successful tenderer after the Agreement has been executed, then ICAC reserves the right to terminate the Agreement.

#### **6.10 Addenda to RFT**

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

**6.10.2** Tenderers must check the web site address, [www.icac.nsw.gov.au](http://www.icac.nsw.gov.au) and download the Addendum.

#### **6.11 Costs of Tenderer participating in the RFT**

**6.11.1** ICAC will not be liable to any Tenderer for any expenses or costs incurred by the Tenderer as a result of its participation in this RFT, including where the RFT has been discontinued.

#### **6.12 Ownership of Tenders and Tender Documentation**

**6.12.1** All tenders become the property of ICAC on submission.

**6.12.2** All ICAC tender documentation obtained by tenderers whose tenders are unsuccessful and all ICAC tender documentation obtained by entities that choose not to submit a tender must be returned to ICAC.

#### **6.13 Discontinuance of Tender Process**

**6.13.1** ICAC reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of tenders.

#### **6.14 Variations to Tenders**

**6.14.1** At any time after the Closing Date of tenders and before ICAC accepts any tender received in response to this RFT, a tenderer may, subject to clause 6.14.2, vary its tender:

- (a) by providing the ICAC with further information by way of explanation or clarification;
- (b) by correcting a mistake or anomaly; or
- (c) by documenting agreed changes negotiated.

**6.14.2** Such a variation may be made either:

- (a) at the request of ICAC, or
- (b) with the consent of ICAC at the request of the tenderer; but only if,
  - (i) in the case of variation requested by the tenderer under clause 6.14.1(a)-(b), it appears to ICAC reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
  - (ii) in the case of variation under clause 6.14.1(c), ICAC has confirmed that the draft-documented changes reflect what has been agreed.

**6.14.3** If a tender is varied in accordance with clause 6.14.1(a) or 6.14.1(b), ICAC will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.

- 6.14.4** A variation of a tender under clause 6.14.1 will not be permitted if in ICAC's view:
- (a) it would substantially alter the original tender; or
  - (b) in the case of variation under clause 6.14.1(a) or 6.14.1(b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

## **6.15 Evaluation Process**

- 6.15.1** Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or equal weight. The evaluation criteria for this RFT that do not relate to price will account for 70% of the total evaluation score. The evaluation criteria for this RFT that relate to price will account for 30% of the total evaluation score. Information supplied by the tenderer in Tender Response will contribute to the assessment against each criterion.
- 6.15.2** Tenderers must respond clearly to all the evaluation criteria listed in this RFT. Tenders that do not include a fully completed Tender Response, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the file has become corrupt, may be excluded from the tender process without further consideration.
- 6.15.3** ICAC may assess an Alternative Tender against the evaluation criteria where submitted with a Conforming Tender.

## **6.16 Evaluation Criteria**

- 6.16.1** The evaluation criteria for this RFT (which include but are not limited to) are:
- (a) Capability and capacity to provide a transcription service in accordance with the Statement of Requirements including the extent to which the Response meets the requirements set out in the Statement of Requirements.
  - (b) Quality assurance.
  - (c) Proposed arrangements for managing the Agreement.
  - (d) Price.
  - (e) Previous experience and performance on meeting the requirements covered in this RFT or other similar requirements.
  - (f) Financial capacity and stability.
  - (g) Compliance with the proposed conditions of the Agreement.
  - (h) Record of ethical behaviour.

## **6.17 Site inspections and Presentations by Tenderer**

- 6.17.1** Prospective tenderers may arrange to inspect the ICAC hearing rooms by contacting the ICAC Contact Officer.
- 6.17.2** ICAC may, during the evaluation of tenders, undertake site inspections of tenderer's proposed premises. ICAC may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender. The tenderer shall make any presentations at its own cost. Receiving a presentation by a tenderer in no way represents a commitment by ICAC to accept any aspect of the tender. All information obtained during the course of presentation or site inspection may be taken into consideration in the evaluation of tenders.



## **6.18 Acceptance or Rejection of Tenders**

- 6.18.1** ICAC is not bound to accept the lowest priced tender.
- 6.18.2** If ICAC rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).
- 6.18.3** ICAC expressly reserves the right to accept, in its discretion, either or both of the following:
- (a)** Any Alternative Tender or part of an Alternative Tender, when submitted with a Conforming Tender; and
  - (b)** Any other Non-Conforming Tender or part of a Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in ICAC's opinion, is substantially a Conforming Tender.

## **6.19 Post Tender Negotiations**

- 6.19.1** Before making any determination as to acceptance or rejection of Tenders ICAC may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted Conforming Tenders, to mutually improve outcomes. ICAC will not enter into negotiations to amend the Agreement.
- 6.19.2** If ICAC considers that none of the tenders are fully acceptable either because of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by ICAC and made clear to the participants before the commencement of negotiation.
- 6.19.3** ICAC may at its absolute discretion elect to conduct post tender negotiations under clause 6.19 with more than one tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

## **6.20 Exchange of Information between Government Agencies**

- 6.20.1** By lodging a tender, the Tenderer will authorise the ICAC to make information available, on request, to any NSW government agency. This includes information dealing with the tenderer's performance on any prior contract that has been awarded. Such information may be used by the recipient NSW Government agency for assessment of the suitability of the tender for pre-qualification, selective tender lists, expressions of interest or the award of a contract.
- 6.20.2** The provision of the information by the ICAC to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 30 of the Defamation Act 2005 (NSW), and the tenderer shall have no claim against the ICAC and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication

## **6.21 Method of Acceptance**

- 6.21.1** Acceptance of a tender or part tender will be subject to the execution of the Agreement. Until ICAC and the successful tenderer execute the Agreement there will be no legally enforceable agreement concluded between them.

## **6.22 Disclosure Information**

- 6.22.1** Following ICAC's decision, all tenderers will be notified in writing of the outcome of their Tenders.

**6.22.2** Details of this tender and the outcome of the tender process will be disclosed in accordance with the *Government Information (Public Access) Act* (NSW).

# STATEMENT OF REQUIREMENTS

1. Introduction
2. Service requirements

# 1. INTRODUCTION

## 1.1 The ICAC

ICAC is a corporation constituted by section 4 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act). The role of ICAC is to investigate, expose and minimise corruption in or affecting the NSW public sector. As part of its role ICAC may conduct public inquiries (hearings held in public) and compulsory examinations (hearings held in private).

## 1.2 Location of hearings

Hearings will generally be conducted in the two hearing rooms at ICAC's Sydney premises at level 7, 255 Elizabeth Street Sydney NSW.

Hearings may be conducted elsewhere, including outside the Sydney metropolitan region, however this is likely to be a rare occurrence. All of the public inquiries or compulsory examinations referred to in the hearings profile below were conducted at ICAC's Sydney premises.

## 1.3 ICAC Transcript

Transcription of the evidence given at hearings, produced to the standards of the Supreme Court of New South Wales, is required for all hearings conducted by the Commission.

It is essential that transcript is highly accurate and produced on a timely basis and meet ICAC's requirements for confidentiality and security of data.

In addition to using transcript for its own purposes, ICAC may also need to make transcript of its proceedings available to a court as evidence of what was said in a hearing. This will be necessary where what was said is required to be admitted in evidence in a criminal prosecution. It is therefore essential that there is a mechanism for certifying the accuracy of the transcript in a form admissible in evidence under the *Evidence Act 1995*.

## 1.4 Current use of information technology

The standard office automation software is Microsoft Office. Transcript text for individual hearings is accessed via the Commission's network utilising Word 2016, however this is likely to be upgraded to Office 365. The transcription service proposed by the tenderer should be Word 2016 capable and able to be made Office 365 capable.

Further information is available to Tenderers on request.

## 1.5 Hearings profile

In any one day of a public inquiry (public hearing) evidence may be taken from a number of witnesses.

A number of compulsory examinations (private hearings) may be conducted on any given day. This is because the examination of each witness is categorised as a separate compulsory examination. Compulsory examinations are usually conducted sequentially rather than simultaneously. There may be occasions when one or more compulsory examinations in one matter are held simultaneously with a public inquiry or compulsory examinations in another matter.

In the calendar year **2015**, there were 46 days of public inquiries and 67 compulsory examinations. On 17 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

In the calendar year **2016**, there were 53 days of public inquiries and 73 compulsory examinations. On 8 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

In the calendar year **2017**, there were 17 days of public inquiries and 58 compulsory examinations. On 18 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

In the calendar year **2018**, there were 112 days of public inquiries and 110 compulsory examinations. On 34 days a public inquiry was conducted simultaneously with one or more compulsory examinations not related to the public inquiry.

## 2. SERVICE REQUIREMENTS

### 2.1 Information about tenderers

It is **mandatory** the Tenderer provides the following information:

- company name and ABN
- address
- telephone number
- email address
- name of contact person
- details of all off-site premises to be used to provide the transcription service
- a current client list and referees.

Tenderers are also required to provide the following information if requested by ICAC:

- the most recent annual report
- the most recent audited financial statements
- identification details of principals, directors, secretary and major shareholders
- identification details of all staff who will have any dealings with ICAC information

### 2.2 Transcription service

It is **mandatory** that the Tenderer provide a transcription service which involves:

- on-site recording and monitoring of ICAC hearings;
- off-site highly accurate transcription of ICAC hearings in electronic form;
- production of transcript, witness lists and exhibit lists in electronic form in the format required by ICAC;
- regular, timely and secure transmission of electronic product from and to ICAC;
- all items of equipment including hardware, software, cables, connectors etc to provide the transcription service;
- all services for the operation of equipment and software to provide the transcription service, including supply, installation, maintenance, and support;
- identification of any equipment including hardware, software, cables, connectors etc required to be provided by ICAC to ensure delivery of the transcription service;
- provision of trained personnel to provide the transcription service; and
- certification of the accuracy of the transcript in a form admissible in evidence under the *Evidence Act 1995*.

### 2.3 Alternative tender

ICAC will consider an alternative tender based on the provision of instantaneous transcription services to its hearing rooms. It is **mandatory** that the provision of any instantaneous transcription service includes:

- on-site recording and monitoring of ICAC hearings;
- on-site highly accurate electronic transcription of ICAC hearings;
- production of transcript, witness lists and exhibit lists in electronic form in the format required by ICAC;
- regular, timely and secure transmission of electronic product from and to ICAC;
- all items of equipment including hardware, software, cables, connectors etc to provide the transcription service;
- all services for the operation of equipment and software to provide the transcription service, including supply, installation, maintenance, and support;
- identification of any equipment including hardware, software, cables, connectors etc required to be provided by ICAC to ensure delivery of the transcription service;
- provision of trained personnel to provide the transcription service; and
- certification of the accuracy of the transcript in a form admissible in evidence under the *Evidence Act 1995*.

### 2.4 Description of solution

It is **mandatory** that the tender fully set out the solution to the provision of the transcription service in terms of:

- mechanisms to achieve reliability;
- mechanisms to achieve timely production of transcript in electronic form;
- mechanisms to handle electronic transcript production;
- mechanisms to ensure required levels of accuracy;
- mechanisms to ensure timely and secure transmission of electronic product to and from the ICAC.

### 2.5 Pricing

It is **mandatory** that Tenderers set out the basis on which they will charge ICAC for the provision of the transcription service, including any preparation time.

It is **mandatory** that the mechanism for any proposed variation in charges during the term of the contract (and any extension thereof) is fully set out.

### 2.6 Independence of tenderer from ICAC's technical expertise

It is **mandatory** that the transcription service is totally independent of ICAC expertise for installation, modification, operation, maintenance and support.

## **2.7 Production of transcript at other sites**

It is **mandatory** that the transcript service be available for hearings held at sites within NSW other than the ICAC's premises, including sites outside the Sydney metropolitan area. Tenderers are required to specify how this will be provided and to specify any variations in equipment, procedures and cost from those that apply to hearings to be conducted at the ICAC's premises.

## **2.8 Equipment and assistance provided by ICAC**

It is **mandatory** that the Tenderer identify any equipment including hardware, software, cables, connectors etc required to be provided by ICAC and/or technical assistance to ensure delivery of the transcription service.

## **2.9 Liaison with ICAC**

ICAC will normally use email to book the transcription service for each hearing.

The ICAC and the successful Tenderer will both nominate a contact officer who will liaise with each other on behalf of their respective employers during the duration of the contract or any extension thereof and the email address of each contact officer.

## **2.10 Liability in event of cancellation of a hearing**

It is **mandatory** that the ICAC is not held liable in the event of cancellation of a sitting where a minimum of three (3) hours notice from the appointed time is given.

## **2.11 Description of equipment to be provided by the tenderer**

It is **mandatory** that all equipment required to support the bid solution is fully itemised and described by the Tenderer ("Contractor Equipment").

## **2.12 Quantity of Contractor Equipment**

It is **mandatory** that sufficient quantities of Contractor Equipment are available to provide transcript services for all hearings.

## **2.13 Backup and recovery of electronic format data**

It is **mandatory** that suitable Contractor Equipment is supplied for the backup and recovery of electronic format data sufficient to ensure that no delays will be experienced in the transcript production process.

It is **mandatory** that the Tenderer fully describe the mechanism and procedures for backup and recovery of electronic data held on Contractor Equipment.



#### **2.14 Equipment installation**

It is **mandatory** that full installation services are provided by the Tenderer for all items of Contractor Equipment, including delivery, registration of delivered equipment items, unpacking, removal of packing material, hardware setup and configuration, and software setup and configuration.

#### **2.15 Equipment maintenance**

It is **mandatory** that the Tenderer provides a maintenance and support service for all items of Contractor Equipment and software used to provide the transcription service so that all equipment is maintained in good working order and condition.

#### **2.16 Maintenance period**

It is **mandatory** that the maintenance service be provided for the duration of the Agreement and any extension thereof.

#### **2.17 Retention of damaged parts containing data**

It is **mandatory** that the maintenance service incorporates a method for retention by ICAC of damaged parts of Contractor Equipment that may hold sensitive data.

#### **2.18 Full description of proposed maintenance service**

It is **mandatory** that Tenderers fully describe the proposed maintenance service including hours of availability, problem resolution, available expertise, response time and problem escalation mechanisms.

#### **2.19 Timeframe for provision of transcript**

It is **mandatory** that a complete and accurate transcript is available in electronic form on a timely basis.

The response to the tender should indicate the time within which the final electronic form of transcript will be provided to ICAC:

- a) of that part of the hearing conducted prior to lunch (1.00pm); and
- b) of that part of the hearing conducted between the end of the lunch period and the end of the hearing day (usually from 2.00pm to 4.00pm).

#### **2.20 Electronic transcript**

The ICAC requires that the electronic version of the transcript be compatible with its existing computer systems such that transcript text can be made available, without conversion and loss of formatting, to the ICAC's word processing application (currently Microsoft Word 2016).

It is **mandatory** that the electronic transcript be compatible with existing ICAC systems to enable timely and secure electronic transfer of transcript and allow for the ICAC to produce hard copy transcript without loss of formatting.

#### **2.21 Secure automatic transmission of data**

It is **mandatory** that a mechanism to enable secure automated transmission of transcript text data in electronic form from the transcription service system to the ICAC's network is provided to the satisfaction of the ICAC.

#### **2.22 Compatibility of cabling and network equipment**

It is **mandatory** that the cabling and network equipment used are compatible with ICAC's existing network such that existing cabling may be used for the connection of transcription service equipment.

#### **2.23 Transcript data conversion**

It is **mandatory** that no significant transcript data conversion is required in the process of transferring electronic forms of text. Outline the proposed mechanism for any data conversion, if required.

#### **2.24 Availability of data for backup purposes**

It is **mandatory** that an electronic form of all transcript data is available in order to provide full recovery of any transcript document that may become lost, corrupted or otherwise non-available.

#### **2.25 Frequency of backup procedure**

It is **mandatory** that backups are taken and provided to ICAC at a frequency to enable document recovery, if necessary, on the day following production.

#### **2.26 Form of transcript**

It is **mandatory** that when printed from the electronic form the transcript complies with ICAC's formatting requirements as set out below.

#### **2.27 Separate document for morning and afternoon sittings**

It is **mandatory** that the transcript of each sitting is a separately named document, i.e. morning and afternoon sittings must be presented separately.

#### **2.28 Naming conventions**

It is **mandatory** that documents are named according to the ICAC's naming conventions. These will be conveyed to the Tenderer upon signing of the Agreement.

### **2.29 Format for cover page for transcript of each sitting**

It is **mandatory** that a cover page for each sitting is created for printing from the electronic product containing the information and in the format of the examples for a public inquiry and a compulsory examination in **Schedule A**.

### **2.30 Format for other transcript pages**

It is **mandatory** that the other transcript pages for each sitting are created for printing from the electronic product in the format of the example in **Schedule B**, including the print size and font.

### **2.31 Data on the bottom of each transcript page, excluding the cover sheet**

It is **mandatory** that the following information is provided at the bottom of each page of transcript except for the cover sheet:

- Date of transcript, e.g. 22/4/19
- page number, e.g. 1236 (or 1236PT if of a compulsory examination)
- transcriber's initials, e.g. AEB (for Anne Eliza Black)
- surname of witness, e.g. JONES
- name of counsel examining witness in brackets, e.g. (SMITH)
- ICAC investigation number, e.g. E18/1007

### **2.32 Paper size**

It is **mandatory** that transcript documents be formatted for printing on A4 paper.

### **2.33 Line numbering**

It is **mandatory** that some form of line numbering in the margin, or other such suitable breakdown of pages for ready reference to text is provided.

### **2.34 Additional features**

Tenderers should inform ICAC of any additional or enhanced features that the proposed equipment can provide, or any ideas or suggestions that would improve upon that proposed.

### **2.35 Quality control**

It is **mandatory** that **methods** of quality control be specified for the document as a whole and for aspects within it, e.g. names, dates, etc.

### **2.36 Accuracy**

A high level of accuracy of its transcript is essential to ICAC, especially from an evidentiary point of view.

It is **mandatory** that Tenderers specify the level of accuracy guaranteed for the documents produced.

### **2.37 Spelling**

It is **mandatory** that the Tenderer provide proposals acceptable to ICAC to ensure accurate and uniform spelling of all names and words occurring in the transcript.

### **2.38 Audits**

It is **mandatory** that the successful tenderer agree to ICAC conducting spot audits from time to time to satisfy itself as to the quality of the service.

### **2.39 Electronic despatch**

It is **mandatory** that Tenderers specify the means by which they will securely transmit electronic product from and to ICAC and to outline the steps they would take to ensure the safe storage of such backups as it would be deemed necessary to keep until notification of the arrival of the original in usable format.

### **2.40 Exhibit list**

It is **mandatory** that an Exhibit List for each sitting is created for printing from the electronic product in the format in **Schedule C** and setting out the following information:

- date document or thing was made an exhibit
- exhibit number
- description of the exhibit
- page number of transcript where exhibit tendered
- name of witness (if any) during whose evidence the exhibit was tendered.

### **2.41 Witness list**

It is **mandatory** that a Witness List is created for printing from the electronic product in the format in **Schedule D** for each public inquiry and updated on a daily basis. The list will set out the following information:

- name of the witness
- name and address of the legal representatives
- date(s) of appearance
- transcript page(s) where evidence of witness commences

### **2.42 Certification**

It is **mandatory** that the Tenderer provide details of how transcribers will certify that that part of the transcript prepared by them has been accurately transcribed.

### **2.43 Audio recording of hearing**

ICAC audio records the evidence given in each public inquiry and compulsory examination. It is **mandatory** that the Tenderer be able to operate ICAC recording equipment to ensure that all evidence is recorded.

**2.44 Documentation relating to the transcription process**

This refers to forms, etc. that document the process and assist in the future retrieval and administration of the output of the transcription process.

It is **mandatory** that any such documentation is the property of ICAC and will be provided to ICAC.

**2.45 Transcription service staff on site**

It is **mandatory** that staff of the Tenderer are provided **on site** to record the hearings and monitor the recording and transmission process.

**2.46 Transcription service staff off site**

It is **mandatory** that (with the exception of the provision of instantaneous transcript) the Tenderer provide staff off-site to undertake the actual transcription.

**2.47 Staff required for various combinations of hearings at ICAC premises and elsewhere**

It is **mandatory** that staffing flexibility is provided such that the needs of the following can be supported:

- one hearing
- two simultaneous hearings at the ICAC's premises
- two simultaneous hearings, one at a site other than the ICAC's premises

**2.48 Conduct of staff**

It is **mandatory** that when at ICAC premises the Contractor and its staff comply with all reasonable directions of ICAC officers and the ICAC procedures relating to occupational health and safety.

**2.49 Transcription staff**

It is **mandatory** that Tenderers specify the numbers of staff and supervisors (on site and off site) to be used to provide the transcription service for each and every hearing.

**2.50 Staff numbers**

It is **mandatory** that the necessary staff numbers be maintained at all times to ensure delivery of the transcription service.

**2.51 Staff training**

It is **mandatory** that staff be fully trained and proficient in each and every aspect of the transcription service to a standard acceptable to the Commission, as necessary to the Request for Tender and for the life of the contract and any extension thereof.

## **2.52 Responsibility for ensuring professional standards**

It is **mandatory** that the successful Tenderer bears sole responsibility to ensure that the highest professional standards, commensurate with the ICAC's requirements, are maintained. The ICAC will at all times be the sole determiner as to whether or not the professional standards and proficiency required has been maintained.

## **2.53 Security vetting**

It is **mandatory** that all staff directly or indirectly involved in the provision of the transcription service (including persons undertaking maintenance of equipment used to provide the transcription service) be security vetted by the ICAC. This will involve completion by each staff member of the ICAC's security vetting package. The level of vetting will be determined by the ICAC. At least three weeks from the ICAC receiving a completed security vetting package is required by the ICAC to complete vetting. Only staff who are deemed by ICAC to have been security vetted are to be involved directly or indirectly in the provision of the transcription service.

## **2.54 Consent to conduct enquiries/release information**

It is **mandatory** that staff being vetted consent to the ICAC undertaking any background enquires the ICAC considers appropriate to satisfy itself that the particular person does not pose any security or other risk to the ICAC.

## **2.55 Advance security vetting to cover emergency staff**

To cater for cases when emergency staff may be brought in, it is **mandatory** that stand-by staff be security vetted in advance.

## **2.56 Notice required for security vetting**

It is **mandatory** that the Commission be given four weeks notice of appointment of new staff so that security vetting can be conducted.

## **2.57 Notification of change in information**

It is mandatory that all staff security vetted by ICAC immediately advise ICAC of any change to the information provided by them to ICAC during their security vetting.

## **2.58 Staff departure and exit interviews**

It is **mandatory** that ICAC be given at least two weeks advance notice in writing of staff's intention to leave and the staff member concerned is made available to ICAC for an exit interview if the ICAC so requests.

**2.59 Removal of staff**

It is **mandatory** that ICAC can require the removal of staff from involvement in the provision of the transcription service. Reasons will not necessarily be given for such decisions.

**2.60 Subcontracting**

It is **mandatory** that the successful tenderer not subcontract any part of the transcription services without ICAC's written approval.

**2.61 Confidentiality of records**

It is **mandatory** that all records relating to ICAC hearings are dealt with confidentially and that no information or records obtained or created during the course of or for the purpose of the provision of the transcription service is communicated to any contractor staff not security vetted by ICAC or to any other person, other than ICAC officers.

**2.62 Ownership of items and records**

It is **mandatory** that all items and records used and produced for the transcription service and any copies are and remain ICAC property.

**2.63 Insurance**

It is **mandatory** that the successful Tenderer provides up to date insurance cover for Workers Compensation, Public Liability, and any other insurances as considered necessary by ICAC. Copies of all relevant policies are to be provided by the successful tenderer to ICAC on contract award.

# **SCHEDULE A**

## **SAMPLES OF TRANSCRIPT COVER PAGES FOR A PUBLIC INQUIRY AND A COMPULSORY EXAMINATION**



INDEPENDENT COMMISSION AGAINST CORRUPTION

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THE HON. PETER HALL QC  
CHIEF COMMISSIONER

PUBLIC INQUIRY

OPERATION: MAXIMUS

Reference: E18/1010

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON TUESDAY 25 MARCH 2019

AT 10:21 AM

PAGES 29 - 67

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

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25/03/19 (DRG)  
E18/1010

25T

INDEPENDENT COMMISSION AGAINST CORRUPTION

COPYRIGHT

PATRICIA MCDONALD SC  
COMMISSIONER

COMPULSORY EXAMINATION

OPERATION: MAXIMUS

Reference: E18/1010

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 24 MARCH 2019

AT 9:30 AM

PAGES 246PT-309PT

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

This transcript has been prepared in accordance with conventions used in the Supreme Court.

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24/03/19 (STV)  
E18/1010

246PT

# **SCHEDULE B**

## **SAMPLE OF TRANSCRIPT PAGES**

THE COMMISSIONER: Sit down, please.

MR DREWETT: Commissioner, my client wished the direction under section 38 in relation to her evidence and I'll ask that you make that direction.

10 THE COMMISSIONER: Thank you. Ms Li, let me just explain to you your obligations and rights as a witness before this Commission. As a witness, you must answer all questions truthfully and you must produce any item described in your summons or required by me to be produced during the course of your evidence. You counsel has asked me to make a section 38 declaration. The effect of such a declaration is that although you must still answer the questions put to you or produce any item that I require you to produce, your evidence can't be used in any civil proceedings or criminal proceedings, subject to one very important exception in your case, that is  
20 being used against you in a prosecution for an offence under the ICAC Act, most importantly, an offence of giving false or misleading evidence. To give false or misleading evidence to this Commission is a very serious matter. It, it is a serious criminal offence and it can lead to a penalty of imprisonment for up to five years. Do you understand that?--Yes, I do.

All right. I'll make that declaration now. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by her during the course of her evidence at this public inquiry are to be regarded as having  
30 been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED  
40 ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Thank you.

MR ENGLISH: Can you please state your full name for the record, please?  
---My name is Qin Li. Q-i-n L-i.

And do you go by the name Lynn Li as well, L-y-n?---L-y-n-n.

L-y-n-n.---Yes.

You have some qualifications?---Yes, I do.

10 What are they?---A CPA.

And you obtained a degree first at university, did you?---Yes. Bachelor of Business and, Finance and Business and a Master of Accounting.

And what university was that at?---University of Western Sydney.

And you've practiced as an accountant, have you?---Not really. Like, as a bookkeeper.

20 As a bookkeeper.---Yeah.

Have you practiced as a tax agent previously?---I worked in tax agent before, yeah.

And did you meet Mr Taher Sirour when you were working as a tax agent?  
---Yes, I do, yeah, did, yeah.

30 Can you tell the Commission how you met him, please.---I worked as a walk-in tax agent, and Tommy Sirour, he's a client of the agent then. His work, my boss instruct me to do his work and he, he said, told my boss, saying can I let your worker works for me for a few days, one or two days in his office. Then I started one or two days, started with Tommy. Then after that start, later started full-time when Tommy's business grows up.

When you say Tommy asked if you could come and work in his office, what office was that?---In Rockdale.

And what is the business?---Security business.

40 Do you know, was it a company? Do you know the name of the company if it was?---Australian United Security Professionals.

And when did you start working for Australian United Security Professionals?---I can't exactly remember the date. Probably around 2009 or 2010, this period, yeah.

And when you say Tommy, that's Mr Sirour, isn't it?---That's correct.

THE COMMISSIONER: I might, well, I do now.

MR ENGLISH: There's a copy for the witness.

THE COMMISSIONER: The index for this suggests that the records within it are available within other volumes, is that right?

MR ENGLISH: I'm just, they are, the records can be found in what is now Exhibit 38, Exhibit 39, Exhibit - - -

10

THE COMMISSIONER: I think what we should do, I mean, these documents are going to go up on screen aren't they?

MR ENGLISH: They are.

THE COMMISSIONER: As you go through and you draw this witness's attention to whatever documents you propose, it might be just an idea to identify for the record where they come from.

20

MR ENGLISH: I'll do that Commissioner, certainly. If the first document which is from volume 38, which was previously volume 4, can be brought on the screen. That's page 85.

THE COMMISSIONER: Sorry, I should have marked this.

MR ENGLISH: Perhaps I can ask you to do that, Commissioner. I think we're up to 47 would be the next exhibit number.

30

THE COMMISSIONER: The folder marked Operation Gerda E17 I believe 0445 MFI B will be admitted into evidence and be marked Exhibit 47.

**#EXH-47 – EXCERPTS FORM PUBLIC INQUIRY BRIEF  
(MARKED FOR IDENTIFICATION B)**

MR ENGLISH: Now this is for the same week that we were just looking at Ms Li. You see there, this is originally an email from Mr Lu to yourself where Mr Lu's claiming 210 hours.---Yes.

40

You see that he's providing some instructions, he says that Ben P is a team leader so I get 23 an hour.---Yes.

What's your understanding of what he's saying there?---If he work that on Ben shift, Ben didn't attend, then he should get the team leader rate.

So he's signing as Ben for that particular shift is he and wants to be paid the higher rate, does he?---That's right.

So the first version of this which was Sheet 1.---Yes.

What document was relied on to create the entries in Sheet 1?---On site's time sheet.

So we get to the document which is New, which is on page 47.---Yes.

10 Are there further documents relied to create additional entries in the new version?---I believe probably according to the personal time sheets if they appear in their personal time sheets, yes.

Now, can I just ask, please, that page 75 of Exhibit 39 be brought on the screen. This is an invoice from S International Group to SNP Security, do you see that?---Yes.

It identifies the various locations at which security guarding services were provided by way of a subcontracting arrangement with SNP?---Yes.

20 If I can just ask you to turn to page 76, please. You'll see at the bottom there, there is an entry for Sydney University. I'm sorry it's hard to read. ---Yes.

And then if we go over the next page, you can see there's a list of entries and this time it includes that name I drew your attention to earlier, which is Peter Walsh.---Yes.

30 Do you just want to, by reference to page 47, answer this question, is it the case that once the new spreadsheet was settled, that would then be used for the purposes of invoicing SNP in the form that we can see, it's behind Tab 5, but running from pages 75 through to 84?---Yes.

THE COMMISSIONER: Those details were provided to SNP were they? ---Yes.

Thank you.

MR ENGLISH: Is that an appropriate time Commissioner.

40 THE COMMISSIONER: Certainly. Now, we'll adjourn till 2.00.

**LUNCHEON ADJOURNMENT**

**[1.00pm]**

THE COMMISSIONER: Now, this is the compulsory examination of Qin Li. I understand, Mr Drewett, that you seek authorisation to appear?

MR DREWETT: Yes, I, I seek leave on behalf of my client to legally represent her interests here today.

THE COMMISSIONER: Yep.

MR DREWETT: I, I, I believe it's pronounced Chin, as in C-h-i-n.

10 THE COMMISSIONER: Oh, thank you.

MR DREWETT: I believe. Is that - - -

MS LI: Yes.

MR DREWETT: Yes. And I am instructed that she will be seeking the protection of a section 38 - - -

THE COMMISSIONER: Right.

20

MR DREWETT: - - - certificate and I've explained to my client what that means and she's indicated to me she understands that and she would seek that.

THE COMMISSIONER: All right. Well, I have a few words to say about that as well.

MR DREWETT: Yes, thank you.

30 THE COMMISSIONER: In relation to this compulsory examination, the Commission is investigating allegations that, 1, from 2014 staff of S International Group, otherwise known as SIG, Sydney Night Patrol and Inquiry Co Pty Limited, otherwise known as SNP, and/or the University of Sydney have made false entries on daily time sheets claiming for staff who did not actually work or who no longer worked at the University of Sydney and/or who were overseas or otherwise unavailable to work at the times claimed. 2, from 2014 SIG, SNP and/or University of Sydney staff edited daily time sheets to include staff that did not actually work and/or replaced names with other staff members' names regardless of the associated  
40 signature.

I propose to make a, or give a direction rather under section 31A of the Independent Commission Against Corruption Act 1988. I direct that the following persons may be present at this compulsory examination, Commission officers including transcription staff, the witness, the witness's legal representatives. Mr Drewett, you are instructed by?

MR DREWETT: DA Amaton Solicitors.



THE COMMISSIONER: Right. Mr Drewett - - -

MR DREWETT: And my instructing solicitor in court today is Mr Dion Accoto, spelt A-c-c-o-t-o.

THE COMMISSIONER: Well, obviously you're both entitled to be here.

MR DREWETT: Yes, thank you, Commissioner.

10

THE COMMISSIONER: I also propose to make a direction under section 112 of the Act, it's a non-publication order. The order that I propose to make restricts the publication of information with respect to this compulsory examination. The direction will prevent those present today other than Commission officers from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by the Commission. The direction may be varied or lifted by the Commission without notification if the

20 Commission is satisfied that it is necessary or desirable to do so in the public interest.

20

Being satisfied that it is necessary and desirable in the public interest to do so, I direct pursuant to section 112 of the Independent Commission Against Corruption Act 1988, that the evidence given by this witness, the contents of any exhibits tendered, the contents of any documents shown to the witness, any information that might enable the witness to be identified, and the fact that the witness has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for

30 statutory purposes or pursuant to further order of the Commission.

30

**BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE IN THE PUBLIC INTEREST TO DO SO, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, THAT THE EVIDENCE GIVEN BY THIS WITNESS, THE CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO THE WITNESS, ANY INFORMATION THAT MIGHT ENABLE THE WITNESS TO**

40 **BE IDENTIFIED, AND THE FACT THAT THE WITNESS HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

40

THE COMMISSIONER: Now, Ms Li, that means that you can't talk to anyone about the evidence you give here, apart from of course your lawyers,

and indeed you can't even tell anyone that you've been here. Do you understand that?

MS LI: Yes.

THE COMMISSIONER: And I should tell you that it's a serious criminal offence for any person to contravene the direction I've just given.

MS LI: Okay.

10

THE COMMISSIONER: Do you understand that?

MS LI: Yes.

THE COMMISSIONER: Now, your counsel has sought what is called a section 38 declaration. Let me just explain, and I may be repeating things he has already said, but I do so anyway explain your rights and obligations. As a witness you must answer all questions truthfully. Were any items required to be produced by way of summons?

20

MR BAINE: No, Commissioner.

THE COMMISSIONER: You are also required to produce anything that I direct you to produce during the course of your evidence.

The effect of the section 38 declaration is that your answers or any items produced cannot be used against you in any civil proceedings, or subject to one exception, in any criminal proceedings. That exception is that the protection given to you by a section 38 declaration does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, most importantly, and indeed it's probably the only one you have to worry about, is that the section 38 declaration that your counsel has asked me to make will not protect you if you give false or misleading evidence. And, to give false or misleading evidence to this Commission is a very, very serious matter for which the penalty can be imprisonment for up to five years. Do you understand that?

30

MS LI: Yes.

40

THE COMMISSIONER: So it is so important that you tell the truth. I'll make that declaration now. Pursuant to section 38 of the Independent Commission Against Corruption Act 1988, I declare that all answers given by this witness and all documents and things produced by her during the course of her evidence at this compulsory examination are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HER DURING THE COURSE OF HER EVIDENCE AT THIS COMPULSORY EXAMINATION ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Yes, Mr Bain.

MR BAINE: Thank you, Commissioner. Would you please state your name?

MS LI: Xin Li.

MR BAINE: Of course, thank you, thank you. We might, Commissioner, take the - - -

THE COMMISSIONER: Ah, the witness hasn't taken an oath yet, have you. My apologies. Do you wish to take an oath or an affirmation?

MS LI: Ah - - -

MS DREWETT: I believe she wants to take an affirmation, I asked her before we came in.

THE COMMISSIONER: Thank you. I do apologise.

# **SCHEDULE C**

## **SAMPLE OF EXHIBIT LIST**

**EXHIBIT LIST**

**Date: 21 May, 2018**

**Number E17/0345**

<b>Number</b>	<b>Description</b>	<b>Page No.</b>
EXH-045	LITHGOW BUNDLE OF DOCUMENTS .....	13
EXH-046	RECORDS OF INTERVIEWS & WITNESS STATEMENTS.....	14
EXH-047	CSNSW POLICIES & PROCEDURES.....	14
EXH-048	4 SEGMENTS OF CELL SEARCH VIDEO CONDUCTED ON 20 FEBRUARY 2014 .....	14
EXH-049	EMAIL FROM DALE ASHCROFT TO TERRENCE WALKER RE: BEING A THUG DATED 19 FEBRUARY 2014.....	78
EXH-050	MAP OF 5 UNIT AT LITHGOW CORRECTIONAL CENTRE MARKED BY TERRENCE WALKER TO IDENTIFY THE OFFICER'S STATION, DAY ROOM & ENTRY DOOR.....	85
EXH-051	PHOTOS OF LITHGOW CORRECTIONAL CENTRE TAKEN MAY 2018	85
EXH-052	FORMAL INVESTIGATION REPORT BY JOHN GLASHEEN RE: TERRENCE WALKER DATED MARCH 2015.....	88
EXH-053	LETTER FROM KEVIN CORCORAN TO TERRENCE WALKER RE: ISS CASE NO 14-0227 DATED 22 DECEMBER 2015 .....	88

**Date: 22 May, 2018**

**Number E17/0345**

<b>Number</b>	<b>Description</b>	<b>Page No.</b>
EXH-054	TRANSCRIPT OF RECORD OF INTERVIEW BETWEEN PAUL GRAINGER & TERRENCE WALKER HELD ON 9 AUGUST 2017 .....	93
EXH-055	TRANSCRIPT OF OP ESTRY COMPULSORY EXAMINATION OF TERRENCE WALKER HELD ON 9 MARCH 2018.....	94
EXH-056	AERIAL MAP OF LITHGOW CORRECTIONAL CENTRE MARKED BY TERRENCE WALKER TO IDENTIFY IAT OFFICE WITH A 1 AND OFFICE IN WHICH IRM WAS COMPLETED WITH A 2.....	160

## **SCHEDULE D**

### **SAMPLE OF WITNESS LIST**

WITNESS LIST

**Date: 21 May, 2018**

**Number E17/0345**

**Name of Witness**

**Page No.**

TERRENCE BERNARD WALKER, sworn [11.20am] .....21  
Occupation: Former senior correctional officer, Corrective Services NSW  
Legal Representative: Mr Michael Taylor  
Address:

**Date: 22 May, 2018**

**Number E17/0345**

**Name of Witness**

**Page No.**

TERRENCE BERNARD WALKER, sworn [10.08am] .....93  
Occupation: Former senior correctional officer, Corrective Services NSW  
Legal Representative: Mr Michael Taylor  
Address:

WESLEY JOHN DUFFY, sworn [2.55pm] .....162  
Occupation: Senior correctional officer, Corrective Services NSW  
Legal Representative: Unrepresented  
Address:

**Date: 23 May, 2018**

**Number E17/0345**

**Name of Witness**

**Page No.**

WESLEY JOHN DUFFY, sworn [10.10am].....193  
Occupation: Senior correctional officer, Corrective Services NSW  
Legal Representative: Unrepresented  
Address:

ELLIOTT OGDEN DUNCAN, sworn [12.10pm].....228  
Occupation: Former correctional officer, Corrective Services NSW  
Legal Representative: Mr Brett Eurell  
Address:

# **FORM OF AGREEMENT**



# TRANSCRIPTION SERVICES AGREEMENT

This AGREEMENT is made on

2019

**BETWEEN:** THE INDEPENDENT COMMISSION AGAINST CORRUPTION a corporation constituted under the *Independent Commission Against Corruption Act 1988* (“ICAC Act”) of Level 7, 255 Elizabeth Street, Sydney New South Wales A.B.N. 17 934 402 440 (“ICAC”)

**AND:**

A.B.N  
 (“the Supplier”)

**WHEREAS:**

- A. ICAC wishes the Supplier to provide a Transcription Service.
- B. The Supplier has agreed to provide a Transcription Service on the terms and conditions contained in this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

“**Commencement Date**” means the commencement date for the undertaking of the Services specified in Part 1 of Schedule A.

“**Completion Date**” means the completion date for the undertaking of the Services specified in Part 2 of Schedule A.

“**Confidential Information**” means in relation to a party all information which relates either directly or indirectly to the business of that party regardless of the form in which that information is constituted, and which is not lawfully in the public domain; but does not include details of this Agreement or the significant evaluation criteria used in tender assessment.

“**Control**” includes the direct or indirect power to:

- a) direct the management or policies of the Supplier; or
- b) control the membership of the board of directors of the Supplier,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

**“Dispute”** includes any dispute, controversy, difference or claim arising out of or in connection with the Agreement, including any question concerning its formation, validity, interpretation, performance, breach and termination.

**"GST"** means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* as amended from time to time.

**"GST Law"** means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing, or relating, to a GST and any regulation made pursuant to any such Acts.

**“ICAC Representative”** means the ICAC officer specified in Part 4 of Schedule A.

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

**“Service Fee”** means the fees to be paid by ICAC to the Supplier for the Services, as set out in Part 4 of Schedule A.

**“Specification”** means the documents which comprise ICAC Tendering Conditions and Statement of Requirements (as set out in Schedule B to this Agreement), the Supplier’s successful response (as set out in Schedule C to this Agreement) together with the detail of any negotiated resolution of any non conformance as set out in Schedule D to this Agreement.

**“Supplier Representative”** means the employee of the Supplier specified in Part 5 of Schedule A.

**“Transcription Service”** means the provision by the Supplier of the transcription service described in the Statement of Requirements and the Supplier’s response.

1.2 In this Agreement, unless the contrary intention appears:

- a) headings are included for reference only and are not to affect the interpretation of this Agreement;
- b) the singular includes the plural and vice versa and words importing a gender include other genders;
- c) other grammatical forms of defined words or expression have corresponding meanings;
- d) a reference to a clause, paragraph, part, schedule or annexure is a reference to a clause or paragraph or part of or schedule or annexure to this Agreement and a reference to his Agreement includes any schedules and annexures;

- e) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- f) an amount of money is a reference to the lawful currency of Australia;
- g) a reference to a specific time for the performance of an obligation is a reference to that time then currently operative in SydneyNSW;
- h) a reference to a third party includes its executors, administrators, successors and permitted assigns;
- i) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- j) a reference to any legislation or statutory instrument or regulation is construed in accordance with the *Interpretation Act 1987 (NSW)*.

## **2. APPOINTMENT OF THE SUPPLIER**

- 2.1 In consideration of ICAC agreeing to meet its obligations under this Agreement, the Supplier agrees to provide the Transcription Service in accordance with the provisions of this Agreement.
- 2.2 The Supplier will:
  - a) provide the Transcription Service so as to fully and adequately meet the requirements indicated to the Supplier by ICAC in accordance with this Agreement and any reasonable request made by ICAC from time to time which is not in conflict with the intention of this Agreement;
  - b) provide all information in respect to the provision of the Transcription Service as ICAC or the ICAC Representative may from time to time reasonably request;
  - c) keep the ICAC Representative fully informed as to the Supplier's progress in provision of the Transcription Service, and in particular in respect of any problems or difficulties which the Supplier may identify, consult with the ICAC Representative regarding the manner of provision of the Transcription Service, and comply with all reasonable directives issued by the ICAC Representative regarding the provision of the Transcription Service, and the Agreement generally;
  - d) undertake the Transcription Service to a standard set out in the Specification and with due care, skill, diligence and competence expected of a professional service provider and in such a manner as will keep disruption of ICAC business and administration to a minimum;
  - e) undertake the Transcription Service in a cost effective manner consistent with the required level of quality and performance;

- f) ensure the Transcription Service is provided in accordance with the Specification or any mutually agreed variation thereto;
  - g) ensure that only appropriately qualified competent and experienced personnel undertake the performance of the Transcription Service;
  - h) ensure the provision of the Transcription Service achieves the performance indicators specified in the Specification; and
  - i) provide (without additional charge) any incidental or related service not specifically described in this Agreement which are required for the proper provision of the Transcription Service.
- 2.3 The Supplier is appointed as an independent contractor and is not an employee, agent nor partner of ICAC. The relationship between the parties shall not come within the scope of any law or regulation in relation to annual holidays, long service leave, worker's compensation, sick leave or any other employment arrangement or entitlement whether arising under statute or otherwise except as provided in this agreement.
- 2.4 ICAC will promptly notify the Supplier if it is not reasonably satisfied with the provision of any aspect of the Transcription Service, specifying the reasons for its dissatisfaction. If so notified by ICAC, the Supplier must, as soon as possible and, in any event, within five (5) business days of such notification, take such reasonable steps as may be necessary to remedy the matter(s) to the reasonable satisfaction of ICAC, at no additional cost to ICAC.
- 2.5 If the Supplier fails to address any dissatisfaction referred to in clause 2.4 above, to ICAC's reasonable satisfaction within the said period of five (5) business days, then ICAC may arrange for an alternative supplier to remedy the short coming at the expense of the Supplier and/or may terminate this Agreement by notice in writing to the Supplier.

### **3. SUB-CONTRACTING**

- 3.1 The Supplier must not sub-contract a material part of its obligations under the Agreement without the prior written approval of the ICAC. The ICAC may give or withhold its approval in its absolute discretion and may impose conditions on its approval.
- 3.2 The Supplier is responsible for all acts and omissions of subcontractors as if they were those of the Supplier and the Supplier indemnifies the ICAC against all costs, expenses and liabilities incurred by the ICAC in connection with the acts or omissions of any subcontractors.

### **4. PROJECT MANAGEMENT**

- 4.1 On or before the Commencement Date, the Supplier will nominate and appoint a Supplier Representative being a suitably qualified and experienced employee, acceptable to ICAC, to be primarily responsible for liaising with ICAC in relation to the provision of the Transcription Service, and shall inform ICAC of the name, qualifications and experience of

that employee, together with the details of a person, also acceptable to ICAC, who will relieve that person during periods of leave or other absence.

- 4.2 The ICAC representative for liaising with the Supplier in relation to the provision of the Services will be the person employed in the position of Solicitor to the Commission.
- 4.3 The Supplier Representative will be primarily responsible for the provision of the Transcription Service on behalf of the Supplier and for ensuring that the provision of the Transcription Service progresses in accordance with this Agreement and for liaising with ICAC in relation to the provision of the Transcription Service and without limiting the generality of the foregoing, the Supplier will ensure that the Supplier Representative:
- a) has a detailed knowledge of all aspects of the Transcription Service and of the progress of the delivery of the Transcription Service from time to time;
  - b) fully and promptly responds to all enquiries or suggestions made by the ICAC Representative in relation to the provision of the Transcription Service;
  - c) liaises with the ICAC Representatives regarding the provision of the Transcription Service;
  - d) is available to attend and attends meetings with the ICAC Representative from time to time during the duration of this Agreement;
  - e) promptly advises the ICAC Representative if any aspect of the Transcription Service cannot reasonably be met or of any proposed alterations or amendments to the Transcription Service and will liaise with the ICAC Representative to determine a mutually acceptable amendment to the delivery of the Transcription Service.
- 4.4 If the Supplier Representative leaves the employ of the Supplier the Supplier will promptly notify ICAC and will nominate and appoint a replacement employee acceptable to the ICAC as soon as possible (and in any event within seven (7) business days of the date upon which the previous representative leaves its employment). The Supplier will provide the ICAC with details of the new Supplier Representative's qualifications and experience.

## **5. REMUNERATION OF THE SUPPLIER**

- 5.1 The Supplier will provide ICAC with a legally acceptable tax invoice for any part of the Service Fee then due in accordance with this Agreement, providing documented detail of any schedule of rates, services or consumables provided during the period the subject of the tax invoice. ICAC shall pay the Supplier that part of the Service Fee specified without deduction or set-off, except as provided by this Agreement or prescribed by law, within the period specified in this Agreement or, if no time is specified, within twenty (20) calendar days of receipt of the tax invoice and appropriate supporting documentation.
- 5.2 ICAC shall not be obliged to make any payment to the Supplier unless and until the Supplier has completed to the reasonable satisfaction of ICAC provision of the Transcription Service due to be completed by the date of the invoice and provided the relevant documentation in support thereof.

## **6. ICAC's OBLIGATIONS**

- 6.1 Subject to the provisions of this Agreement, including the Schedules hereto, and clause 12, ICAC must provide to the Supplier access to ICAC's premises, personnel and information as is reasonably necessary to enable the Supplier to properly and promptly perform the Transcription Service.

## **7. INDEMNITIES**

- 7.1 The Supplier hereby indemnifies and shall keep indemnified ICAC from and against all loss or damage from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against ICAC in respect of any fact, matter or claim which arises out of a breach by the Supplier of a warranty or condition of this Agreement.

## **8. CONFIDENTIAL INFORMATION**

- 8.1 Each party must keep confidential all Confidential Information of the other party which becomes known to it during the currency of this Agreement.
- 8.2 Each party must use Confidential Information of the other party solely for the purposes of performing its obligations under this Agreement and must not disclose Confidential Information of the other party to any person without the prior written consent of the other party.
- 8.3 Each party must provide all reasonable assistance to the other party in the taking of:
- a) legal action against any person (including an employee of either party) relating to a disclosure of Confidential Information; or
  - b) any other necessary steps to retain the confidentiality of Confidential Information of that other party.
- 8.4 Each party must take all reasonable steps and measures (including, without limitation, procuring the execution by its employees and contractors, who may be in possession of Confidential Information of the other party, of confidentiality agreements reasonably acceptable to the other party) to ensure that the confidentiality of Confidential Information of the other party is retained.
- 8.5 On completion or termination of this Agreement, or earlier demand, each party must immediately return to the other party or delete or destroy all Confidential Information of the other party in its possession or control.
- 8.6 The Supplier acknowledges that ICAC may be required to publish certain information concerning the Agreement in accordance with ss 27 – 35 of the *Government Information (Public Access) Act 2009 (NSW)*. If the Supplier reasonably believes that any part of the Agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, then the Supplier should immediately advise ICAC in writing, identifying the provisions and providing reasons so that ICAC may consider seeking to exempt those provisions from publication.

8.7 The obligations of the parties under this clause survive termination or expiry of this Agreement for any cause.

## **9 COMPLIANCE WITH PRIVACY REQUIREMENTS**

9.1 The Supplier must:

- a) comply with the ICAC's privacy policies (and each specific privacy policy of the ICAC in relation to the collection and/or handling of personal or private information relating to third parties including the obtaining of any necessary consents to its use by the ICAC or by third parties) as notified in writing to the Supplier from time to time as if it were bound by that policy;
- b) comply with the *Privacy Act 1988* (Cwlth) and all other applicable privacy laws and such other data protection laws as may be in force from time to time which regulate the collection, storage, use and disclosure of information, as if it were regulated by those laws;
- c) comply with all directions by the ICAC:
  - i. relating to the means by which the ICAC complies with the *Privacy and Personal Information Protection Act 1998* (NSW), the ICAC's privacy policies, and all other applicable laws, codes and privacy policies; and
  - ii. co-operate with the ICAC in the resolution of any complaint alleging a breach of such laws, codes or privacy policy.

## **10 INTELLECTUAL PROPERTY RIGHTS**

10.1 All Intellectual Property Rights of the parties existing before the date of the Agreement will be retained by the relevant party.

10.2 The Supplier assigns or will procure the assignment to the ICAC, on creation:

- a) Intellectual Property Rights in all modifications made by the Supplier or its Subcontractors to the Intellectual Property Rights owned by or licensed to the ICAC made available to the Supplier or a subcontractor; and
- b) if specified by the ICAC, all other Intellectual Property Rights created by the Supplier or its subcontractors in the supply of the Transcription Service.

10.3 The Supplier grants to the ICAC a, perpetual, royalty-free, non-exclusive, irrevocable licence:

- a) to use the Supplier's Intellectual Property Rights (including all Intellectual Property Rights created by the Supplier or its subcontractors in the supply of the Transcription Service that are not assigned to the ICAC) to the extent necessary for the ICAC to receive the full use and benefit of the Transcription Service; and
- b) sub-licence any of the rights granted under clause 10.3(a) to any person, but only in relation to the use or receiving benefits of the Transcription Service.

- 10.4 The ICAC grants to the Supplier, and to the extent necessary any relevant subcontractor, for the term of this Agreement, a royalty free, non-exclusive, non-transferable licence to use the ICAC's Intellectual Property Rights only to the extent necessary to provide the Transcription Service.

## **11 TERM AND TERMINATION**

- 11.1 This Agreement commences on the Commencement Date and continues until the Completion Date unless an option under this Agreement is exercised or the Agreement is earlier terminated in accordance with this clause.

- 11.2 The ICAC may terminate this Agreement in accordance with clause 2.5, or as otherwise provided in the Schedules to this Agreement.

- 11.3 Either party may, by written notice to the other party, terminate this Agreement immediately if:

- a) the other party commits any breach of this Agreement and fails to remedy that breach (where it is capable of being remedied) within 10 business days of notice requiring it to do so; or
- b) any secured creditor of the other party takes any step to exercise its rights in relation to that party's assets or that party assigns any of its property for the benefit of or enters into any arrangement with its creditors, or any steps is taken to appoint a receiver, receiver and manager, liquidator, provisional liquidator or administrator over all or any part of that party's assets or business.

- 11.4 ICAC may terminate this Agreement should a person, who did not have Control of the Supplier at the Commencement Date, acquire Control of the Supplier or a person who had Control of the Supplier at the Commencement Date ceases to have Control of the Supplier.

- 11.5 The expiry or termination of this Agreement will be without prejudice to any accrued rights of the parties.

## **12 OPTION TO EXTEND**

- 12.2 The ICAC may elect to extend the period of the Agreement for a period of one year AND may also elect to further extend the period of the Agreement for a further one year period at the expiration of the first extension period.

- 12.3 In each case the ICAC will notify the Supplier of its election to extend the period of the agreement by providing notice in writing to that effect to the Supplier at least one month before the expiration of the Agreement (or the extension thereof).

## **13 NON SOLICITATION OF PERSONNEL**

- 13.2 Both the Supplier and ICAC agree that they will not during the term of this Agreement and for a period of six (6) months following its termination attempt to induce or solicit



any employee or agent of the other party to leave the employment or agency of the other party or directly or indirectly employ those employees or agents.

## **14 ACCESS AND SECURITY**

- 14.1 Any designated person of the Supplier (in this clause referred to as “designated person”) whom the Supplier proposes will carry out the Supplier’s provision of the Transcription Service under the Agreement and who will be required, while carrying out some or all of that work or performing some or all of those duties to:
- a) enter secure areas in ICAC’s buildings or places;
  - b) work with ICAC’s personnel for extended periods;
  - c) have access to, or be responsible for the physical custody of, official, classified, sensitive or commercial information, or documents or valuable assets belong to ICAC or a third party;
  - d) hold a particular kind of security clearance the details of which have been notified to the Supplier by ICAC; or
  - e) dispose of office or other waste from premises occupied or otherwise utilised by ICAC;

must be authorised by ICAC under this clause to carry out that work or perform those duties prior to the Supplier assigning any work or duties to the designated person in relation to the Transcription Service.

- 14.2 The Supplier or a designated person, shall provide to ICAC such information as ICAC from time to time requests for the purpose of allowing ICAC to undertake investigations for the purposes of this clause. ICAC warrants such information will be used only for the purpose of establishing a person’s suitability for the grant of such authorisation.

- 14.3 The Supplier shall ensure that only persons who:
- a) are properly qualified and/or experienced for the tasks they are to perform; and
  - b) will act, in all the circumstances, in a fit and proper manner while they are carrying out work or performing duties under the Agreement;

are notified to ICAC as designated persons.

- 14.4 ICAC shall promptly notify the Supplier in writing of:
- a) the names of the designated persons it authorises to carry out work or perform duties under this Agreement (in this clause referred to as an “authorised person”) the type and level of clearance given in respect of each of those persons and the date from which, or the period during which, those clearances will be effective; and
  - b) the names of the designated persons it refuses to authorise to carry out such work or perform such duties;

and the Supplier shall sign a copy of that notice, and return it to ICAC as soon as possible as acknowledgement of the contents of the notice.

- 14.5 The Supplier shall promptly advise ICAC in writing of any change in the circumstances of an authorised person that in the Supplier's reasonable opinion, is likely to affect ICAC's assessment of the person as an authorised person.
- 14.6 ICAC may, at its absolute discretion, give notice requiring the Supplier to remove personnel from work in respect of the Transcription Service, without giving reasons for that request. The Supplier shall promptly arrange for the removal of such personnel and their replacement with personnel acceptable to ICAC.
- 14.7 ICAC will require the Supplier to arrange for its employees or agents engaged in the performance of this Agreement to undergo such security vetting procedures as ICAC may require and which may involve the giving of an undertaking as to secrecy and information.
- 14.8 For the purposes of this clause:
  - a) a reference to "ICAC" includes a reference to any ICAC security advisor; and
  - b) a reference to "the Supplier" includes a reference to a subcontractor.

## **15. DISPUTE RESOLUTION**

- 15.1 Either party may give written notice of a Dispute to the other party ("Dispute Notice"). A party giving a Dispute Notice must provide details of the history and circumstances of the Dispute and give reasons for why the party is disputing the issue.
- 15.2 At the expiration of five (5) business days from the date of the Dispute Notice, unless the Dispute has otherwise settled, the Dispute may be submitted to the dispute resolution process described in clause 15.3.
- 15.3 Any Dispute submitted to the dispute resolution process will be dealt with in the following manner:
  - a) The Dispute will be referred initially to the ICAC Representative and the Supplier Representative. The parties' representatives will attempt to settle the Dispute within five (5) business days of the referral;
  - b) If the ICAC Representative and the Supplier Representative are unable to resolve the Dispute within those five (5) business days, or other such period as is agreed, the Dispute will be referred to the parties' respective senior management at a level deemed appropriate by each party given the nature of the Dispute; and
  - c) if the Dispute remains unresolved after a further five (5) business days of the period referred to in clause 15.3(b), or other such period as is agreed, the parties will refer the Dispute to mediation by a single mediator in accordance with the procedure described below in clause 15.4.

15.4 Subject to this clause, if the parties agree to refer a Dispute to mediation, the mediation will be administered by the Australian Commercial Disputes Centre (“ACDC”) and will be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated into this Agreement. In the event that the Supplier is a “small business” (being an Australian or New Zealand based firm that has an annual turnover of under \$2 million in the latest financial year), then the parties agree to refer the Dispute to the Small Business Commissioner for mediation.

15.5 Clauses 15.1 to 15.4 do not affect either party’s rights to:

- a) terminate the Agreement under clause 11 or otherwise; or
- b) commence court proceedings seeking interlocutory relief.

15.6 Notwithstanding the existence of a Dispute, each party must continue to perform its obligations under the Agreement.

## **16. NOTICE**

16.1 A notice to be given by a party to another party under this Agreement must be:

- a) in writing;
- b) directed to or left at the recipient’s address set out in Schedule A or as varied by written notice; or
- c) sent by prepaid post to the recipient’s address set out in Schedule A or as varied by written notice;
- d) sent by email to the recipient’s email address set out in Schedule A or as varied by written notice.

## **17. FORCE MAJEURE**

17.1 Neither party will be liable for any failure or delay in the performance of its obligations under this Agreement if that failure or delay is due to circumstances beyond that party’s control. If that failure or delay in performance exceeds sixty (60) calendar days, either party may immediately terminate this Agreement by written notice to the other party.

17.2 This clause does not apply to any obligation to pay money.

## **18. LAW AND JURISDICTION**

18.1 This Agreement is governed by the laws of the State of New South Wales.

18.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of the State of New South Wales and the Commonwealth of Australia and courts entitled to hear appeals from those Courts.

## **19. SEVERABILITY**

19.1 Any provision of this Agreement will be read down to the extent necessary to prevent that provision or this Agreement being invalid, voidable or unenforceable in the circumstances.

19.2 If, notwithstanding clause 19.1, a provision of this Agreement is still invalid or voidable:

- a) if the provision would not be invalid or voidable if a word or words were omitted, that word or those words will be deleted; and
- b) in any other case, the whole provision will be deleted, and the remainder of this Agreement, will continue to have full force and effect.

## **20. ASSIGNMENT**

20.1 The Supplier shall not, without the previous written consent of the ICAC, assign the Agreement, or any part thereof or mortgage, charge or encumber, all or any of the monies payable or to become payable under this Agreement, to any person.

20.2 Any permission to subcontract or assign the obligation to perform services or to supply services under the Agreement shall not discharge the Supplier from any liability in respect of the Agreement and shall extend only to the permission actually given, but not so as to prevent any proceedings for any subsequent breach of this clause; and all rights under the Agreement shall remain in full force, and shall be available as against any such subsequent breach.

## **21. GOODS AND SERVICES TAX (GST)**

21.1 Notwithstanding any other provision of this Agreement, if with respect to any provision of the Transcription Service the Supplier is or becomes liable to pay GST:

- a) Subject to paragraph (b) and (c) the Supplier may recover from the ICAC the amount of such GST in addition to and at the same time and in the same manner as the ICAC is obliged to pay the price for that supply otherwise provided for under this Agreement.
- b) The Supplier warrants and undertakes that at the time any provision of the Transcription Service on which GST is imposed is made by it to the ICAC under this Agreement it is or will be registered under the GST Law. If the ICAC requests written evidence of registration, the Supplier will promptly produce evidence satisfactory to the ICAC.
- c) The recovery of any amount in respect of GST by the Supplier from the ICAC is subject to the Supplier issuing to the ICAC a tax invoice enabling the ICAC to claim any applicable input credits in respect of the supply.

## **22. COMPLIANCE WITH STATUTORY REQUIREMENTS**

- 22.1 The Supplier agrees, warrants and undertakes that all work done in connection with the Services complies and conforms with all applicable legislation both state and Commonwealth, and any regulations, bylaws, ordinances, or orders made under such legislation as well as any applicable codes of conduct, policies, guidelines, quality assurance standards, all relevant Australian standards applicable to the Services and any other formal requirement relevant to the provision of the Services.

## **23. CONFLICT OF INTEREST**

- 23.1 The Supplier represents and warrants that no undisclosed conflict of interest exists or is likely to arise in the performance of the Services at the date of this Agreement.
- 23.2 The Supplier warrants and undertakes to notify the ICAC, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest. On receipt of such notice the ICAC may approve the Supplier undertaking any work which the ICAC considers might give rise to a conflict of interest or refuse to approve whereby the Supplier will refrain from undertaking any such work. The ICAC may thereupon exercise its rights of termination under this Agreement.
- 23.3 Failure by the Supplier to adhere to the provisions of this clause will give rise to a ground for termination pursuant to clause 11 without prejudice to any accrued rights or remedies of the ICAC.

## **24. COMPLIANCE WITH ETHICAL STANDARDS**

- 24.1 The Supplier shall comply with the principles of the NSW Department of Finance and Services Business Ethics Statement as in operation at the commencement of this Agreement and the ICAC Code of Conduct.

## **25. RECORDS AND INSPECTION**

- 25.1 The Supplier must, and must ensure all subcontractors:
- a) keep and maintain all necessary records relating to this Agreement and provision of the Transcription Service during the term of the Agreement (including any extension) and for seven (7) years thereafter (other than any ICAC Confidential Information held by the Supplier which must be returned to the ICAC in compliance with clause 8.5 of this Agreement);
  - b) make those records available for inspection and/or audit as reasonably required by the ICAC, a regulator, any external auditor or advisor or any of their authorised representatives, during normal business hours. Copies and extracts of any records may be taken for these purposes;

- c) permit the ICAC to inspect or appoint a third party to inspect the Supplier's premises to confirm compliance with the Agreement; and
- d) provide all appropriate resources and all reasonable assistance required by any person conducting any inspection and/or audit, and fully co-operate with that person in good faith and at the Supplier's sole cost.

25.2 The ICAC may conduct itself, or appoint a third party to conduct, an audit of the Supplier's performance and compliance with the Agreement.

25.3 The auditors' costs incurred by the ICAC in the audit under clause 25.2 will be paid by the ICAC. However, where the auditor objectively determines that the performance by the Supplier breaches the Agreement, all the costs of the ICAC (including third party auditor fees) in respect of that audit will be paid by the Supplier.

25.4 The records required to be kept by the Supplier and any subcontractor include time sheets or other records in respect of any time charge billing under this Agreement.

## **26. MINIMUM INSURANCE REQUIREMENTS**

26.1 Without limiting the Supplier's obligations under this Agreement the Supplier will take out and maintain during the term of this Agreement with a reputable insurance company in the name of the Supplier, such insurance policies, if any, as are specified in Part 7 of Schedule A.

26.2 The Supplier will, on request, produce to the ICAC satisfactory evidence that the Supplier has effected and renewed the insurance policies referred to in clause 26.1 which will be maintained fully effective and current during the term of this Agreement.

26.3 The Supplier must notify the ICAC within two (2) business days of any event which affects or may affect the Supplier's compliance with the requirements under this Agreement for minimum insurance, including any cancellation of a policy or reduction of limit of coverage below that required by the Agreement.

## **27. ENTIRE AGREEMENT**

27.1 This Agreement including its schedules and attachments:

- a) constitutes the entire agreement of the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter; and
- b) may only be altered in writing signed by all parties.

**EXECUTED AS AN AGREEMENT**

Signed for **the Supplier** by an authorised person in the presence of:

Signature of Authorised Person

Signature of witness

Name of Authorised Person (print)

Name of witness (print)

Position held

Signed for **The Independent Commission Against Corruption** by an authorised officer in the presence of:

Signature of Officer

Signature of witness

Name of Officer (print)

Name of witness (print)

Office held

## SCHEDULE A

### PART 1

**Commencement Date:** 1 October 2019

### PART 2

**Completion Date:** 30 September 2022 (unless an option to extend is exercised by ICAC)

### PART 3

**Service Fees:**

The amount to be paid to the Supplier for the Services shall be \$XXXX

### PART 4

**ICAC Representative:** Roy Waldon, Solicitor to the Commission

### PART 5

**Supplier Representative:** XXXX

### PART 6

**Address for Notices (clause 16)**

Independent Commission Against Corruption  
Level 7, 255 Elizabeth Street,  
SYDNEY NSW 2000

Email: [icac@icac.nsw.gov.au](mailto:icac@icac.nsw.gov.au)

Supplier  
XXX

### PART 7

**Insurance requirements.**

- a) a broad form public liability policy of insurance in the amount of not less than \$20,000,000 in respect of any single occurrence and unlimited in the aggregate as to the number of occurrences for any one period of cover; and
- b) workers' compensation insurance in accordance with applicable legislation in respect of all the Supplier's employees.



## **SCHEDULE B**

### **ICAC TENDERING CONDITIONS AND STATEMENT OF REQUIREMENTS**

## **SCHEDULE C**

### **TENDERER'S RESPONSE**

**SCHEDULE D**

NEGOTIATED OUTCOME OF ANY NON CONFORMANCE