



Australian Government
Department of Health and Ageing

**Commonwealth of Australia as represented by
the Department of Health and Ageing
ABN 83 605 426 759**

RFT 394/1011

REQUEST FOR TENDER

**Development of national minimum standards for service delivery for a
national alcohol and drug telephone counselling service**

LODGEMENT OF TENDERS (Refer Part A, Section 3).

Tenders **must** be lodged by 2.00pm local Canberra time on Friday, 17 June 2011
"Tender Closing Time".

The Department of Health and Ageing (the Department) now requires Tenderers to
lodge their Tender electronically via AusTender. Tenders **must** be lodged in
accordance with Part A – Section 3 – Tender Lodgement.

CONTACT OFFICER

The contact for all enquiries relating to this RFT: Julie Taylor (02) 6289 2575
(‘Contact Officer’).

Senate Community Affairs Legislation Committee
Budget Estimates 2011–2012

Department: *Health + Ageing*

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By:

Date: *31/5/11*

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Part A – Conditions of Tender

1. GENERAL CONDITIONS

1.1 Invitation

- 1.1.1 Tenderers are invited to make an offer ("Tender") that meets the Statement of Requirement at Part B of this Request for Tender ("RFT").
- 1.1.2 Please read all parts of this RFT carefully. Any Tenders that are not submitted according to this RFT may be excluded from consideration.
- 1.1.3 This RFT is expressly not a contract between the Commonwealth and the tenderer. Nothing in this RFT nor in any Tender is to be construed as to give rise to any contractual obligations, expressed or implied.
- 1.1.4 The Commonwealth may stop the RFT process, or re-tender, at any time if it considers that it is in the public interest to do so.
- 1.1.5 The Commonwealth may amend this RFT, including extending the Tender Closing Time, by giving written notice. Any extension notice or other variation or amendment will be given the same distribution as the original RFT.

1.2 AusTender, the Australian Government Tender System

- 1.2.1 AusTender is the Australian Government's procurement information system. Access to and use of AusTender is subject to terms and conditions. In participating in this Approach to Market (ATM) process, Tenderers must comply with those terms and conditions and any applicable instructions, processes, procedures and recommendations as advised on AusTender at <https://www.tenders.gov.au>.
- 1.2.2 All queries and requests for technical or operational support must be directed to:
AusTender Help Desk
Telephone: 1300 651 698
International: +61 2 6215 1558
Email: tenders@finance.gov.au
- 1.2.3 The AusTender Help Desk is available between 9am and 5pm ACT Local Time, Monday to Friday (excluding ACT and national public holidays).

1.3 Enquiries by Tenderers

- 1.3.1 All enquiries by potential tenderers **must** be addressed to the nominated Contact Officer named on the cover page of this RFT.
- 1.3.2 The Contact Officer will not be obliged to address any enquiries received by the Contact Officer within seven (7) calendar days prior to the Tender Closing Time.
- 1.3.3 Official responses to enquiries by potential tenderers will only be issued by the nominated Contact Officer.

- 1.3.4 Tenderers may seek clarification of the meaning of this RFT from the Contact Officer. The Commonwealth will respond to requests for clarification in writing (including by faxed notice or by e-mail).
- 1.3.5. The Commonwealth may circulate questions and their answers to all other tenderers without disclosing the source of the questions, or revealing any confidential tender information.
- 1.3.6 The Commonwealth shall ensure that any responses to requests for clarification or variations to the RFT are issued at least five (5) calendar days prior to the Tender Closing Time.

1.4 Language, Measurement and Currency

- 1.4.1 The Tender, including all attachments and supporting material, **must** be written in English. Unless otherwise specified in the Statement of Requirement, measurement **must** be expressed in Australian legal units of measure. Any prices quoted in the Tender **must** be in Australian dollars.

1.5 Affirmative Action

- 1.5.1 It is an Australian Government policy requirement that the Commonwealth and Commonwealth authorities do not acquire goods or services from a supplier who does not comply with the *Equal Opportunity for Women in the Workplace Act 1999* (EOWW Act).
- 1.5.2 A Tender from a tenderer who, at the Tender Closing Time, is named under the EOWW Act as having failed to comply with the EOWW Act, will not be considered, or further considered, unless within 14 days after the Tender Closing Time, the tenderer produces to the Commonwealth written confirmation from the Equal Opportunity for Women in the Workplace Agency that it currently complies with the EOWW Act.

1.6 Inconsistency

- 1.6.1 Where there is any inconsistency between Part A and Part B of this RFT, the provisions of Part A will prevail.

1.7 Coordinated Procurement Policy

- 1.7.1 Without limiting the general section on public interest referred to at clause 1.1.4 above, potential suppliers should note the Commonwealth's coordinated procurement policy for the delivery of certain goods and services to Commonwealth departments and agencies, where it can be established that the coordinated procurement of those goods and services could deliver savings to the Commonwealth.
- 1.7.2 The process of identifying such goods and services is currently underway. It is therefore possible that the Commonwealth may approve the procurement of some or all of the same goods or services to the Commonwealth under a coordinated process:
 - (a) before the submission period for this RFT ends; or

- (b) after the submission period ends but before a contract is signed with the successful tenderer(s); or
 - (c) during the period of any contract entered into as a result of this RFT.
- 1.7.3 If (a) applies, the department reserves the right to discontinue this RFT process.
- 1.7.4 If (b) applies, the department reserves the right to discontinue the tender process and not proceed to enter any contract as a result of this RFT.
- 1.7.5 If (c) applies, the department may exercise its rights under the contract to terminate any such contract for convenience, without compensation for loss of potential profits.

2. TENDER PREPARATION

2.1 Tenderers to Meet Costs

- 2.1.1 Tenderers are to meet all costs of responding to this RFT, including preparation, submission, postage, courier, lodgement and negotiation costs.

2.2 Tenderers to Inform Themselves

- 2.2.1 Tenderers are considered to have:
- (a) examined the RFT and any documents referred to in the RFT and any other information made available in writing by the Commonwealth to tenderers for the purpose of tendering;
 - (b) assessed the risks, contingencies and other circumstances surrounding the application of Coordinated Procurement Policy described in Clause 1.7;
 - (c) examined all further information which is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on their Tenders;
 - (d) made all investigations, interpretations and conclusions in relation to the Commonwealth as necessary or desirable in preparing their Tender; and
 - (e) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices.
- 2.2.2 Tenderers acknowledge that except where expressly provided for in this RFT the tenderer does not rely on:
- (a) any statement, letter, document or arrangement whether oral or in writing or other conduct, or
 - (b) any warranty or representation made by or on behalf of the Commonwealth,
- as adding to or amending this RFT.

3. TENDER LODGEMENT

3.1 Electronic Lodgement

- 3.1.1 Tenders must be lodged electronically via the Australian Government Tender System, AusTender, at <https://www.tenders.gov.au> before the Tender Closing Time and in accordance with the tender lodgement procedures set out in this clause 3 and on AusTender.
- 3.1.2 Where there is any inconsistency between the tender lodgement procedures set out on AusTender and those set out in this RFT, this RFT will prevail.
- 3.1.3 Tenders lodged by any other means, including by hand, facsimile or email, will not be considered.

3.2 Tender Closing Time

- 3.2.1 Tenders must be lodged before Tender Closing Time as indicated on the cover page of this RFT.
- 3.2.2 For Tenders submitted electronically, the time displayed on AusTender is deemed to be the correct time and will be the means by which the Department will determine that tenders have been lodged by the Tender Closing Time.
- 3.2.3 The judgement of the Department as to the time a Tender has been lodged will be final.
- 3.2.4 The Department may extend the Closing Time at its sole and absolute discretion, and will issue an addendum notifying any decision to extend.
- 3.2.5 It is the responsibility of Tenderers to ensure that their infrastructure including operating system and browser revision levels meet the minimum standards as defined on AusTender. Neither the Department nor the Commonwealth take any responsibility for any problems arising from tenderers' infrastructure and/or Internet connectivity.

3.3 Preparing to Lodge a Tender

Virus Checking

- 3.3.1 In submitting their Tenders electronically, Tenderers warrant that they have taken reasonable steps to ensure that tender response files are free of viruses, worms or other disabling features which may affect AusTender and/or the Department's computing environment. Tenders found to contain viruses, worms or other disabling features will be excluded from the evaluation process.

Tender File Formats, Naming Conventions and Sizes

- 3.3.2 Tenderers must lodge their tender in accordance with the requirements set out in clauses 3.3.2 to 3.3.6 for file format/s, naming conventions and file sizes. Failure to comply with any or all of these requirements may result in the tender not uploading successfully and/or may eliminate the bid from consideration.
- 3.3.3 The Department will accept tenders lodged in Microsoft Word 2003, Microsoft Excel 2003 or PDF format v9.

- 3.3.4 The tender file name/s:
- (a) should incorporate the Tenderer's company name;
 - (b) should reflect the various parts of the bid they represent, where the tender comprises multiple files;
 - (c) must not contain \ / : * ? " < > | characters. Check your files and re-name them if necessary; and
 - (d) must not exceed 100 characters including the file extension.
- 3.3.5 Tender files:
- (a) should not exceed a combined file size of 5 megabytes per upload;
 - (b) should be uploaded from a high level directory on a Tenderer's desktop, so as not to impede the upload process; and
 - (c) should be zipped (compressed) together for transmission to AusTender.
- 3.3.6 AusTender will accept up to a maximum of five files in any one upload of a tender. Each upload should not exceed the combined file size limit of 5 megabytes. If an upload would otherwise exceed 5 megabytes, the tenderer should either:
- (a) transmit the tender files as a compressed (zip) file not exceeding 5 megabytes; and/or
 - (b) lodge the tender in multiple uploads ensuring that each upload does not exceed 5 megabytes and clearly identify each upload as part of the tender.
- 3.3.7 If a Tender consists of multiple uploads, due to the number of files or file size, tenderers should ensure that transmission of all files is completed before the Tender Closing Time.
- 3.3.8 Tenders must be completely self-contained. No hyperlinked or other material may be incorporated by reference.

Scanned or Imaged Material, including Statutory Declarations

- 3.3.9 Scanned images of signed and/or initialled pages within the Tender, including Statutory Declarations and Deeds of Confidentiality, where they are required, are permitted so long as the total file size does not exceed the 5 megabyte limit. The use of scanned or imaged material, where it expands the tender file size beyond the 5 megabyte limit per upload, is prohibited.

3.4 Lodgement Process

- 3.4.1 Before submitting an electronic tender, Tenderers must:
- (a) ensure their technology platform meets the minimum requirements identified on AusTender;
 - (b) refer to AusTender's Help guidance, if required, on uploading tenders;
 - (c) take all steps to ensure that the Tender is free from anything that might reasonably affect useability or the security or operations of

- AusTender and/or the Department's computing environment;
- (d) ensure that the Tender does not contain macros, script or executable code of any kind unless that specific material has previously been approved in writing by the Department; and
 - (e) ensure that the Tender complies with all file type, format, naming conventions, size limitations or other requirements specified in clauses 3.3.2 to 3.3.6 or otherwise advised by the Department or required by AusTender.
- 3.4.2 Tenderers must allow sufficient time for Tender lodgement, including time that may be required for any problem analysis and resolution prior to the Tender Closing Time.
- 3.4.3 Tenderers should be aware that holding the "Lodge a Response" page in the web browser will not hold the electronic tender box open beyond the Tender Closing Time. An error message will be issued if the lodgement process is attempted after the Tender Closing Time.
- 3.4.4 Tenders lodged through AusTender will be deemed to be authorised by the Tenderer.
- 3.4.5 If Tenderers have any problem in accessing the AusTender website or uploading a tender they must contact the AusTender Help Desk, clause 1.2.2 **prior to the Tender Closing Time**. Failure to do so will exclude a Tender from consideration.

3.5 Late Tenders, Incomplete Tenders and Corrupted Files

- 3.5.1 Any attempt to lodge a Tender after the Tender Closing Time will not be permitted by AusTender. Such a Tender will be deemed to be a Late Tender.
- 3.5.2 Where electronic submission of a Tender has commenced prior to the Tender Closing Time but concluded after the Tender Closing Time, and upload of the tender file/s has completed successfully, as confirmed by AusTender system logs, the Tender will not be deemed to be a Late Tender. Such tenders will be identified by AusTender to the Department as having commenced transmission prior to, but completed lodgement after, the Tender Closing Time.
- 3.5.3 Where a tender lodgement consists of multiple uploads, due to the number and/or size of the files, tenderers must ensure that transmission of all files is completed and receipted before the Tender Closing Time and Clause 3.5.2 will only apply to the final upload.
- 3.5.4 Late Tenders, incomplete tenders, including those with electronic files that cannot be read or decrypted, tenders which the Department believes to potentially contain any virus, malicious code or anything else that might compromise the integrity or security of AusTender and/or the Department's computing environment, will be excluded from evaluation.

3.6 Proof of Lodgement

- 3.6.1 When a tender lodgement has successfully completed, an official receipt is provided on screen. The on-screen receipt will record the time and date the

Tender was received by AusTender and will be conclusive evidence of successful lodgement of a Tender. It is essential that tenderers save and print this receipt as proof of lodgement. A separate email confirming receipt of the tender will also be automatically dispatched to the email address of the registered user whose details were recorded at login.

- 3.6.2 Failure to receive a receipt means that lodgement has not completed successfully. Where no receipt has been issued by AusTender, the attempted lodgement will be deemed to have been unsuccessful. Tenderers should refer to clauses 3.4.2 and 3.4.5.

3.7 AusTender Security

- 3.7.1 Tenderers acknowledge that although the Commonwealth has implemented the security measures described on AusTender, the Commonwealth does not warrant that unauthorised access to information and data transmitted via the Internet will not occur.

- 3.7.2 Tenderers acknowledge that:

- (a) lodgement of their Tender on time and in accordance with these conditions of tender is entirely their responsibility; and
- (b) the Department will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a tender or any other material or communication relevant to this RFT, is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

3.8 Tender Validity Period

- 3.8.1 Tenders shall remain open for acceptance by the Commonwealth for 90 days from the Tender Closing Time specified on the cover page of this RFT.

3.9 Alterations, Erasures, Additional Information or Illegibility

- 3.9.2 If the Tenderer becomes aware of any discrepancy, error or omission in the Tender after lodgement and wishes to lodge a correction or additional material, that correction or additional material **must** be in writing and lodged in accordance with clause 3.1 above and prior to the Tender Closing Time.
- 3.9.3 Any corrections or additional information provided by a tenderer after Tender Closing Time will be regarded as late and will not be considered for evaluation.
- 3.9.4 Any Tenders in which prices are not clearly and legibly stated may be excluded from consideration.

3.10 Unintentional Errors of Form

- 3.10.1 If the Commonwealth considers that there are unintentional errors of form in a Tender, the Commonwealth may request the tenderer to correct or clarify the error, but will not permit any material alteration or addition to the Tender.
- 3.10.2 Where the Commonwealth considers that such corrections would introduce unfairness into the evaluation process, the corrections will not be admitted

for evaluation.

4. TENDER RESPONSE (SUBMISSION)

4.1 Improper Assistance and Collusive Tendering

4.1.1 The Commonwealth will exclude from further consideration, Tenders which have been compiled:

- (a) with improper assistance of employees or ex-employees of the Commonwealth, or any consultants or advisers to the Commonwealth;
- (b) with knowledge of the Commonwealth's requirements obtained prior to release to tenderers;

Some tender processes have been established with involvement of consultants and committee members who may think they are entitled to use their knowledge gained in that process to participate in a tender. This is a clear conflict of interest, and could give a competitive advantage to a tenderer.

- (c) using information unlawfully obtained from the Commonwealth; or
- (d) in collusion with other tenderers.

4.2 Unacceptable to Offer Inducements

4.2.1 Tenderers and their officers, agents and advisers must not offer inducements at any time in connection with the preparation of their tender.

4.3 Ownership of Tender Documents

4.3.1 All Tender documents will become the property of the Commonwealth on lodgement.

4.3.2 Intellectual property rights in the Tender do not pass to the Commonwealth with the lodgement of the Tender. However in submitting a Tender, the tenderer grants the Commonwealth a licence to retain, use, disclose and copy the information contained in any Tender document for the purposes of:

- (a) evaluating or clarifying the Tender;
- (b) evaluating any subsequent Tender;
- (c) negotiating any resultant contract;
- (d) managing a contract with the successful tenderer, if any;
- (e) referring any material that suggests collusion by tenderers to the Australian Competition and Consumer Commission ("ACCC") and the use by the ACCC of the material to conduct any review or investigation it deems necessary;
- (f) responding to any challenge to the RFT process, audit and complying with governmental and parliamentary reporting requirements or request for information, including but not limited to

- requests from parliament or parliamentary committees; and
- (g) any other purpose related to the RFT process or above purposes.

4.4 Confidentiality

- 4.4.1 The Commonwealth undertakes to keep confidential any confidential information provided to the Commonwealth by tenderers prior to the award of any contract and, in respect of unsuccessful tenderers, after the award of any contract.
- 4.4.2 The obligation of confidentiality in clause 4.4.1 does not apply if the confidential information:
- (a) is disclosed by the Commonwealth to its advisors or employees solely in order to consider the Tender;
 - (b) is disclosed by the Commonwealth to the responsible Minister;
 - (c) is disclosed by the Commonwealth, in response to a request by a House or a Committee of the Parliament of the Commonwealth;
 - (d) is authorised or required by law to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of clause 4.4.1.
- 4.4.3 If the tenderer is successful in being awarded a contract, the Commonwealth will agree to keep confidential any specific information provided under, or in connection with, the contract where it is appropriate to do so having regard to the matters covered by the Department of Finance and Deregulation's publication "*Guidance on Confidentiality in Procurement*" available from:
<http://www.finance.gov.au/publications/fmg-series/03-guidance-on-confidentiality-in-procurement.html>
- 4.4.4 To enable the Commonwealth to consider whether it agrees to keep specific information confidential, tenderers must include in their Tender any request that information is to be treated as confidential following the award of a contract to it, if any, specifying the information and giving reasons why it is necessary to keep the information confidential.
- 4.4.5 The Commonwealth will consider any request made under Section 4.4 and will inform the tenderer whether or not the Commonwealth, in its sole discretion, agrees to the request and the terms under which it agrees.
- 4.4.6 The terms of any agreement as to confidentiality will form part of the contract to be awarded at completion of the RFT process.

4.5 Disclosure of Information

- 4.5.1 The *Freedom of Information Act 1982* ("FOI Act") gives to members of the public rights of access to official documents of the Commonwealth and its agencies. The FOI Act extends as far as practicable the right of the Australian community to access information (generally documents) in the possession of the Commonwealth, limited only by exceptions and exemptions necessary for the protection of essential public interests and of the private and business affairs of persons in respect of whom information is

collected and held by departments and public authorities.

- 4.5.2 The Commonwealth is required to publish the award of all contracts, agreements and standing offers valued at \$10,000 or more. This includes details to whom the contract, agreement or standing offer was awarded and the contract price.
- 4.5.3 The Senate Order on Departmental and Agency Contracts, requires Commonwealth agencies to publish on the Internet with access through their websites, a report listing of all contracts with a value \$100,000 or more, including details as to whether each contract contains provisions requiring the parties to maintain confidentiality of any of the contract's provisions, or whether any provisions of the contract are regarded by the parties as confidential and also provide a statement for the reasons for confidentiality.

4.6 Australian Government Fair Work Principles

- 4.6.1 *Tenderers should note that the Australian Government Fair Work Principles apply to this procurement. More information on the Fair Work Principles and their associated User Guide can be found at www.deewr.gov.au/fairworkprinciples.*
- 4.6.2 In particular Tenderers should note that in accordance with the Fair Work Principles Commonwealth Entities will not enter into a contract with a Tenderer who:
- (a) fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, occupational health and safety law, or workers' compensation law;
 - (b) is subject to an order from any Court or Tribunal decisions relating to a breach of workplace relations law, occupational health and safety law, or workers' compensation law with which the Tenderer has not fully complied or is not fully complying;
 - (c) has a Fair Work Act 2009 agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures;
 - (d) fails to provide information when requested by the Department of Health and Ageing relevant to their compliance with the Fair Work Principles;
- 4.6.3 For the purposes of clause 4.6.2:
- (a) a genuine dispute resolution procedure is one which provides each of the following processes to resolve workplace disputes:
 - the ability for employees to appoint a representative in relation to the dispute;
 - in the first instance procedures to resolve the dispute at the workplace level;
 - if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and

- if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.
 - (b) a decision or order with which the Tenderer has not fully complied or is not fully complying includes any relevant penalty or order of a Court or Tribunal, but It does not extend to infringement notices issued by workplace inspectors or a provisional improvement notice issued by an occupational health and safety inspector, or those instances where a penalty or a requirement has been imposed but the period for payment/compliance has not expired.
- 4.6.4 To enable the Department of Health and Ageing to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles the Tenderer must complete the attached Declaration in the form it is provided and include it as part of their tender or expression of interest response.
- 4.6.5 *Clause 4.6 is a minimum content and format requirement for the purposes of the RFT. Failure to comply with these clauses will result in a [Submission] being excluded from further consideration.*

4.7 Commercial, Technical and Financial Capacity

- 4.7.1 Tenderers **must** disclose any litigation, arbitration, mediation, conciliation or proceeding, including any investigations ('Proceedings'), that are taking place, pending or threatened, against them where such Proceedings will or have the potential to impact adversely upon either:
- (a) the tenderer's capacity to perform and fulfil its obligations if contracted as a result of this tender process; or
 - (b) the tenderer's reputation.
- 4.7.2 In circumstances where there are no Proceedings as detailed in 4.7.1 tenderers **must** make a statement to this effect.
- 4.7.3 Tenderers who fail to disclose Proceedings in accordance with clause 4.7.1 or who fail to make a statement in accordance with clause 4.7.2 (as applicable) and are subsequently found to have Proceedings that the Commonwealth considers should have been disclosed will immediately be disqualified from the tender process. If it is found that a successful tenderer has Proceedings as detailed in 4.7.1 after they are engaged under a contract, it may be grounds for immediate termination.
- 4.7.4 The Department will consider the tenderer's response to 4.7.1 and 4.7.2 and the commercial, technical or financial capacity any tenderer or subcontractor proposed in their submissions, including the existence of any breach or default or alleged breach or default of any agreement, order or award binding upon them.

4.8 Security, Probity and Financial Checks

- 4.8.1 The Commonwealth reserves the right to perform such security, probity and/or financial investigations and procedures as the Commonwealth, in its absolute discretion, may determine are necessary in relation to each

tenderer, its partners, associates, sub-contractors or related entities including consortium members and their officers or employees. Each tenderer agrees to provide, at its cost, all reasonable assistance to the Commonwealth in this regard.

4.9 Australian National Audit Office

- 4.9.1 The attention of tenderers is drawn to the *Auditor-General Act 1997*, which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records.
- 4.9.2 In addition to the Auditor-General's powers under the *Auditor-General Act 1997*, if the tenderer is chosen to enter into a contract, the tenderer will be required to provide the Auditor-General or an authorised person, access to information, documents, records and Commonwealth assets, including those on the tenderer's premises. This access will be required at reasonable times on giving reasonable notice for the purpose of carrying out the Auditor-General's functions and will be restricted to information and assets which are in the custody or control of the tenderer, its employees, agents or subcontractors, and which are related to the contract. Such access will apply for the term of the contract and for a period of 7 years from the date of expiration or termination.
- 4.9.3 Tenderers **should** obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997* on their participation in the RFT.

4.10 Australian Industry Participation (AIP) Plan

Not Used.

4.11 Open Source Software Policy

Not Used.

5. EVALUATION PROCESS

5.1 Acceptance of Tenders

- 5.1.1 Tenders which are deemed late in accordance with section 3.1 will not be admitted for evaluation, and will normally be returned to the tenderer with an explanation within five (5) working days of receipt of the late Tender.
- 5.1.2 The Commonwealth is not bound to accept the lowest priced Tender or any other Tender.
- 5.1.3 Unsuccessful Tenderers will be notified once a contract has been executed between the successful tenderer and the Commonwealth.
- 5.1.4 The Commonwealth may negotiate with any tenderer or tenderers, or seek clarification of the contents of a Tender from any tenderer.

5.2 Compliance

- 5.2.1 The tenderer will be taken to agree and comply with all parts of the RFT unless the tenderer provides detail of the extent of and reasons for any non-compliance.

- 5.2.2 Tenders that do not meet the minimum content and format requirements or satisfy a condition of participation or an essential requirement will be automatically excluded from consideration (refer sections 5.3 to 5.5).
- 5.2.3 A non-compliant Tender may be excluded from consideration as being incomplete or clearly not competitive, however, the Commonwealth may seek clarification from the tenderer in accordance with section 3.5.

5.3 Minimum Content and Format Requirements

- 5.3.1 Subject to sections 3.2 and 3.5 the Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the Tender does not comply with the following requirements:
- a. the packaging and identification of Tenders (refer Cover Page);
 - b. the number of copies of the Tender (refer Cover Page);
 - c. Included a signed declaration with their submission that they have not engaged in collusive tendering or received improper assistance in compiling their Tender (refer Part A clause 4.1);
 - d. Include a signed declaration with their submission that they do not have any adverse Court or Tribunal decision for a breach of workplace law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this RFT (refer clause 4.7 and Annex B).
 - e. the Tender has been approved by signature of an officer authorised to bind the company/organisation (refer Part A clause 3.1.8);
 - f. the language and units of measurement/currency to be used (refer Part A section 1.4);
 - g. minimum content and format requirements (Refer Part B); and
 - h. the provision of the information detailed in the Tenderer's Submission Checklist at Annex A to this RFT.

5.4 Conditions of Participation

- 5.4.1 The Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the tenderer does not comply with the conditions for participation listed in Part B – Conditions of Participation.

5.5 Essential Requirements

- 5.5.1 The Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the Tender does not comply with an essential requirement identified in the Statement of Requirement (Part B – Essential Requirements).

5.6 Preferred Tenderer

- 5.6.1 The Commonwealth may identify a tenderer as a preferred tenderer, but such a selection:
- (a) does not effect or limit the Commonwealth's rights or the tenderer's

obligations under the RFT;

- (b) is not a representation that a contract will be entered into between the Commonwealth and those tenderers; and
- (c) does not preclude the possibility that any other tenderer has also been selected as a preferred tenderer.

Part B – Statement of Requirement

1. INTRODUCTION

The contractor is required to research and develop, in consultation with states and territories, as nominated by the Commonwealth, minimum standards for a national alcohol and drug telephone information, referral and counselling service (NADTIRCS). The intended purpose of these standards is to provide a benchmark for states and territories to assist them in providing consistency of NADTIRC services whilst recognising that there may be minor variations between the services provided within each jurisdiction. The standards will provide a basis on which jurisdictions can re-examine their existing policies and service standards over 2011/12 to ensure that they are providing an appropriate, high level service to their population.

2. CONDITIONS OF PARTICIPATION (*Part A section 5.4*)

In compliance with the Commonwealth Procurement Guidelines (CPGs), the Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the tenderer does not comply with the following condition(s):

- (a) Capacity to comply with the draft contract conditions from a commercial, financial or technical perspective (Part A Section 4.7).
- (b) Included a signed declaration with their submission that they have not engaged in collusive tendering or received improper assistance in compiling their Tender.
- (c) Include a signed declaration with their submission that they do not have any adverse Court or Tribunal decision for a breach of workplace law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this RFT.
- (d) Tenderers must have, or be prepared to obtain if engaged, the following levels of insurance and indemnity coverage in place for this project assignment (refer attached contract clauses referring to insurance and indemnity):
 - Workers Compensation to an amount required by law, and
 - \$10,000,000.00 Professional Indemnity.

3. MINIMUM CONTENT AND FORMAT REQUIREMENTS (*Part A section 5.3*)

In compliance with the Commonwealth Procurement Guidelines (CPGs), the Commonwealth will exclude a Tender from further consideration where the minimum content and format requirements have not been met. Subject to Part A section 3.4, tenderers are required to satisfy the format and content requirement including provision of the information listed in Part A section 5.3.

4. BACKGROUND

A considerable body of evidence suggests that brief interventions are one of the most effective treatments for people who consume alcohol at risky and high risk levels, but who have not progressed to dependency. The NADTIRCS platform will provide a valuable resource for providing brief intervention, information and referral services. Where longer term responses to alcohol and other problems are required, helplines refer clients to alcohol and other drug services for more structured interventions.

In May 2010, the Australian Government announced that it would invest an additional \$50 million in the National Binge Drinking Campaign. This included \$5 million for enhanced telephone counselling and referrals for people with alcohol-related problems.

Currently, under the umbrella of the Alcohol and Drug Information Services (ADIS) - which is a telephone counselling service funded by state and territory governments - each state and territory offers a information, referral and counselling service for people with alcohol and other drug problems, or people concerned that friends or family members might have such problems. In most jurisdictions, these services are toll-free. In total 21 telephone numbers exist for ADIS across Australia.

The main component of this new measure is to provide a single national '24/7' phone number that people with alcohol problems can call to receive information, counselling, advice, and referral to appropriate alcohol and other drug services where required. In addition to implementing the single national number, the need for national consistent standards has been identified.

5. CONTEXT

Contractors should understand the context for the National Binge Drinking Strategy, and more specifically, the project to enhance NADTIRCS for people with alcohol-related problems.

There are a number of key documents that contractors should be aware of when developing their tenders:

The National Alcohol Strategy 2006-2011

The National Alcohol Strategy 2006-2011 was developed as a response to the patterns of high risk alcohol consumption that are prevalent in Australia. It is a plan for action developed through collaboration between Australian governments, non-government and industry partners, and the broader community.

The strategy was endorsed by the Ministerial Council on Drug Strategy (MCDS) in May 2006 for the period 2006-2009. On 24 April 2009, the Ministerial Council on Drug Strategy approved an extension to the term of the strategy (which was due to expire in 2009) until 2011, as its goals and priorities remain current.

The four priority areas that have been nominated as the focus of the strategy are:

1. intoxication

2. public safety and amenity
3. health impacts
4. cultural place and availability

The document is available online at:

<http://www.health.gov.au/internet/alcohol/publishing.nsf/Content/nas-06-09>

Taking Preventative Action. A Response to Australia: The Healthiest Country by 2020.

In 2008, the Government commissioned the National Preventative Health Taskforce (NPHT), which comprised Australia's leading public health experts, to provide advice on strategies for reducing the incidence, harms and costs to the community of alcohol, tobacco and obesity.

The NPHT report, *The Healthiest Country by 2020*, was released for public consultation in September 2009. On 11 May 2010, Minister Roxon released the Government's response to the report, *Taking Preventative Action. A Response to Australia: The Healthiest Country by 2020*.

The document is available online at:

<http://www.health.gov.au/internet/preventativehealth/publishing.nsf/Content/nphs-roadmap>

The Government's response to the Taskforce's recommendations covers the key themes of:

- Liquor licensing and enforcement measures;
- Changing the drinking culture;
- Supporting community action;
- Social marketing and public education; and
- Improved alcohol data.

The Taskforce's recommendations on alcohol promotions, labelling and taxation were noted by the Government.

6. OBJECTIVES

The Departments expects, at the end of this contract, to have national minimum standards identified for the NADTIRCS with a clearly defined set of minimum standards which the states and territories will be able to use to help inform the delivery of the service in their jurisdiction over 2011/12 and in future years. The final report will include recommendations on the minimum data set that should be routinely collected by all states and territories to provide useful information on the individual NADTIRCS and to inform alcohol policy in all jurisdictions, and include the baseline data collected by the contractor from each of the services in the states and territories for use in 2013/14 in the evaluation of the NADTIRCS.

7. REQUIREMENT

The project will comprise two stages.

Stage 1

The contractor will develop national minimum standards for the NADTIRCS which should address:

- nationally consistent minimum levels of staff training;
- requirements for a 24 hour, seven day a week service for all jurisdictions;
- the types of information and referrals which should be provided consistently across the states and territories for service delivery to address current variability in services and ensure consistency across the country. This may include, for example, counsellor scripts, referral protocols, maintenance of best practice standards, clinical pathways and/or algorithms; and
- any other matters the contractor, in their experience, believe should be included in national minimum standards of the NADTIRCS.

Fulfilment of the above objectives will include:

- identifying minimum appropriate levels of qualifications and experience required for NADTIRCS staff;
- identifying the types of training required to work on NADTIRCS and the minimum qualifications/training recommended for staff (recognising different roles within the service if relevant);
- identifying the minimum level of staff required to run the NADTIRCS in each state and territory;
- detailing the minimum data set that should be routinely collected by all states and territories to provide useful information on the NADTIRCS and to inform alcohol policy in all jurisdictions; and
- any other matters the contractor believes should be included in national minimum standards of the NADTIRCS.

The successful tenderer will be required to consult with the states and territories and any other key stakeholders to ensure that acceptable differences in the levels of the NADTIRCS are correctly identified, and that states and territories understand and are in agreement with the proposed minimum standards.

Stage 2

Preparation for an evaluation of the NADTIRCS in 2013/14 by:

- the collection and reporting in the final report, of baseline data from each of the services in the states and territories for use in 2013/14 in the evaluation of the NADTIRCS. This data should be able to be used to measure the performance of the service and the impact of the enhancements once the National 1800 number is in place and the minimum standards are implemented across the states and territories; and
- identifying what, if any, further data needs to be collected and what more might be required that would improve the future evaluation of the service.

The contractor is required to recommend the most appropriate methodology to undertake the above tasks conforming to both time and budget constraints (see timelines in section 9

below).

8. ESSENTIAL REQUIREMENTS (*Part A section 5.5*)

In compliance with the Commonwealth Procurement Guidelines, the Commonwealth will exclude a Tender from further consideration if the Commonwealth considers that the Tender does not comply with an essential requirement identified in the Statement of Requirement indicated by the use of the word “**must**”.

9. TIMEFRAMES

Task/Milestone	Proposed Date
Contractor commences project	On execution of contract (approx. date: mid-July 2011).
Establishment Meeting with Department to discuss project	Late July 2011
Report outline provided to Department	Late July 2011
Comments provided back to contractor	Early August 2011
Discussions with states & territories on draft standards prior to drafting report	August/September 2011
Draft report provided to Department	Mid October 2011
Comments provided back to contractor	Mid to late October 2011
Final report provided to the Department	Early November 2011

10. REPORTING REQUIREMENTS

The successful contractor is required to provide the following material:

- a report outline in the first month which should address the objectives and requirements outlined above;
- a draft report; and
- a final report which incorporates any feedback provided by the Department and other jurisdictions on the outline and draft report.

Draft report

An electronic copy of the draft report is required. The draft report will be reviewed by the Department and comments provided for revision before the report is finalised.

Final report

On acceptance of the draft report, a final report will be required in the following formats:

- one unbound copy;
- one bound copy; and
- an electronic version in Word 2003 format.

11. COMMUNICATION ISSUES

In the development of the national minimum standards for the NADTIRCS, the contractor will be required to consult with state and territory representatives to ensure they are aware of, and in agreement with, the minimum standards being proposed. It is anticipated that this consultation will involve teleconferences organised by the manager in charge of this project within the Department of Health and Ageing on behalf of the contractor where required. If travel to different jurisdictions is considered necessary a strong argument for this travel will be required and approval given by the Departmental manager in charge of this project.

12. CULTURAL, COMMUNITY OR ORGANISATIONAL ISSUES

Advice from jurisdictions is that the service appears to be underutilised by the indigenous people.

13. CONFIDENTIALITY ISSUES (*Part A section 4.4*)

Tenderers **must** indicate any element of their Tender which may become part of any subsequent contract, which they regard as confidential and provide reasons for requiring confidentiality. Further information regarding confidentiality in this context can be sought from the Department of Finance and Deregulation's publication "Guidance on Confidentiality in Procurement" available from:

<http://www.finance.gov.au/publications/fmg-series/03-guidance-on-confidentiality-in-procurement.html>

14. RECORDS AND RECORD KEEPING

Tenderers should be familiar with the requirements of record keeping in an outsourced environment, particularly the National Archives publication "Records Issues for Outsourcing". Copies can be downloaded from

http://www.naa.gov.au/Images/GDA25_tcm2-1129.pdf

15. ELECTRONIC COMMERCE INITIATIVE

As part of this Department's adoption of electronic commerce principles, the Department has a preference to make all payments by electronic funds transfer ("EFT"). Tenderers are required to advise their acceptance of the use of EFT.

Part C – Evaluation Process and Response Format

1. EVALUATION METHOD

- 1.1 A Tender Evaluation Committee consisting of representatives from the Commonwealth Department of Health and Ageing will conduct the evaluation of Tenders.
- 1.2 In assessing tenders, the Department reserves the right to draw on information about the tenderer in the public domain or acquired in the department's course of business, to ascertain a tenderers capacity to perform a contract from a commercial, financial or technical perspective. In doing so, tenderers will be given an opportunity to comment on any discoveries which may be detrimental to their submission.
- 1.3 The Commonwealth proposes to use the following evaluation process:
- (a) Compliance - An initial assessment of whether the tenderer meets any conditions of participation, complies with any minimum content and format requirements, and satisfies the essential requirements (as identified in the following table);

CONFORMANCE ITEMS	REFERENCE POINTS
Conditions of Participation	Part A section 5.4 Part B section 2
Minimum Content and Format Requirements	Part A section 5.3 Part B section 3
Essential Requirements	Part A section 5.5 Part B section 8

- (b) Assessment – a detailed assessment of Tenders against the evaluation criteria to assess value for money;
 - (c) Short-listing of tenderers (if required);
 - (d) Formal presentations by short-listed tenderers to the Tender Evaluation Committee (if required);
 - (e) Other meetings with the Tender Evaluation Committee to review the project methodology, deliverables and timeframes of the Tender.
- 1.4. Any recommendation from the Tender Evaluation Committee for the Commonwealth to enter into a contract with the successful tenderer will need to be approved by a departmental delegate prior to the Commonwealth entering into a formal contract.

2. TENDER EVALUATION CRITERIA AND INFORMATION REQUIRED FROM TENDERERS

- 2.1. Tenderers **should** ensure their Tenders clearly address the Tender evaluation criteria. Tenderers must respond to, but need not be limited to; the information identified in the Tenderer's Submission Checklist (Annex A).
- 2.2. If additional evaluation criteria are to be applied, the Commonwealth will notify tenderers and give them sufficient opportunity to respond.
- 2.3. Please note that any tender that does not provide all required information or which contains false or misleading information may be excluded from consideration.

- 2.4 In evaluating Tenders, the Commonwealth will take into account the following Tender evaluation criteria in its consideration of value for money:

EVALUATION Criteria	Involves assessment of
Achieving the Requirement:	
(a) The extent to which the Tender meets the Statement of Requirement.	Executive summary Methodology (how the task will be accomplished) Project Plan Quality and performance criteria
(b) Understanding of cultural, community and organisational sensitivities relevant to the project assignment described in the RFT.	Your organisations understanding of cultural, community and organisational issues relevant to the project assignment, any potential for conflict of interest and how these issues can be managed.
Tenderer's Capacity and Infrastructure:	
(a) Appropriate experience and skills of specified personnel and support personnel.	Curriculum vitae of all specified personnel.
(b) Availability of specified personnel at the time required.	Current commitments of the specified personnel.
(c) Backup available to specified personnel, including guidance available from senior consultants.	Identification of backup personnel and senior consultants available for guidance.
(d) Previous performance on comparable projects, indicating the tenderer's dependability and quality of work.	References relating to recently undertaken, comparable projects, including; <ul style="list-style-type: none"> - Project summaries, - Client organisations, - Client contact details, and - Examples of previous work produced.
Whole of Project Costs:	
The estimated total potential cost (including options and extensions) to the Department of completing the project.	Itemised budget information and proposed payment schedules detailing all fees, prices and charges related to each milestone or deliverable of the project Travel costs (itinerary, duration etc). Any additional costs to be incurred by the Department in support of the proposed contract.



Part D – Draft Conditions of Contract

The draft contract terms and conditions are intended to form the basis of any contract between a successful tenderer and the Commonwealth.
Tenderers please note, the tenderer is taken to agree to accept these Draft Conditions of Contract unless the tenderer specifies otherwise, giving reasons.

CONTRACT FOR SERVICES

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health and Ageing
ABN 83 605 426 759

and

[Insert Contractor's Name and ABN]

in relation to Services for

[

]

TABLE OF CLAUSES

1. Interpretation and Operation of Contract
2. Provision of Services
3. Fees, Allowances and Assistance
- 3A. Small Business Payments
4. Taxes, Duties and Government Charges
5. Subcontractors
6. Specified Personnel and Other Personnel
7. Responsibility of Contractor
8. Commonwealth Material
9. Intellectual Property in Contract Material
10. Moral Rights
11. Disclosure of Information
12. Access to Documents
13. Protection of Personal Information
14. Compliance with Laws and Policies
15. Conflict of Interest
16. Accountability and Access
17. Indemnity
18. Insurance
19. Dispute Resolution
20. Termination for Convenience
21. Termination for Default
22. Deemed Termination for Convenience
23. Contractor Warranties and Undertakings
24. Negation of Employment, Partnership and Agency
25. Notices

SCHEDULE

Item A	Services and Subcontractors
Item B	Required Contract Material
Item C	Standards and Best Practice
Item D	Time-frame
Item E	Fees
Item F	Allowances and Costs
Item G	Facilities and Assistance
Item H	Invoice Procedures
Item I	Specified Personnel
Item J	Commonwealth Material to be provided by Commonwealth
Item K	Use of Commonwealth Material
Item L	Existing Material
Item M	Dealing with Copies
Item N	Insurance
Item O	Address for Notices

This Contract is made between the

COMMONWEALTH OF AUSTRALIA ('the Commonwealth') for the purposes of this Contract represented by and acting through the Department of Health and Ageing ('the Department') ABN 83 605 426 759

and

[Insert name and registered address of Contractor] ABN [insert number] ('the Contractor').

RECITALS

- A. The Commonwealth requires the provision of certain services to the Department as specified in the Schedule.
- B. The Contractor has fully informed itself on all aspects of the work required to be performed and has submitted a proposal and quotation entitled and dated
- C. The Commonwealth has agreed to engage the Contractor to provide the Services upon the terms and conditions contained in this Contract.

OPERATIVE PART

1. INTERPRETATION AND OPERATION OF CONTRACT

1.1 In this Contract, unless the contrary intention appears:

'**Australian Standards**' means the documents published under that name by Standards Australia;

'**Auditor-General**' means the office established under the *Auditor-General Act 1997* and includes any other person that may, from time to time, perform the functions of that office;

'**Business Day**' means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in that place;

'**Commonwealth**' means the Commonwealth of Australia as represented by any department or agency of the Commonwealth which is from time to time responsible for the administration of this Contract;

'**Commonwealth Material**' means any Material:

- (a) provided by the Commonwealth to the Contractor for the purposes of this Contract; or
- (b) copied or derived at any time from the Material referred to in paragraph (a);

'**Confidential Information**' means information that:

- (a) is by its nature confidential;
- (b) is designated by the Commonwealth as confidential; or
- (c) the Contractor knows or ought to know is confidential;

but does not include information which:

- (d) is or becomes public knowledge other than by breach of this Contract or by any other unlawful means;

(e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from the Commonwealth; or

(f) has been independently developed or acquired by the Contractor;

'Conflict' means any conflict of interest, any risk of a conflict of interest and any apparent conflict of interest arising through the Contractor (or the Contractor Personnel) engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Contractor in performing the Services fairly and independently;

'Contractor Personnel' means:

(a) officers, employees, agents or subcontractors of the Contractor;

(b) officers, employees, agents or subcontractors of the Contractor's subcontractors; and

(c) includes those individuals (if any) engaged by the Contractor or its subcontractors on a voluntary basis;

engaged in the performance of the Services;

'Contract Material' means all Material:

(a) created for the purposes of this Contract;

(b) provided or required under this Contract to be provided to the Commonwealth as part of the Services; or

(c) copied or derived at any time from the Material referred to in paragraphs (a) or (b); and

including the Contract Material described in Item B;

'Existing Material' means all Material in existence prior to the commencement of this Contract that is:

(a) incorporated in;

(b) supplied with, or as part of; or

(c) required to be supplied with, or as part of,

the Contract Material and identified as Existing Material in Item L but excludes Commonwealth Material;

'Government Agency' means:

(a) a body corporate or an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;

(b) a body established by the Governor-General or by a Minister of State of the Commonwealth, including departments; or

(c) an incorporated company over which the Commonwealth exercises control;

'Intellectual Property' means all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service

marks), registered and unregistered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Interest' means interest calculated at the 90 day bank-accepted bill rate (available from the Reserve Bank of Australia) less 10 basis points;

'Law' means any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time anywhere in Australia, whether made by a State, Territory, the Commonwealth, or a local government, and includes the common law as applicable from time to time;

'Material' means documents, records, equipment, software (including source code and object code), goods, images, information and data stored by any means including all copies and extracts of the same;

'Moral Rights' includes the following rights of an author of copyright Material:

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

'Ombudsman' means the office established under the *Ombudsman Act 1976* and includes any other person that may, from time to time, perform the functions of that office;

'Party' means a party to this Contract;

'Personal Information' means information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

'Privacy Commissioner' means the office established under the *Privacy Act 1988* and includes any other person that may, from time to time, perform the functions of that office;

'Services' means the services described in the Schedule including as set out in Item A and the provision to the Commonwealth of the Material specified in Item B; and

'Specified Personnel' means the personnel specified in Item I.

1.2 In this Contract, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) words importing a gender include any other gender;
- (c) words importing persons include a partnership and a body whether corporate or otherwise;
- (d) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;

- (e) all references to dollars are to Australian dollars;
 - (f) where any word or phrase is given a defined meaning, any other form of that word or phrase has a corresponding meaning;
 - (g) an uncertainty or ambiguity in the meaning of a provision of this Contract will not be interpreted against a Party just because that Party prepared the provision;
 - (h) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended from time to time;
 - (i) a reference to the word 'including' in any form is not to be construed or interpreted as a word of limitation; and
 - (j) references to clauses are to clauses in this Contract, references to 'Items' are to Items in the Schedule to this Contract, references to 'Schedule' are to the Schedule to this Contract and references to Annexures or Attachments are references to documents attached to this Contract.
- 1.3 If there is any conflict or inconsistency between:
- (a) the terms and conditions contained in the clauses of this Contract and any part of the Schedule, then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency;
 - (b) the terms and conditions contained in the clauses of this Contract and any part of the Annexures or Attachments (if any), then the terms and conditions of the clauses will prevail to the extent of the conflict or inconsistency; and
 - (c) any part of the Schedule and any part of the Annexures or Attachments (if any), then the Schedule will prevail to the extent of the conflict or inconsistency.
- 1.4 The laws of the Australian Capital Territory apply to this Contract. The Parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory in respect of any dispute under this Contract.
- 1.5 This Contract records the entire contract between the Parties in relation to its subject matter.
- 1.6 No variation of this Contract is binding unless agreed in writing between the Parties.
- 1.7 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.8 A waiver of any provision of this Contract must be in writing.
- 1.9 No waiver of a term or condition of this Contract will operate as a waiver of another breach of the same or of any other term or condition contained in this Contract.

- 1.10 If a Party does not exercise, or delays in exercising, any of its rights under this Contract or at Law, that failure or delay does not operate as a waiver of those rights.
- 1.11 A single or partial exercise by a Party of any of its rights under this Contract or at Law does not prevent the further exercise of any right.
- 1.12 The Contractor must not assign its rights under this Contract without prior approval in writing from the Commonwealth.
- 2. PROVISION OF SERVICES**
- 2.1 The Contractor must:
- (a) perform the Services in accordance with this Contract, with due care and skill and in accordance with relevant best practice, including any applicable Australian Standards and any Commonwealth and industry standards and guidelines specified in Item C;
 - (b) ensure that the Services and Contract Material are fit for the purpose for which they are provided;
 - (c) comply with the time frame for the performance of the Services specified in Item D;
 - (d) liaise with the Commonwealth, provide any information the Commonwealth may reasonably require, and comply with any reasonable directions of the Commonwealth; and
 - (e) ensure that it and its Contractor Personnel, when carrying out their duties and performing work under this Contract, do not:
 - (i) cause any unreasonable or unnecessary disruption to the routines, procedures and responsibilities of the Commonwealth; or
 - (ii) damage the reputation of the Commonwealth in the community.
- 2.2 The Contractor acknowledges that:
- (a) the Commonwealth collects or may come into possession of information concerning the Contractor that is either publicly available information or information obtained through the course of the Commonwealth conducting its affairs; and
 - (b) subject to clause 2.3, the Commonwealth may use that information when considering the Contractor's ability to perform this Contract.
- 2.3 The Commonwealth may consult with the Contractor if any information referred to under clause 2.2 is a cause of concern to the Commonwealth.
- 2.4 Subject to clauses 11 and 12, no right or obligation in this Contract is to be read or understood as limiting the Contractor's rights to enter into public debate or criticism of the Commonwealth, its agencies, officers, employees or agents.
- 3. FEES, ALLOWANCES AND ASSISTANCE**
- 3.1 The Commonwealth agrees to:

- (a) pay the fees specified in Item E;
 - (b) pay the allowances and meet the costs, if any, specified in Item F; and
 - (c) provide the facilities and assistance, if any, specified in Item G.
- 3.2 The Commonwealth will be entitled, in addition to any other right it may have, to withhold or reduce any payment of fees or allowances until the Contractor has completed to the satisfaction of the Commonwealth that part of the Services to which the payment relates.
- 3.3 If an overpayment occurs at any time and for any reason (including where an invoice is found to have been incorrectly rendered after payment), the Commonwealth may issue the Contractor with a written notice requiring repayment of the full amount of the overpayment.
- 3.4 The Contractor must pay to the Commonwealth the full amount of the overpayment specified in the notice referred to in clause 3.3 in the manner specified in the notice, and within twenty (20) Business Days of the date of the notice.
- 3.5 The Commonwealth may, at its sole and absolute discretion, recover the overpayment specified in the notice referred to in clause 3.3, from the Contractor by offsetting that overpayment against any amount subsequently due to the Contractor under this Contract.
- 3.6 If the Contractor fails to repay the full amount of an overpayment in accordance with a notice given pursuant to clause 3.3, the Commonwealth may (at its sole discretion) require that Interest be paid on the amount after the expiry of the twenty (20) Business Days notice referred to in clause 3.4, until the amount is paid to the Commonwealth in full.
- 3.7 The Contractor must provide the Commonwealth with an adjustment note if required by the *A New Tax System (Goods and Services Tax) Act 1999*, including where the Contractor repays to the Commonwealth some or all of the fees or expenses.
- 3.8 The Contractor agrees to submit invoices for payment in the manner specified in Item H and clause 4.

3A. SMALL BUSINESS PAYMENTS

- 3A.1 This clause only applies if:
- (a) the Contractor is a Small Business; and
 - (b) the fee will be paid by the Commonwealth from departmental items.
- 3A.2 For the purposes of this clause:
- (a) 'Small Business' means an enterprise that employs less than the full time equivalent of 20 persons at the date of execution of this Contract, where 'full time equivalent' has the meaning given by the Australian Bureau of Statistics and where, if the enterprise forms part of a group, this test is applied to the group as a whole;
 - (b) 'General Interest Charge Rate' means the general interest charge rate

determined under section 8AAD of the *Taxation Administration Act 1953* on the day payment is due, expressed as a decimal rate per day; and

- (c) 'The day that payment is made' is the day when the Commonwealth's system generates a payment request into the banking system for payment to the Contractor.
- 3A.3 The Commonwealth agrees to pay to the Contractor the fees for Services completed to the satisfaction of the Commonwealth within 30 days after the receipt by the Commonwealth of a correctly rendered invoice submitted in accordance with Item H and clause 4. If this period ends on a day that is not a Business Day, payment is required on the next Business Day.
- 3A.4 The Commonwealth is not required to make any payment to the Contractor in the absence of a correctly rendered invoice. Accordingly, an invoice which includes amounts that are not properly payable under this Contract or are incorrectly calculated is not a correctly rendered invoice and the Commonwealth is not required to make any payment in respect of that invoice.
- 3A.5 If the total fee for Services under this Contract is \$1 million or less, and the Commonwealth fails to pay to the Contractor an amount payable by it under this Contract by the day it is due for payment and payable, the Commonwealth agrees to pay simple interest on the unpaid amount at the General Interest Charge Rate calculated in respect of each day from the day after the amount was due up to and including the day that payment is made in accordance with the formula set out in clause 3A.6. Interest is only payable by the Commonwealth when the amount of interest exceeds \$10 and the Contractor has issued a correctly rendered invoice in relation to the interest.
- 3A.6 $SI = UA \times GIC \times D$
- Where:
- SI = simple interest amount;
- UA = the unpaid amount;
- GIC = General Interest Charge daily rate; and
- D = the number of days from the day after payment was due up to and including the day that payment is made.

4. TAXES, DUTIES AND GOVERNMENT CHARGES

- 4.1 Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be paid by the Contractor or as the Contractor might arrange.
- 4.2 The provisions of this clause in respect of GST apply where the Contractor is registered, or is required to be registered for GST.
- 4.3 The goods, services and other supplies made by the Contractor under this Contract are Taxable Supplies within the meaning of the GST Law.
- 4.4 The Contractor will issue the Commonwealth with a 'tax invoice' in accordance with the GST Act together with, or as a part of, each invoice submitted for payment in

- accordance with clause 3.8.
- 4.5 The amounts payable by the Commonwealth to the Contractor, as determined under clause 3, are stated inclusive of GST but must not include any amount which represents GST paid by the Contractor for which the Contractor may claim an input tax credit.
- 4.6 If a payment to satisfy a claim or a right to claim under or in connection with this Contract gives rise to a liability to pay GST, the payer must also pay, and indemnify the payee against the amount of that GST.
- 4.7 If a Party has a claim under or in connection with this Contract for a cost on which that Party must pay GST, the claim is for the cost plus all GST on that cost (except any GST for which that Party is entitled to an input tax credit).
- 4.8 For the purposes of this clause, 'GST', 'GST Law' 'supply', 'input tax credit' and other terms relevant to GST, have any meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* and any applicable rulings of the Australian Taxation Office.
- 5. SUBCONTRACTORS**
- 5.1 The Contractor agrees that:
- (a) it will not subcontract the performance of any part of the Services without the prior approval in writing of the Commonwealth; and
 - (b) the subcontractors, if any, specified in Item A will perform work in relation to the Services in accordance with this Contract and are approved by the Commonwealth to do so.
- 5.2 The Commonwealth may impose any terms and conditions it considers appropriate when giving its approval under clause 5.1(a).
- 5.3 Where a subcontractor specified in Item A or approved by the Commonwealth under clause 5.1(a) is unable to perform the work, the Contractor agrees to notify the Commonwealth immediately.
- 5.4 Where clause 5.3 applies, the Commonwealth may request the Contractor to secure a replacement subcontractor acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 5.5 If the Contractor does not comply with any request made under clause 5.4 the Commonwealth may terminate this Contract in accordance with the provisions of clause 21.
- 5.6 In respect of subcontractors listed in Item A or approved by the Commonwealth under this clause, the Contractor must ensure that:
- (a) the subcontract facilitates compliance by the Contractor with its obligations under this Contract;
 - (b) the subcontract will not conflict with or detract from the rights and entitlements of the Commonwealth under this Contract;
 - (c) the other party to the subcontract, has the necessary relevant expertise and the appropriate types and amounts of insurance to perform work in relation

to the Services;

- (d) the other party to the subcontract has consented to the public disclosure of its name in connection with the performance of the Services;
- (e) the subcontract contains all the relevant terms of this Contract including those relating to compliance with the Law, Fair Work Principles (if applicable), subcontracting, intellectual property, audit and access, privacy, confidentiality, warranties and indemnities, disclosure and termination and in particular that the Contractor has or will secure for itself a right to terminate the subcontract on terms no less favourable than those accorded the Commonwealth by clauses 20 and 21, in the event of this Contract being terminated;
- (f) the other party to the subcontract acknowledges that it may be considered a 'Commonwealth service provider' for the purposes of the *Ombudsman Act 1976* and subject to investigation by the Ombudsman under that Act and that the Commonwealth will not be liable for the cost of any such investigation by the Ombudsman in connection with the subject matter of the subcontract or the subject matter of this Contract;
- (g) the other party to the subcontract is prohibited from further subcontracting the Services without the prior written approval of the Commonwealth; and
- (h) if requested, the Contractor will promptly provide a copy of the relevant subcontract to the Commonwealth.

6. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 6.1 The Contractor agrees that the Specified Personnel will perform the activities specified in Item I.
- 6.2 Where Specified Personnel are unable to perform the activities, the Contractor must notify the Commonwealth immediately.
- 6.3 The Commonwealth may, at its absolute discretion, request the Contractor to remove Contractor Personnel from work in relation to the Services.
- 6.4 Where clauses 6.2 or 6.3 apply, the Commonwealth may request the Contractor to provide replacement personnel acceptable to the Commonwealth at no additional cost and at the earliest opportunity.
- 6.5 If the Contractor does not comply with any request made under clause 6.4, the Commonwealth may terminate this Contract in accordance with the provisions of clause 21.

7. RESPONSIBILITY OF CONTRACTOR

- 7.1 The Contractor agrees to be fully responsible for the performance of the Services and for ensuring compliance with the requirements of this Contract, and will not be relieved of that responsibility because of any:
 - (a) involvement by the Commonwealth in the performance of the Services;
 - (b) payment made to the Contractor on account of the Services;
 - (c) subcontracting of the Services; or

(d) acceptance by the Commonwealth of replacement personnel.

8. COMMONWEALTH MATERIAL

- 8.1 The Commonwealth agrees to provide Material to the Contractor as specified in Item J.
- 8.2 The Commonwealth grants to the Contractor a royalty-free, licence fee-free, non-exclusive licence (including a limited right of sub-licence to sub-licence to a subcontractor specified in Item A or approved by the Commonwealth under clause 5) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material for the purposes of this Contract.
- 8.3 The Contractor agrees to ensure that all Commonwealth Material is used strictly in accordance with any conditions or restrictions set out in Item K, and any direction by the Commonwealth.
- 8.4 Property in any copy of Commonwealth Material (in the form of a document, article or removable medium) vests or remains vested in the Commonwealth. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or termination of this Contract, to deliver to the Commonwealth, or, in accordance with Commonwealth directions erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.

8.5 This clause survives the expiration or earlier termination of this Contract.

9. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

- 9.1 Intellectual Property in all Contract Material vests or will vest in the Commonwealth.
- 9.2 Clause 9.1 does not affect the ownership of Intellectual Property in any Existing Material but the Contractor grants, or undertakes to arrange for a third party to grant, to the Commonwealth a permanent, irrevocable, royalty-free, licence fee-free, world-wide, non-exclusive licence (including a right of sublicense) to use, reproduce, modify, adapt, publish, perform, broadcast, communicate, commercialise and exploit the Intellectual Property in any such Existing Material in conjunction with the other Contract Material.
- 9.3 If requested by the Commonwealth, the Contractor agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause.
- 9.4 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in the Contract Material in the manner provided for in this clause.
- 9.5 Property in any copy of Contract Material (in the form of a document, article or removable medium) vests or will vest in the Commonwealth. The Contractor

agrees:

- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
- (b) on the expiration or earlier termination of this Contract, to deliver to the Commonwealth, or, in accordance with Commonwealth directions, erase or otherwise deal with all such copies,

unless any provision to the contrary is set out in Item M.

9.6 This clause survives the expiration or earlier termination of this Contract.

10. MORAL RIGHTS

10.1 For the purposes of this clause, the 'Specified Acts' relating to Moral Rights means any of the following classes or types of acts or omissions by or on behalf of the Commonwealth:

- (a) using, reproducing, modifying, adapting, publishing, performing, broadcasting, communicating, commercialising or exploiting all or any part of the Contract Material, with or without attribution of authorship;
- (b) supplementing the Contract Material with any other Material; and
- (c) using the Contract Material in a different context to that originally envisaged; but does not include false attribution of authorship.

10.2 The Contractor must use its best endeavours to ensure that:

- (a) where there is no consent already in place, a written consent will be given by the author of any Contract Material, other than Existing Material, to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly to the performance of the Specified Acts by the Commonwealth or any person claiming under or through the Commonwealth; and
- (b) where there is no consent already in place, the author of any Existing Material will give a written consent to the Specified Acts (whether occurring before or after the consent is given) which extends directly or indirectly for the benefit of the Commonwealth in relation to the Commonwealth's licensed use of such Material.

10.3 This clause survives the expiration or earlier termination of this Contract.

11. DISCLOSURE OF INFORMATION

11.1 The Contractor agrees not to disclose to any person other than the Commonwealth any Confidential Information relating to this Contract or the Services without prior approval in writing from the Commonwealth.

11.2 The Commonwealth may impose any conditions it considers appropriate when giving its approval under clause 11.1 and the Contractor agrees to comply with these conditions.

11.3 The Commonwealth may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the

- Commonwealth, relating to the non-disclosure of Confidential Information.
- 11.4 If the Contractor receives a request under clause 11.3, it agrees to promptly arrange for all such undertakings to be given.
- 11.5 The obligations on the Contractor under this clause will not be taken to have been breached where the information referred to is required by Law to be disclosed.
- 11.6 Property in any copy of Confidential Information (in the form of a document, article or removable medium) vests or will vest in the Commonwealth. The Contractor agrees:
- (a) to secure all copies within its control against loss and unauthorised use or disclosure; and
 - (b) on the expiration or earlier termination of this Contract, to deliver to the Commonwealth, or, in accordance with Commonwealth directions, erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.
- 11.7 The Commonwealth gives no undertaking to treat Contractor information, or this Contract, as confidential information. The Contractor acknowledges that the Commonwealth may disclose information relevant to this Contract, or this Contract itself, to any person:
- (a) to the extent required by Law or by a lawful requirement of any government or governmental body, authority or agency;
 - (b) if required in connection with legal proceedings;
 - (c) for public accountability reasons, including disclosure on request to other Government Agencies, and a request for information by parliament or a parliamentary committee or a Commonwealth Minister;
 - (d) to Commonwealth third party service providers for the purposes of providing goods and services to, or on behalf of, the Commonwealth; or
 - (e) for any other requirements of the Commonwealth.
- 11.8 This clause survives the expiration or earlier termination of this Contract.

12. ACCESS TO DOCUMENTS

- 12.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.
- 12.2 This clause only applies if this is a Contract which complies with the description of 'Commonwealth contract'.
- 12.3 Where the Commonwealth has received a request for access to a document created by or in the possession of, the Contractor or any subcontractor that relates to the performance of this Contract (and not to the entry into this Contract), the Commonwealth may at any time by written notice require the Contractor to provide the document to the Commonwealth and the Contractor must, at no additional cost to the Commonwealth, promptly comply with the notice.
- 12.4 The Contractor must include in any subcontract relating to the performance of this

Contract provisions that will enable the Contractor to comply with its obligations under this clause.

13. PROTECTION OF PERSONAL INFORMATION

13.1 This clause applies only where the Contractor deals with Personal Information when, and for the purpose of, providing the Services under this Contract.

13.2 In this clause, the terms:

- (a) agency;
- (b) approved privacy code (APC);
- (c) contracted service provider;
- (d) Information Privacy Principles (IPPs);
- (e) National Privacy Principles (NPPs);
- (f) health service; and
- (g) health information;

have the same meaning as they have in section 6 of the *Privacy Act 1988* ('the Privacy Act') and 'subcontract' and other grammatical forms of that word have the meaning given in section 95B(4) of the Privacy Act.

13.3 The Contractor acknowledges that it may be treated as a 'contracted service provider' and agrees in respect of the provision of the Services under this Contract:

- (a) to use or disclose Personal Information obtained during the course of providing the Services under this Contract, only for the purposes of this Contract;
- (b) not to do any act or engage in any practice which if done or engaged in by an agency, would be a breach of an IPP;
- (c) to carry out and discharge the obligations contained in the IPPs as if it were an agency;
- (d) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
- (e) not to use or disclose Personal Information or engage in an act or practice that would breach section 16F (direct marketing) of the Privacy Act, an NPP (particularly NPPS 7 to 10) or an APC where that section, NPP or APC is applicable to the Contractor, unless:
 - (i) in the case of section 16F, the use or disclosure is necessary, directly or indirectly, to discharge an obligation under this Contract; or
 - (ii) in the case of an NPP or an APC, where the activity or practice is engaged in for the purpose of discharging, directly or indirectly, an obligation under this Contract, and the activity or practice which is authorised by this Contract is inconsistent with the NPP or APC;

- (f) to comply with any request under section 95C of the Privacy Act (relating to disclosure of any provisions of this Contract (if any) that are inconsistent with an NPP or an APC binding on a Party to this Contract);
 - (g) to immediately notify the Commonwealth if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Contractor or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause; and
 - (i) to ensure that any officers, employees or agents of the Contractor who are required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause.
- 13.4 The Contractor agrees to ensure that any subcontract entered into for the purpose of fulfilling its obligations under this Contract imposes on the subcontractor the same obligations as the Contractor has under this clause, including the requirement in relation to subcontracts.
- 13.5 The Commonwealth may at any time require the Contractor to give, and to arrange for Contractor Personnel to give, undertakings in writing in a form required by the Commonwealth, relating to the non-disclosure of Personal Information.
- 13.6 If the Contractor receives a request under clause 13.5, it agrees to promptly arrange for all such undertakings to be given.
- 13.7 The Contractor agrees to indemnify the Commonwealth in respect of any loss, liability or expense suffered or incurred by the Commonwealth which arises directly or indirectly from a breach of any of the obligations of the Contractor under this clause, or a subcontractor under the subcontract provisions referred to in clause 13.4.
- 13.8 The Contractor's obligations under this clause are in addition to, and do not restrict, any obligations it may have under the Privacy Act or any privacy codes or privacy principles contained in, authorised by or registered under any law including any such privacy codes or principles that would apply to the Contractor but for the application of this clause.
- 13.9 This clause survives the expiration or earlier termination of this Contract.
- 14. COMPLIANCE WITH LAWS AND POLICIES**
- 14.1 The Contractor agrees, in carrying out this Contract, to comply with all Laws, and in particular:
- (a) (i) the *Crimes Act 1914*;
 - (ii) the *Racial Discrimination Act 1975*;
 - (iii) the *Sex Discrimination Act 1984*;
 - (iv) the *Disability Discrimination Act 1992*;
 - (v) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Terrorism and Dealing with Assets) Regulations 2002*;

- (vi) the *Archives Act 1983*;
 - (vii) the *Privacy Act 1988*;
 - (viii) the *Freedom of Information Act 1982*;
 - (ix) the *Criminal Code Act 1995*; and
 - (x) any occupational health and safety legislation applicable to the Contractor;
- (b) the Australian Government's *Lobbying Code of Conduct* as published by the Australian Public Service Commission in 2008; and
- (c) any policies notified to the Contractor in writing or listed in Item C.
- 14.2 The Contractor must comply with its obligations, if any, under the *Equal Opportunity for Women in the Workplace Act 1999*.
- 14.3 The Contractor must not enter into a subcontract with a subcontractor that is currently not complying with the *Equal Opportunity for Women in the Workplace Act 1999*.
- 14.4 The Contractor acknowledges that under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.
- 14.5 The Contractor agrees, when using the Commonwealth's premises or facilities, to comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.
- 14.6 Without limiting the effect of clause 24, the Contractor must comply with, and require Contractor Personnel to comply with, the behaviours specified in the Code of Conduct in section 13 of the *Public Service Act 1999*.
- 14.7 Subclauses 14.8 to 14.11 only apply to a covered procurement as that term is defined in the *Commonwealth Procurement Guidelines*.
- 14.8 The Contractor must comply, and as far as practicable must ensure its subcontractors comply, with all relevant requirements of the Fair Work Principles as set out in the Fair Work Principles User Guide (available at www.deewr.gov.au/fairworkprinciples), including by:
- (a) complying with all applicable workplace relations, occupational health and safety, and workers' compensation laws;
 - (b) informing the Commonwealth of any adverse court or tribunal decision for a breach of workplace relations law, occupational health and safety laws, or workers' compensation laws made against it during the term of this Contract and any remedial action it has taken, or proposes to take, as a result of the decision;
 - (c) providing the Commonwealth any information the Commonwealth reasonably requires to confirm that the Contractor (and any subcontractor) is complying with the Fair Work Principles; and

- (d) participating in all compliance activities associated with its legal obligations, including those arising under the Fair Work Principles. Compliance activities may include responding to requests for information and/or audits undertaken by the Commonwealth, its nominees and/or relevant regulators.
- 14.9 Compliance with the Fair Work Principles shall not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.
- 14.10 If the Contractor does not comply with the Fair Work Principles, without prejudice to any rights that would otherwise accrue to the Commonwealth, the Commonwealth shall be entitled to publish details of the Contractor's failure to comply (including the Contractor's name) and to otherwise provide those details to other Commonwealth agencies.
- 14.11 As far as practicable, the Contractor must:
- (a) not use a subcontractor in relation to this Contract where the subcontractor would be precluded from contracting directly with the Commonwealth under the requirements of the Fair Work Principles; and
 - (b) ensure that all subcontracts impose obligations on subcontractors equivalent to the obligations contained in clauses 14.8 to 14.11.
- 15. CONFLICT OF INTEREST**
- 15.1 The Contractor warrants that, to the best of its knowledge after making diligent inquiry, at the date of signing this Contract no Conflict exists or is likely to arise in the performance of obligations under this Contract by the Contractor or the Contractor Personnel.
- 15.2 If, during the term of this Contract, a Conflict arises, or appears likely to arise, in respect of the Contractor or any of the Contractor Personnel, the Contractor agrees to:
- (a) notify the Commonwealth immediately in writing of the Conflict making a full disclosure of all relevant information relating to the Conflict and setting out the steps the Contractor proposes to take to resolve or otherwise deal with the Conflict; and
 - (b) take such steps as have been proposed by the Contractor, or at the discretion of the Commonwealth, take such steps as the Commonwealth may reasonably require to resolve or otherwise deal with the Conflict.
- 15.3 If the Contractor fails to notify the Commonwealth under this clause or is unable or unwilling to resolve or deal with the Conflict as required, the Commonwealth may terminate this Contract in accordance with the provisions of clause 21.
- 15.4 The Contractor agrees that it will not, and will use its best endeavours to ensure that any Contractor Personnel do not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Services to the Commonwealth fairly and independently.
- 16. ACCOUNTABILITY AND ACCESS**
- 16.1 The Contractor must give to:

- (a) the Auditor-General;
 - (b) the Privacy Commissioner;
 - (c) the Ombudsman; and
 - (d) any persons authorised in writing by the Commonwealth
- (referred to in this clause collectively as 'those permitted') access to premises :
- (e) at which Materials associated with this Contract are stored; or
 - (f) work associated with this Contract is undertaken, and
 - (g) to the Contractor Personnel,
- in order for those permitted to be able to inspect and copy Material for purposes associated with this Contract or any review of performance under this Contract.
- 16.2 The rights referred to in clause 16.1 are, wherever practicable, subject to:
- (a) the provision of reasonable prior notice from the Commonwealth (except where there is an actual or apprehended breach of the Law);
 - (b) access being sought during reasonable times (except where the Commonwealth believes there is an actual or apprehended breach of the Law); and
 - (c) the Contractor's reasonable security procedures.
- 16.3 The Contractor agrees to provide all reasonable assistance requested by the Commonwealth in respect of any inquiry into or concerning the Services or this Contract.
- 16.4 Without limitation to the generality of clause 16.3:
- (a) the assistance to be provided by the Contractor under clause 16.3 will include, as appropriate, the provision of Material, and making available relevant Contractor Personnel to provide information or answer questions on any matters relevant to or arising from this Contract or the performance of the Services which might reasonably be expected to be within the knowledge of the Contractor; and
 - (b) an inquiry referred to in clause 16.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- 16.5 The Commonwealth will endeavour to notify the Contractor as early as possible of any assistance required under clause 16.4, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 16.6 The requirement for access under this clause does not in any way reduce the responsibility of the Contractor to perform its obligations in accordance with this Contract.
- 16.7 The Contractor agrees to ensure that any subcontract entered into for the purpose

- of this Contract contains an equivalent clause permitting those permitted to have access as specified in these clauses.
- 16.8 Nothing in this Contract limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, or the Privacy Commissioner or their respective delegates. The rights of the Commonwealth under this Contract are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner or their respective delegates.
- 16.9 This clause survives the expiration or earlier termination of this Contract for a period of seven years.
- 17. INDEMNITY**
- 17.1 To the extent permitted by Law, the operation of any legislative proportionate liability regime is excluded in relation to any claim against the Contractor under or in connection with this Contract.
- 17.2 The Contractor indemnifies the Commonwealth, its officers, employees and agents from and against any:
- (a) loss or liability incurred by the Commonwealth;
 - (b) loss of or damage to property of the Commonwealth; or
 - (c) loss or expense incurred by the Commonwealth in dealing with any claim against it including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth,
- arising from:
- (d) any act or omission by the Contractor or the Contractor Personnel in connection with this Contract, where there was fault (including, without limitation, any negligent or otherwise tortious act or omission) on the part of the person whose conduct gave rise to that liability, loss, damage or expense; or
 - (e) any breach by the Contractor of its obligations or warranties under this Contract.
- 17.3 The Contractor's liability to indemnify the Commonwealth under clause 17.2 will be reduced proportionately to the extent that any negligent or other tortious act or omission of the Commonwealth contributed to the relevant liability, loss, damage, or expense.
- 17.4 The right of the Commonwealth to be indemnified under this clause:
- (a) is in addition to, and not exclusive of, any other right, power or remedy provided by law; and
 - (b) does not entitle the Commonwealth to be compensated in excess of the amount of the relevant liability, loss, damage, or expense.

17.5 The Contractor agrees that the Commonwealth will be taken to be acting as agent or trustee for and on behalf of its officers, employees and agents from time to time.

17.6 This clause survives the expiration or earlier termination of this Contract.

18. INSURANCE

18.1 The Contractor warrants that it has taken out or will take out, and will maintain for the period specified in clause 18.2 or 18.3 as applicable, all appropriate types and amounts of insurance to cover the Contractor's obligations under this Contract, including those which survive its expiration or earlier termination, which insurance must include but is not limited to the types and corresponding amounts of insurance specified in Item N.

18.2 If the Contractor takes out a 'claims made policy', which requires all claims and any fact situation or circumstance that might result in a claim to be notified within the period of insurance, the Contractor must maintain the policy during the term of this Contract and a policy in like terms for 7 years after the expiry or earlier termination of this Contract.

18.3 If the Contractor takes out an 'occurrence' policy, which requires the circumstances to which a claim relates to occur during the period of insurance whilst the notification of event can occur at any time subsequently, the Contractor must maintain the policy during the term of this Contract.

18.4 The Contractor must, on request, promptly provide to the Commonwealth any relevant insurance policies or certificates of currency for inspection.

18.5 This clause survives the expiration or earlier termination of this Contract.

19. DISPUTE RESOLUTION

19.1 The parties agree that any dispute arising during the course of this Contract will be dealt with as follows:

- (a) first, the Party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- (b) secondly, the Parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who have authority to intervene and direct some form of resolution;
- (c) thirdly, the Parties have 10 Business Days from the receipt of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure; and
- (d) lastly, if:
 - (i) there is no resolution or agreement; or
 - (ii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of the 15 Business Days,then, either Party may commence legal proceedings.

- 19.2 Despite the existence of a dispute, the Contractor will (unless requested in writing not to do so) continue to perform the Services.
- 19.3 This clause:
- (a) does not apply to action by the Commonwealth under or purportedly under clauses 3.2, 20 or 21; and
 - (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.
- 20. TERMINATION AND REDUCTION FOR CONVENIENCE**
- 20.1 The Commonwealth may, at any time by notice and at its sole discretion, terminate this Contract in whole or reduce the scope of the Services immediately.
- 20.2 Upon receipt of a notice of termination or reduction the Contractor must:
- (a) stop or reduce work as specified in the notice; and
 - (b) take all available steps to minimise loss resulting from that termination or reduction and to protect Commonwealth Material and Contract Material.
- 20.3 Where there has been a termination under clause 20.1, the Commonwealth will be liable only for:
- (a) payments and assistance under clause 3 for services properly rendered before the effective date of termination; and
 - (b) reasonable costs unavoidably incurred by the Contractor and directly attributable to the termination and which the Contractor fully substantiates.
- 20.4 The Commonwealth will not be liable to pay compensation under clause 20.3(b) in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees set out in Item E.
- 20.5 The Contractor will not be entitled to compensation for loss of prospective profits.
- 20.6 If there is a reduction in the Services, the Commonwealth's obligation to pay any fee will abate proportionately to the reduction in the Services.
- 20.7 To avoid doubt, the Commonwealth has an unfettered discretion to terminate this Contract or reduce the scope of the Services in accordance with this clause.
- 21. TERMINATION FOR DEFAULT**
- 21.1 Where a Party fails to satisfy any of its obligations under this Contract, the other Party may:
- (a) if it considers that the failure is not capable of remedy, by notice, terminate this Contract immediately;
 - (b) if it considers that the failure is capable of remedy, by notice, require that the failure be remedied within a time specified in the notice (being not less than seven days); and
 - (c) if the failure is not remedied in accordance with a notice given under paragraph (b), by further notice, terminate this Contract immediately.
- 21.2 The Commonwealth may also, by notice, terminate this Contract immediately (but

without prejudice to any prior right of action or remedy which either Party has or may have) if the Contractor:

- (a) being a corporation, comes under one of the forms of external administration referred to in chapter 5 of the *Corporations Act 2001*, or an order has been made for the purpose of placing the corporation under external administration;
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors;
- (c) breaches subclause 14.8; or
- (d) breaches a warranty listed in clause 23.

22. DEEMED TERMINATION FOR CONVENIENCE

22.1 If a purported termination for cause by the Commonwealth under clause 21 is determined by a competent authority not to be properly a termination for cause, then that termination by the Commonwealth will be deemed to be a termination for convenience under clause 20 which termination has effect from the date of the notice of termination referred to in clause 21.

23. CONTRACTOR WARRANTIES AND UNDERTAKINGS

23.1 The Contractor represents, warrants and undertakes to the Commonwealth that:

- (a) it will promptly notify and fully disclose to the Commonwealth in writing any event or occurrence actual or threatened which could have an adverse effect on the Contractor's ability to perform any of its obligations under this Contract;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Contract;
- (c) the execution, delivery and performance of this Contract has been duly and validly authorised by the Contractor;
- (d) it will promptly notify and fully disclose to the Commonwealth in writing if
 - (i) it becomes insolvent or is wound up;
 - (ii) it makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors or has a receiver, manager or administrator appointed on behalf of creditors;
 - (iii) it goes into liquidation or passes a resolution to go into liquidation, or becomes subject to any petition or proceedings in a court for its compulsory winding up or becomes subject to the supervision of a court or regulatory authority, either voluntarily or otherwise;
 - (iv) it suffers any execution against its assets;
 - (v) anything analogous to, or of a similar effect to anything described above under the Law occurs in respect of the Contractor;
- (e) the unconditional execution and delivery of, and compliance with its obligations by it under this Contract do not:

- (i) contravene any Law to which it or any of its property is subject or any order or directive from a Government Agency binding on it or any of its property;
 - (ii) contravene its constituent documents;
 - (iii) contravene any contract or instrument to which it is a party;
 - (iv) contravene any obligation of it to any other person; or
 - (v) require it to make any payment or delivery in respect of any financial indebtedness before the scheduled date for that payment or delivery;
- (f) no litigation, arbitration, mediation, conciliation or proceedings including any investigations, are taking place, pending, or are threatened against the Contractor which could have an adverse effect upon either the Contractor's capacity to perform its obligations under this Contract or the Contractor's reputation;
- (g) it has not had a judicial decision (excluding decisions under appeal) made against it in relation to employee entitlements where that claim has not been paid;
- (h) unless otherwise disclosed in this Contract, it is not entering into this Contract as trustee of any trust or settlement;
- (i) it has not made any false declaration in respect of any current or past dealings with the Commonwealth or any Government Agency, including in any tender or application process or in any contract;
- (j) it has had no significant deficiency in the performance of any substantive requirement or obligation under any prior contract with the Commonwealth or any Government Agency;
- (k) it has, and will continue to have and to use, the skills, qualifications and experience to perform the Services in an efficient and controlled manner with a high degree of quality and responsiveness and to a standard that complies with this Contract; and
- (l) it has and will continue to have the necessary resources, including financial resources, to perform the Services and will use those resources to perform the Services.

23.2 The Contractor acknowledges that the Commonwealth in entering into this Contract is relying on the warranties and representations contained in this Contract.

23.3 Each representation and warranty survives the execution of this Contract.

24. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

24.1 The Contractor is not, by virtue of this Contract, an officer, employee, partner or agent of the Commonwealth, nor does the Contractor have any power or authority to bind or represent the Commonwealth

24.2 The Contractor agrees not to represent itself, and to use its best endeavours to ensure that its Contractor Personnel do not represent themselves, as being an

officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

25. NOTICES

25.1 A Party giving notice under this Contract must do so in writing, including by facsimile, that is:

- (a) directed to the recipient's address, as varied by any notice; and
- (b) hand delivered or sent by pre-paid post or facsimile to that address.

The Parties' address details are as specified in Item O.

25.2 The Parties agree that a notice given in accordance with clause 25.1 is received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, on the third Business Day after the date of posting;
- (c) if sent by facsimile, at the time the sender receives notification that the notice has been transmitted satisfactorily.

THE SCHEDULE

- Item A Services and Subcontractors**
- Item B Required Contract Material**
- Item C Standards and Best Practice**
- Item D Time-frame**
- Item E Fees**
- Item F Allowances and Costs**
- Item G Facilities and Assistance**
- Item H Invoice Procedures**
- Item I Specified Personnel**
- Item J Commonwealth Material to be provided by Commonwealth**
- Item K Use of Commonwealth Material**
- Item L Existing Material**
- Item M Dealing with Copies**
- Item N Insurance**
- Item O Address for Notices**

Commonwealth's Address for Notices:

Contractor's Address for Notices:

This Contract is **SIGNED** as a Contract.

SIGNED for and on behalf of the **COMMONWEALTH OF AUSTRALIA** acting through the Department of Health and Ageing ABN 83 605 426 759 on:

Date

by: _____

_____	_____
<i>Printed name of signatory</i>	<i>Signature</i>
_____	_____
<i>Position of signatory</i>	

in the presence of:

_____	_____
<i>Printed name of witness</i>	<i>Signature of witness</i>

SIGNED by [You will need to insert the appropriate signature block according to the type of legal entity – see Commentary. This signature block is only appropriate when the Contractor is a company incorporated under the Corporations Act and should be the same as that appearing as a Party.]

_____ *Name of Contractor (ABN)* on

Date

by: _____

_____	_____
<i>Printed name of Director</i>	<i>Signature of Director</i>

and: _____

_____	_____
<i>Printed name of Director/Secretary</i>	<i>Signature of Director/Secretary</i>

Annex A

Tenderer's Submission Checklist*(To be included in submissions)*

This Annex is intended to remind tenderers of the requirements which must be met in order to be evaluated. Failure to meet the Conditions of Participation and Minimum Content and Format Requirements will result in exclusion of the tender from evaluation.

Specialist procurement advice should be sought where there is any doubt regarding the setting of minimum content and format requirements.

Subject	To be Provided	Reference Page in Tender
Conditions of participation	Either details of any litigation, arbitration, mediation, conciliation or proceeding including any investigations ('Proceedings'), that are taking place, pending or threatened, against the Tenderer and proposed sub-contractors, where such Proceedings will or have the potential to impact adversely upon either the Tenderer's capacity to perform and fulfill its obligations if contracted as a result of this tender process or the Tenderer's reputation; Or a statement that there are no such Proceedings.	
	Evidence of public liability and professional indemnity insurance, identifying the limit per incident and in aggregate, and the current expiry dates.	
	Evidence of meeting other conditions identified in Part B Section 2.	
	A signed declaration with their submission that they do not have any adverse Court or Tribunal decision for a breach of workplace law, occupational health and safety law, or workers' compensation law in the past two years preceding the date of this RFT.	
	A signed declaration with their submission that they have not engaged in improper assistance and collusive tendering.	
Tenderer's information:	<ul style="list-style-type: none"> • Tenderer's name and corporate status, including company or business registration number if applicable. • Australian Business Number for GST purposes. • If registered with the Australian Securities and Investments Commission, any Australian Company Number or Australian Registered 	

Subject	To be Provided	Reference Page in Tender
	<p>Body Number.</p> <ul style="list-style-type: none"> • If registered under State or Territory legislation, any registered business name or association name. • Any date and place of incorporation. • If a partnership, the name of the partnership and the names/addresses of the partners. • Registered office (if applicable). • Principal place of business. • Your business Internet address (if any). • Details for the tenderer's representative during the RFT process, including: <ul style="list-style-type: none"> > Name and title > Postal and physical address > Telephone and facsimile numbers, and > E-mail address. 	
Sources of Assistance	A list of any individuals and organisations who have informed the preparation of the tender (refer Part A section 4.1).	
Conflict of interest	A statement declaring any conflict of interest or potential conflict of interest that would exist if the tenderer was successful in being awarded a contract.	
RFT compliance	List of any partial compliance or non-compliance with any clauses of the RFT (including draft conditions of contract) stating reasons for non-compliance (refer Part A clause 5.2.1).	
Sub-Contractors	A list of any individuals and organisations (not part of the tenderer's organisation) who will be engaged to conduct any work resulting from this tender, and evidence of their commitment to this tender.	
Open Source Software	Not used	
AIP	Not Used	
Confidentiality Provisions	An indication of any provisions in the draft contract, and any elements of the Tender which would become part of any subsequent contract, which are regarded as confidential, including reasons (refer Part A section 4.4 and Part B, item 14 [Confidentiality Issues]).	
Details of Tendered Offer/Proposal	<ul style="list-style-type: none"> • An executive summary of the Tender in less than two (2) pages. • Table of contents providing sufficient indexing of the Tender document. • Detailed description of the methodology proposed. • Project Plan (including proposed milestones and completion dates). • Quality or performance criteria which are appropriate to indicate success and/or progress 	

Subject	To be Provided	Reference Page in Tender
	of the project tasks.	
<p>Understanding of cultural, community and organisational sensitivities relevant to the project assignment described in the RFT.</p>	<p>A statement indicating your organisation’s understanding of the cultural, community and organisational issues relevant to the project assignment.</p>	
<p>Capacity and Capability</p>	<ul style="list-style-type: none"> • Brief curriculum vitae of all specified personnel proposed for this project and details of their allocation to project tasks. • A description of any current commitments the specified personnel are likely to have that may conflict with their availability at the time required. • Identification of any backup personnel and senior consultants available for guidance. • References relating to recently undertaken, comparable projects, including; <ul style="list-style-type: none"> > Name and title > Project summaries, > Client organisations, > Client contact details, and > Examples of relevant previous work. 	
<p>Whole of Project Costs</p>	<p>Itemised pricing information:</p> <ul style="list-style-type: none"> • Proposed payment schedules detailing all: <ul style="list-style-type: none"> > fees, > prices, and > charges, related to each milestone or deliverable of the project assignment; • Travel Costs (itinerary, duration etc); and • Any additional costs to be incurred by the Department in support of any resulting contract. 	

Annex B

Declaration in relation to compliance with the Fair Work Principles

THIS DECLARATION is made on the day of 20
by:

.....
... (insert name of person authorised to sign on behalf of the Tenderer)

.....
... (inset name of Tenderer, ABN and ACN of the Tenderer)

WHEREAS

- A. The Tenderer has submitted, or intends to submit, a submission for the *Development of national minimum standards for service delivery for a national alcohol telephone counselling service procurement* (the Procurement).
- B. The Tenderer has read and understood the Fair Work Principles User Guide and understands that the Fair Work Principles will apply to the Procurement.
- C. The Tenderer is aware that the under section 137.1 of the Schedule to the *Criminal Code Act 1995*, giving false or misleading information to the Commonwealth is a serious offence.

DECLARATION

1. Compliance with Fair Work Principles

1.1 The Tenderer declares the following:

The Tenderer has had [NIL OR SPECIFY NUMBER] adverse Court or Tribunal decision for a breach of workplace relations law, occupational health and safety law, or workers' compensation law in the two years preceding the date of this request for tender.

If response is 'nil' go to 1.1.3 below]

Note to Tenderers: Strike through and initial whichever option does not apply.

1.2 The Tenderer has fully complied or is fully complying with all penalties or orders arising from the Court or Tribunal decisions declared above.

OR

The Tenderer has not fully complied with, or is currently not fully complying with [NUMBER] of the penalties or orders arising from the Court or Tribunal decisions declared above and has provided as part of its Response information about each of these penalties or orders in the form required in Appendix A to the *Fair Work Principles User Guide*.

Tenderers must provide additional information about each decision declared above as specified in Appendix A to the *Fair Work Principles User Guide*. Tenderers should note that they will not be eligible for further consideration for this procurement if they have not fully complied

with, or are not fully complying with, any Court or Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

- 1.3 The Tenderer understands its obligations under all applicable workplace relations, occupational health and safety, and workers' compensation laws. The Tenderer warrants that it is currently complying with all of these obligations.
- 1.4 The Tenderer confirms that (except where it is an overseas based supplier to which these requirements do not apply in accordance with the *Fair Work Principles User Guide*) it:
 - (a) has consultation arrangements which encourage cooperation and engagement of employees and management; and
 - (b) understands and respects their employees' rights in relation to freedom of association and the right to representation at work, including that the Tenderer allows its employees to be able to make a free and informed choice about whether to join a union and be represented at work.
- 1.5 Where the Tenderer has a *Fair Work Act 2009* enterprise agreement that was approved on or after 1 January 2010, that enterprise agreement includes a genuine dispute resolution procedure that includes the following:
 - (a) the ability for employees to appoint a representative in relation to the dispute;
 - (b) in the first instance procedures to resolve the dispute at the workplace level;
 - (c) if a dispute is not resolved at the workplace level, the capacity for a party to the dispute to refer the matter to an independent third party for mediation or conciliation; and
 - (d) if the dispute is still not resolved, the capacity for an independent third party to settle the dispute via a decision binding on the parties.
- 1.6 If at any time prior to entry into a contract with the preferred Tenderer, any information provided in this declaration changes, the Tenderer agrees to advise the Department of Health and Ageing of that change within 7 calendar days of the change occurring.
- 1.7 The Tenderer agrees the Department of Health and Ageing may provide any information collected, or provided to it by the Tenderer during the course of this RFT process (including regarding breaches of the Fair Work Principles) to other Commonwealth agencies or regulatory bodies including the Department of Education, Employment and Workplace Relations, Australian National Audit Office, Fair Work Ombudsman and Fair Work Australia.

Signed by :

.....
(Printed Name)

.....
(Signature)

in the presence of:

.....
(Printed Name)

.....
(Signature)