



Australian Government
Professional Services Review

REQUEST FOR TENDERS
RFT – PSR 2012/01
FOR
RECORDING AND TRANSCRIPTION SERVICES

Commonwealth of Australia represented by Professional Services Review
ABN 45 307 308 260

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Section A – Tender Information

1. TENDER CLOSING TIME

Tenders must be lodged by 12.00pm local Canberra time on 29/02/2012 (“**Tender Closing Time**”).

2. LODGEMENT OF TENDERS

Tenders should be emailed with the RFT reference number PSR 2012/01 in the subject field of the email before the Tender Closing Time. Tenders must be lodged at the following address: tenders@psr.gov.au

3. TENDER BRIEFING

A tender briefing will not be held, however enquiries can be submitted to the contact officer who will post all responses on the PSR website <http://www.psr.gov.au/aboutpsr/Tenders.asp>

4. LATE TENDERS

The email account tenders@psr.gov.au will close at 12 noon 29/02/2012. No Tenders can be lodged after the Tender Closing Time; or received at any location other than the place of Tender lodgment referred to above. Other than solely due to mishandling by PSR, the Tender will be deemed to be a late Tender.

Late Tenders will **NOT** be admitted to the evaluation process. Any late Tenders will be registered and returned to the sender’s address.

5. NUMBER OF COPIES REQUIRED

Tenderers are to lodge one (1) electronic copy in either Microsoft Word or PDF via email.

6. CONTACT OFFICER

Contact for all enquiries relating to this RFT should be directed to:

Luke Twyford
Phone: (02) 6120 9100
Email: tenders@psr.gov.au

Section B – Introduction

1. PURPOSE OF THE REQUEST FOR TENDER

- 1.1. This Request for Tender (“RFT”) seeks tenders from suitably qualified and experienced organisations capable of providing recording and transcription services to PSR.
- 1.2. PSR seeks to establish a Contract for a period of three years, with an option to extend for a further one year.
- 1.3. A complete summary of the Services required is available at Section G, Statement of Requirements.

2. ROLE OF PROFESSIONAL SERVICES REVIEW

- 2.1. PSR is a statutory agency that was established under Part VAA of the *Health Insurance Act 1973* (the Act) to examine health practitioners’ (i.e. medical and dental practitioners, optometrists, midwives, nurse practitioners, chiropractors, physiotherapists, podiatrists and osteopaths) conduct to ascertain whether or not they have:
 - (a) practised inappropriately in relation to services which attract Medicare rebates; or
 - (b) have prescribed inappropriately under the Pharmaceutical Benefits Scheme
- 2.2. PSR was established in July 1994 as an agency within the Health Portfolio. It is independent of the Australian Government Department of Health and Ageing and Medicare Australia. PSR examines suspected cases of inappropriate practice referred by Medicare Australia.
- 2.3. Further information that may assist Tenderers in preparing their Tenders and details of the legislation under which the PSR operates can be found on the PSR homepage at: www.psr.gov.au

3. TIMEFRAMES

- 3.1. The proposed timetable for this RFT process and Contract commencement is outlined below:

Activity	Indicative Timing
Issue of Request for Tender	25 January 2012
Tender Closing Time	29 February 2012
Evaluation of Tenders	March 2012
Contract Signed	April 2012

- 3.2. This timetable is provided for convenience only. PSR may change any of these dates, except for the Tender Closing Time, without notice. Any change to the Tender Closing Time will be notified.
- 3.3. Not all activities are identified in this proposed timetable.

Section C - Conditions of Tender

1. DEFINITIONS

1.1. In the RFT the following definitions apply:

Committee	Means a Professional Services Review Committee comprising at least three practitioners appointed under section 93 of the <i>Health Insurance Act 1973</i> . Sometimes referred to as PSRC
Commonwealth	means Commonwealth of Australia
Contact Officer	means the person nominated by Professional Services Review as the contact officer for all enquiries relating to this RFT and the tender process, as specified on the cover page to this RFT
Contract	means the proposed contract to be entered into between PSR and the successful Tenderer
Contract Manager	means the person, or persons, nominated by PSR to manage the Contract
Customer	means PSR
Electronic Form	means any information, data, text, stored in a form suitable for storage and manipulation by electronic data processing equipment
Folio	means per 100 words transcribed, excluding paragraph numbers, header or footer and other non transcribed information such as mandatory copyright statement
Hearing	means a committee investigation by a Committee under Part VAA of the <i>Health Insurance Act 1973</i>
Material	means important, essential or relevant
Panel	means the Professional Services Review Panel

	(established under subsection 84(1) of the <i>Health Insurance Act 1973</i>) member of which are available for appointment to a Committee
Panel Member	means a practitioner appointed under subsection 84(2) of the <i>Health Insurance Act 1973</i>
PSR	means Professional Services Review
Request for Tender” or “RFT	means this document, any amendments to this document and any information provided in response to a Tenderers’ request for clarification or additional information
Section	means a section of this RFT
Service Provider	means a Tenderer with whom PSR negotiates a Contract for the provision of Services, and where the context requires, includes employees, agents and subcontractors of the Service Provider
Services	means the services that would be delivered by the Service Provider under the Contract
Tender	means a Tender submitted in response to this RFT
Tender Closing Time	means the time and date noted on the cover page of this RFT
Tenderer	means a person or organisation responsible for a Tender
The Act	means the <i>Health Insurance Act 1973</i>
Transcript	means the conversion of recorded sound into text
Typographical	An error in printed or typewritten matter resulting from striking the improper key of a keyboard, from mechanical failure, or the like

2. GENERAL

- 2.1. Please read all parts of this RFT carefully. Any Tenders that are not submitted according to this RFT may be excluded from consideration.
- 2.2. This RFT is expressly not a contract between PSR and the Tenderer. Information contained in this RFT or in any Tender is not to be construed as to give rise to any contractual obligations, expressed or implied.
- 2.3. PSR may cease the RFT process, or re-tender, at any time if it considers that it is in the public interest to do so.

3. RFT AND REPRESENTATIONS

- 3.1. This RFT is and will remain the property of PSR. This RFT may only be used by any person other than PSR for the purpose of preparing a tender and matters directly relating to any subsequent agreement in respect of the Services.
- 3.2. No representation made by or on behalf of PSR or the Commonwealth in relation to the RFT will be binding on PSR or the Commonwealth unless that representation is in writing and is incorporated into formal agreement with PSR.
- 3.3. Tenderers will have no claim against PSR, or any officer, employee or adviser of PSR with respect to the exercise of, or failure to exercise, any right under this RFT.

4. ENQUIRIES BY TENDERERS

- 4.1. Tenderers may direct enquiries relating to this RFT to the Contact Officer who is the official and single point of contact for all Tenderers. All enquiries should be sent to the Contact Officer via email. The Contact Officer for this tender process is nominated on page 6.
- 4.2. Tenderers should not communicate with, nor solicit information concerning or relating to the RFT from employees of PSR, except for contact through the Contact Officer.
- 4.3. Official responses to enquiries by potential Tenderers will only be issued by the nominated Contact Officer.

- 4.4. If PSR answers a query from a Tenderer, PSR will post the question with the response on our website, <http://www.psr.gov.au/aboutpsr/Tenders.asp> without disclosing the source of the questions, or revealing any confidential tender information.

5. LODGEMENT OF TENDERS

- 5.1. Tenders must be lodged at the email address by the tender closing time detailed on page 6 of this RFT.
- 5.2. Subject to clause 5.3, Tenders lodged after the Tender Closing Time shall be deemed to be late and will not be admitted for consideration.
- 5.3. PSR will only admit a Tender to evaluation where it was received late as a result of mishandling by PSR.

6. ALTERATIONS, ERASURES, ADDITIONAL INFORMATION OR ILLEGIBILITY

- 6.1. If the Tenderer becomes aware of any discrepancy, error or omission in the Tender after lodgement and wishes to lodge a correction or additional information, that material must be in writing and lodged in accordance with the above provisions and prior to the Tender Closing Time.
- 6.2. Any Tenders in which fees or prices are not clearly and legibly stated may be excluded from consideration.

7. UNINTENTIONAL ERRORS OF FORM

- 7.1. If PSR considers that there are unintentional errors in a Tender, PSR may request the Tenderer to correct or clarify the error, but will not permit any material alteration or addition to the Tender.
- 7.2. Where PSR considers that such corrections would introduce unfairness into the evaluation process, the corrections will not be admitted for evaluation.

8. CONDITIONS FOR PARTICIPATION

- 8.1. PSR will exclude a tender from further consideration if PSR considers that the Tenderer does not comply with the conditions set out in paragraph 37.1.

9. EXCLUSION OF TENDERS AND TENDERERS

- 9.1. Subject to paragraphs 8 and 35 PSR may at any time during the evaluation process reject any:
- a. Tenders which are incomplete or clearly non competitive and
 - b. Tenders or Tenderers which breach or fail to comply with any provision of this RFT

but PSR may still consider such tenders and seek clarification under paragraph 22.

10. OWNERSHIP OF TENDER DOCUMENTS

- 10.1. All Tender documents will become the property of PSR on lodgement.
- 10.2. Intellectual property rights in the Tender do not pass to PSR with the lodgement of the Tender. However in submitting a Tender, the Tenderer grants PSR 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 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 or audit and complying with governmental and Parliamentary reporting requirements or requests 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

11. STATEMENTS

11.1. Tenderers should not:

- a) furnish any information
- b) make any statement or
- c) issue any document or other written or printed material

concerning the acceptance of any Tender in response to this RFT, for publication in any media without the prior written approval of PSR.

11.2. PSR may exclude a Tender from further consideration if the Tenderer contravenes this requirement.

12. TENDER VALIDITY PERIOD

12.1. Offers shall remain open for acceptance for 120 days from the Tender Closing Time specified on page 6 of this RFT.

13. COMPLIANCE

13.1. The Tenderer will be taken to agree and comply with all conditions of all parts of the RFT (including the Draft Contract at Section E) unless the Tenderer specifies otherwise and gives reasons for such in accordance with Section F, Item 2.

13.2. Tenderers may choose not to comply with a condition or part of the RFT or the Draft Contract (non-compliance). However, as non-compliance will be considered during the evaluation of Tenders, significant non-compliance may render a Tender ineligible for further consideration.

14. LANGUAGE, MEASUREMENT AND CURRENCY

14.1. 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.

15. TENDERERS TO MEET COSTS

15.1. Tenderers are to meet all costs of responding to this RFT, including preparation, submission, and negotiation costs.

16. TENDERERS TO INFORM THEMSELVES

- 16.1. Tenderers will be considered to have:
- (a) examined the RFT and any documents referred to in the RFT and any other information made available in writing by PSR to Tenderers for the purpose of tendering;
 - (b) examined all further information that is obtainable by the making of reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on their Tenders;
 - (c) made all investigations, interpretations and conclusions in relation to PSR's requirements as necessary or desirable in preparing their Tender; and
 - (d) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices.
- 16.2. 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 PSR, as adding to or amending this RFT.

17. CONFLICT OF INTEREST

- 17.1. Where a Tenderer identifies that a conflict of interest exists or might arise in the provision of the Services, the Tenderer must identify that actual or potential conflict of interest in their Declaration (see Section F, Item 3). A conflict of interest may exist, for example, if:
- a) the Tenderer or any of its personnel have a relationship (whether professional, commercial or personal) with a party who is able to influence the RFT process (such as PSR personnel); or
 - b) the Tenderer has a relationship with an organisation which would affect the performance of the Contract or would bring disrepute to or embarrass PSR.
- 17.2. If at any time prior to entering into a formal agreement with PSR, an actual or potential conflict of interest arises or may arise for any Tenderer, that Tenderer should immediately notify PSR in writing.

- 17.3. If a conflict of interest is identified PSR may:
- a) exclude the tender from further consideration
 - b) enter into discussions to seek to resolve such conflict of interest or
 - c) take any other action it considers appropriate.

18. TENDERER CONDUCT

18.1. False and Misleading Claims

The attention of Tenderers is drawn to Division 137 of the Criminal Code. Tenderers are advised that giving false or misleading information is an offence.

Tenderers must not make false or misleading statements in their Tenders.

18.2. Improper Assistance and Collusive Bidding

PSR will exclude from further consideration, Tenders which have been compiled:

- (a) with improper assistance of employees or ex-employees of PSR, or any consultants or advisers to PSR;
- (b) with knowledge of PSR's requirements obtained prior to release to Tenderers;
- (c) using information unlawfully obtained from PSR; or
- (d) in collusion with other Tenderers

18.3. Notwithstanding clause 18.2, Tenderers are not precluded from using ex-employees of PSR, or ex-consultants or advisers to PSR to compile their Tender provided they have not been involved in the development of this RFT or had contact with the personnel involved with these activities other than for the legitimate purpose of responding to this RFT.

18.4. PSR may also involve the ACCC to provide assistance to PSR in relation to any competition issues concerning a Tenderer or related to a Tender.

19. FUTURE MATTERS

19.1. Information in this RFT concerning current or past requirements, volumes, location, environment or other relevant matters has been prepared from information available to PSR and may not have been independently verified. In addition, PSR does not guarantee that this information will remain true at any future point in time.

- 19.2. Information in this RFT concerning requirements including expected volumes, location, environment or other relevant matters may be based on projections from available historical information which may not be accurate and may assume trends or events or other matters that may not be valid or eventuate as and when expected or at all.
- 19.3. PSR will have no liability to any Tenderer should any information or material provided in respect to this RFT be inaccurate or incomplete or if actual volumes, locations, environments or other relevant matters vary from PSR's current expectations.
- 19.4. Tenderers should make their own independent assessments of actual workload requirements under any resultant agreement and all prices will be presumed by PSR to have been based upon Tenderers' own independent assessments.

20. RETURN OF INFORMATION

- 20.1. PSR may require that, at any stage, all written or electronically stored information (whether confidential or otherwise and without regard to the type of media on which such information was provided to any Tenderer) provided to Tenderers (and all copies of this information made by Tenderers) must be:
- a) returned to PSR – in which case the Tenderer must promptly return all such information to the address identified by PSR or
 - b) destroyed by the Tenderer – in which case the Tenderer must promptly destroy all such information and provide PSR with written certification that the information has been destroyed.

21. NO PROFESSIONAL SERVICES REVIEW LIABILITY

- 21.1. Participation in any stage of this RFT process, or in relation to any matter concerning this RFT will be at each Tenderers' sole risk, cost and expense. PSR will not be responsible in any circumstance for any costs or expenses incurred by any Tenderer in preparing or lodging a Tender or in taking part in the RFT process or taking any action related to the RFT process.
- 21.2. Neither PSR nor its officers, employees or advisers will be liable to any Tenderer or any other person on the basis of any promissory estoppels, quantum meruit or any rights with a similar legal or equitable basis whatsoever or in negligence as a consequence of any matter or thing relating, or incidental to a Tenderers participation in this RFT process, including instances where:

- a) a Tenderer is not engaged to undertake the provision of Services
- b) PSR decides not to outsource all or any of the Services
- c) PSR exercises or fails to exercise any of its rights under or in relation to this RFT; or
- d) PSR makes information available or provides information to a Tenderer relating to its assets, procedures, plans, tenders, existing arrangements for provision of the Services or any possible future arrangements.

22. PROFESSIONAL SERVICES REVIEW'S RIGHTS

- 22.1. Neither the lowest priced Tender, nor any Tender, will necessarily be accepted by PSR. Acceptance of any Tender will be subject to the execution of a formal agreement.
- 22.2. PSR may at any stage of the RFT process, including during the evaluation process:
 - a) vary the RFT, including the timing and processes referred to in this RFT
 - b) seek amended or call for new Tenders
 - c) forward any clarification of the meaning of the content of this RFT to all known Tenderers on a non attributable basis and without disclosing any confidential information of a Tenderer
 - d) allow or not allow another legal entity to take over a tender in substitution for the original Tenderer where an event occurs which has the effect of substantially altering the composition or control of the Tenderer or the business of the Tenderer
 - e) shortlist Tenderers
 - f) obtain clarification or additional information from Tenderers or anyone else (including a formal presentation in support of their Tender and/or a demonstration of existing components of their proposed solution) and use this information for the evaluation of the Tenders
 - g) provide additional information to Tenderers
 - h) negotiate with one or more Tenderers (including negotiating with all Tenderers without shortlisting) in respect of all or part(s) of the Services or discontinue negotiations
 - i) if PSR considers that no Tender offers value for money in accordance with the RFT or otherwise that it is in the public interest to do so, terminate the RFT process, and:
 - i. not proceed with the procurement

- ii. negotiate with one or more non Tenderers or
 - iii. enter into a contract or other binding relationship outside the RFT process
 - j) add to, alter, delete or exclude the products or services to be supplied under the Draft Contract and/or
 - k) publish or disclose the names of Tenderer(s) (whether successful or unsuccessful).
- 22.3. Without limiting PSR's other rights under this RFT or at law, Tenderers should note that it is Commonwealth policy to develop coordinated procurement contracting arrangements for the acquisition of certain goods and services to Commonwealth departments and agencies.
- 22.4. The process of identifying such goods and services is currently under way. It is therefore possible that some or all of the Services may become subject to a centralised coordinated procurement contracting arrangement:
- a) before the Tender Closing Time
 - b) after the Tender Closing Time 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.
- 22.5. If paragraph (a) applies, PSR may discontinue this RFT process. If paragraph (b) applies, PSR may discontinue the Tender process and elect not to enter any contract as a result of this RFT. If paragraph (c) applies, PSR may exercise its rights under the Draft Contract to terminate the agreement for convenience without compensation for loss of potential profits.
- 22.6. Without limiting its other rights under this RFT or at law, if PSR concludes that a preferred Tenderer has retracted, or attempts to retract information, representations, agreements or understandings, under which material, technical, commercial, financial, corporate, relationship management, legal, contractual or other issues were resolved or understood by PSR to be resolved, in whole or in part, during negotiations, PSR may disqualify or set aside the preferred Tenderers' Tender and/or exercise any other right given by this RFT.
- 22.7. PSR will not be liable or in any way responsible for any losses, costs, expenses, claims or damage resulting from the exercise of any of PSR's rights under this RFT whether or not PSR has informed a Tenderer of its exercise of the rights.

- 22.8. The establishment of a time or date in this RFT does not create an obligation on the part of PSR to take any action or create any right in any Tenderer that any action be taken on the date established.

23. COMPLAINTS

- 23.1. If a Tenderer has a complaint concerning this RFT or PSR's management of any aspect of the RFT process, the Tenderer should notify the Contact Officer in writing of the existence of that complaint. The written notice should also provide details of the complaint.
- 23.2. On receipt of a notification of a complaint made under this clause the Contact Officer will, within 10 days, notify the Tenderer of the identity of the relevant PSR complaints officer for this RFT and of the next steps for the Tenderer to take in order to pursue the complaint. The PSR complaints officer will be an officer of PSR who is and has been independent of the RFT process.

24. AFFIRMATIVE ACTION

- 24.1. It is an Australian Government policy requirement that PSR 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**").
- 24.2. 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 PSR written confirmation from the Equal Opportunity for Women in the Workplace Agency that it currently complies with the EOWW Act.

25. FAIR WORK PRINCIPLES

- 25.1. 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.
- 25.2. 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:

- fails, when required by the Commonwealth, to confirm it understands and complies with all relevant workplace relations law, Work Health and Safety (WHS) laws, or workers' compensation law;
- 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;
- has a Fair Work Act 2009 agreement that was made on or after 1 January 2010 that does not include genuine dispute resolution procedures;
- fails to provide information when requested by PSR relevant to their compliance with the Fair Work Principles;

To enable PSR to confirm the Tenderer's compliance with the relevant requirements of the Fair Work Principles the Tenderer must complete the attached Statutory Declaration in the form it is provided at Section F, item 11 and include it as part of their tender response.

26. WORK HEALTH SAFETY

- 26.1. The Contractor will strictly adhere to and comply with any applicable work health safety and safety policies, procedures, legislation, protocols, Codes of Practice and industry standards which apply within the scope of the Services.
- 26.2. The Contractor must ensure that risk assessments have been conducted for risks to health and safety that relate to the provision of the Services and that control measures are in place to eliminate, prevent or reduce those risks (as applicable) to the extent reasonably practicable.
- 26.3. Without limiting the Contractor's obligations under clause 26.2 the Contractor must, in the absence of any applicable policies and procedures to eliminate, prevent or reduce any risks identified as a result of carrying out a risk assessment.

27. DISCLOSURE OF INFORMATION

- 27.1. 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.

- 27.2. PSR is required to publish the award of all contracts, agreements and standing offers valued at \$10,000 (including gst) or more. This includes details to whom the Contract, agreement or standing offer was awarded and the Contract price.
- 27.3. The Senate Order on Departmental and Agency Contracts, requires PSR to publish on the Internet with access through their website, a report listing of all contracts with a value of \$100,000 (including gst) or more, including details as to whether any provisions of the Contract are regarded by the parties as confidential and also provide a statement for the reasons for confidentiality.

28. CONFIDENTIALITY

- 28.1. PSR undertakes, subject to clause 27.2, to protect any confidential information provided to PSR by Tenderers prior to the award of any contract and, in respect of unsuccessful Tenderers, after the award of any contract.
- 28.2. The obligation of confidentiality in clause 27.1 does not apply if the confidential information:
- (a) is disclosed by PSR to its advisors or employees solely in order to consider the Tender
 - (b) is disclosed by PSR to the responsible Minister
 - (c) is disclosed by PSR, 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 27.1
- 28.3. If the Tenderer is successful in being awarded a contract, PSR 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 available from <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/principles.html>
- 28.4. To enable PSR 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.

- 28.5. PSR will consider any request made under clause 28.4 and will inform the Tenderer whether or not PSR, in its sole discretion, agrees to the request and the terms under which it agrees.
- 28.6. The terms of any agreement as to confidentiality will form part of the Contract to be awarded at completion of the RFT process.

29. SECURITY, PROBITY AND FINANCIAL CHECKS

- 29.1. PSR reserves the right to perform such security, probity and/or financial investigations and procedures as PSR, 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 PSR in this regard.

30. AUSTRALIAN NATIONAL AUDIT OFFICE

- 30.1. 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.
- 30.2. 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 PSR assets, including those on the Tenderers' 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.
- 30.3. 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.

31. RECORDS AND RECORD KEEPING

- 31.1. Tenderers must comply 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.

32. BUSINESS CONTINUITY REQUIREMENTS

- 32.1. It will be a requirement of the resulting contract to this request for tender, for the Contractor to have in place a business continuity plan. The business continuity plan must, as a minimum, cover the following:
- Continuity of services in the event of a major disruption to either the premises or to the premises of the hearing venue;
 - Continuity of services in the event of a major disruption to their IT systems;
 - Measures to ensure the preservation of PSR reporting materials, including the protection from fire and unauthorised destruction of electronic records; and
 - Offsite back-ups of all electronic records.

33. INSURANCE REQUIREMENTS

- 33.1. The successful Tenderer will be required to hold the following minimum levels of insurance over the term of the Contract:
- (a) Public Liability - minimum of \$10,000,000 in respect of each claim
 - (b) Professional Indemnity - minimum of \$5,000,000 in respect of each claim
 - (c) Workers Compensation - as required by law

34. ACCEPTANCE OF TENDERS

- 34.1. Tenders which are deemed late in accordance with clause 5.2 of Section C will not be admitted for evaluation, and will be advised of this within two working days of receipt of the late Tender.

- 34.2. PSR is not bound to accept the lowest priced Tender or any other Tender.
- 34.3. Unsuccessful Tenderers will be notified once a contract has been executed between the successful Tenderer/s and PSR.
- 34.4. PSR may negotiate with any Tenderer or Tenderers, or seek clarification of the contents of a Tender from any Tenderer.

35. INFORMATION TO BE PROVIDED BY TENDERERS

- 35.1. All Tenderers are to respond to the RFT by completing all items at Section F and providing all of the following information in their Tender:

SUBJECT	TO BE PROVIDED BY TENDERER
Tender Details and Declaration	<p>Complete and sign Section F, Item 1.</p> <p><i>Please Note: The officer who approves the Tender (by signature) must have the authority to be able to bind the company/organisation.</i></p>
Compliance with RFT and Draft Contract	<p>Complete Section F, Item 2, declaring any partial compliance or non-compliance with any clauses of the RFT (including draft conditions of contract) stating reasons for partial or non-compliance and alternatives where appropriate.</p> <p>If the Tenderer does not have any partial or non-compliance with any clauses of the RFT (including draft conditions of contract), this should be stated at Section F, Item 2, by noting “Not applicable”.</p>
Conflict of Interest	<p>Complete Section F, Item 3, declaring any conflict of interest or potential conflict of interest that would exist if the Tenderer were successful in being awarded a contract.</p> <p>If the Tenderer does not have a conflict of interest or potential conflict of interest, this should be stated at Section F, Item 3, by noting “Not applicable”.</p>

<p>Tenderers' Confidential Information</p>	<p>Complete Section F, Item 4, indicating 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 Section C clause 27).</p> <p>If the Tenderer does not have any information that it requires be kept confidential, this should be stated at Section F, Item 4, by noting "Not applicable".</p>
<p>Insurance</p>	<p>Complete Section F, Item 5, providing details of existing insurance and indemnity cover as required at clause 33 of Section C.</p>
<p>Referees</p>	<p>Complete Section F, Item 6, providing at least 2 references relating to recently undertaken, comparable Services.</p>
<p>Specified Personnel</p>	<p>Complete Section F, Item 7, providing details for all personnel nominated to manage the provision of Services including the person nominated to be the Relationship Manager. Resumes are required for all personnel nominated at Section F, Item 7.</p>
<p>Major Subcontractors</p>	<p>If the Tenderer proposes to subcontract a component of the Services that is major in terms of quality, technical significance or price, they are to list the names of all subcontractors and details of the Services they would provide by completing Section F, Item 8.</p> <p>If the Tenderer does not propose to subcontract a component of the Services that is major in terms of quality, technical significance or price, this should be stated at Section F, Item 8 by noting "Not Applicable".</p>
<p>Response to evaluation criteria (Experience and Capacity)</p>	<p>Complete Section F, Item 9 providing a response to each listed evaluation criterion.</p>

<p>Response to evaluation criteria (Whole of Life Costs)</p>	<p>Tenderers are asked to set out clearly how they propose to charge for the Services offered by completing the pricing/fee table and fee variation information at Section F, Item 10.</p>
<p>Statutory Declaration for Compliance with Fair Work Principles</p>	<p>Tenderers are asked to complete the Statutory Declaration at Section F, Item 11.</p>

36. MINIMUM CONTENT AND FORMAT REQUIREMENTS

36.1. Tenderers **must** meet the language, currency and measurement requirements detailed at Section C, clause 14.1 in order for their Tender to be considered.

37. ALTERNATIVE TENDERS

37.1. Alternative Tenders will **not** be accepted.

38. TENDERING ENTITIES

38.1. PSR will only consider tenders submitted by single legal entities which are in existence or unincorporated joint ventures which have been established at the Tender Closing Time specified in Section A, Item 1.

38.2. PSR may reject a tender if it is submitted on the basis that two or more organisations will be jointly and severally liable.

39. NEGOTIATION PHASE AND CLARIFICATION

39.1. During the negotiations phase of the RFT process, PSR may engage in detailed discussions and negotiations with the goal of maximising the benefits of a Tenderers' proposal, as measured using the evaluation criteria set out in Section D. As part of this process, those Tenderers participating in this stage may be asked to improve the content of their Tenders, including (without limitation) the technical, commercial, financial, corporate, relationship management, legal and/or contractual content. The selection of

a preferred Tenderer/s will be subject to successfully concluding final negotiations.

39.2. Without limiting its other rights under this RFT, in the event that PSR in its absolute discretion concludes that during final negotiations a preferred Tenderer has retracted, or attempts to retract its tendered offer including agreements under which material issues were resolved during the negotiation phase referred to in clause 39.1, PSR in its absolute discretion reserves the right to:

- a) disqualify the preferred Tenderers' Tender and re-enter negotiations with one or more other Tenderers
- b) terminate this RFT process or parts of the RFT process
- c) re-enter negotiations with other Tenderers (including or excluding the preferred Tenderer); and
- d) exercise any other right reserved to the Commonwealth under law or elsewhere in this RFT

39.3. At the end of the negotiation phase, PSR will confirm whether any Tenderer remaining in the process satisfies the requirements set out in the RFT and if more than one Tenderer satisfies these requirements choose a preferred Tenderer(s).

39.4. PSR reserves the right to seek clarification of various aspects of Tenders from any Tenderer.

40. BEST OFFER

40.1. Tenderers should note that notwithstanding action pursuant to clause 38.1, PSR intends to select preferred Tenderers primarily on the basis of the written Tenders submitted. Accordingly, Tenderers are encouraged to submit their best and unconditional offers in the first instance.

40.2. By submitting its Tender, each Tenderer acknowledges that PSR will be relying on all of the information contained, and all of the representations made, in its Tender and any subsequent written and/or verbal clarifications of that Tender for the purposes of evaluating such Tender against tenders received from other persons.

41. SUPPLIES AND SERVICES TO OTHER AGENCIES

41.1. Obligation to provide Supplies and Services

The Contractor offers to provide the Supplies and Services to any Nominated Agency in accordance with the requirements set out in this clause 41.

41.2. Request

A Nominated Agency may request the provision of Supplies and Services in accordance with clause 41.1, by giving the Contractor a completed Agency Order Form.

41.3. Separate contracts

Each Agency Order Form agreed with the Contractor in accordance with this Contract will create a separate contract between the Contractor and:

- (a) The Commonwealth represented by the Nominated Agency (where that agency is subject to the *Financial Management and Accountability Act 1997 (Cth)*); or
- (b) the Nominated Agency,

as the case requires, for the supply by the Contractor of the requested Supplies and Services to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

Section D - Evaluation of Tenders

1. EVALUATION

- 1.1. Tenders which have not been excluded from consideration by PSR will be evaluated by PSR to identify the option that represents best value for money in accordance with the process and evaluation criteria described in section 1.2. Value for money is a comprehensive assessment that takes into account both cost represented by the assessment of price and value represented by technical assessment in the context of the risk profile presented by each tender, including any request by a Tenderer to limit its liability under the Draft Contract.
- 1.2. Tenders will be assessed on the basis of value for money consistent with the *Commonwealth Procurement Guidelines 2008* and PSR's Chief Executive Instructions. Best value for money is the core principle governing PSR's procurement and is enhanced by three supporting principles:
 - a) encouraging competition
 - b) efficient, effective and ethical use of resources and
 - c) accountability and transparency.
- 1.3. The evaluation criteria are not necessarily listed in any order of importance and may or may not be weighted. In addition, PSR may use material tendered in response to one evaluation criterion in the evaluation of other evaluation criteria.
- 1.4. If additional evaluation criteria are intended to be applied for the purposes of evaluation, PSR will notify Tenderers who will be given an opportunity to respond.
- 1.5. PSR may make independent enquiries about any of the matters that may be relevant to the evaluation of any tender.
- 1.6. The tender evaluation process may involve:
 - a) visits to some or all Tenderers' sites; or
 - b) discussions with, and/or visits to, customers or subcontractors of some or all Tenderers, whether or not the customers are provided as referees by a Tenderer
- 1.7. PSR may seek presentations from, or interview, Tenderers as part of its evaluation process.

2. EVALUATION PROCESS

- 2.1. The purpose of the evaluation process is to assess Tenders to determine the Tender that offers best value for money for PSR.
- 2.2. The evaluation of Tenders will be conducted by a Tender Evaluation Committee consisting of representatives from PSR and, where required, other parties as determined by PSR.
- 2.3. PSR will use the following evaluation process:
 - a) An initial assessment will be conducted of the extent to which Tenders comply with the requirements of the RFT:
 - i. Those Tenders that do not meet a Condition for Participation (refer Section C, clause 8.1) will be set aside.
 - ii. Those Tenders that do not meet the Minimum Content and Form requirements (refer Section C, clause 7) will be set aside.
 - b) Tenders will be reviewed for conflicts of interest or non-compliance with the RFT or draft Contract. Tenders with significant non-compliance or conflicts of interest may be set aside and not evaluated further, at the sole discretion of the Tender Evaluation Committee.
 - c) Tenders with minor non-compliance or conflicts of interest will be evaluated against the evaluation criteria and the Tender Evaluation Committee will then make a decision as to whether non-compliance should be clarified or negotiated.
 - d) Tenders that are not set aside (as per clause 2.3 (a) and 1.3(b)) will be assessed against the evaluation criteria at clause 3.4 below.
 - e) Tenders which are incomplete or clearly uncompetitive may be excluded from consideration at any time during the evaluation process at PSR's discretion but PSR may still consider such Tenders and seek clarification as per clause 2.4 below.
 - f) PSR may develop a shortlist of Tenders at any time during the evaluation process. Shortlisting will be conducted on the basis of an assessment of the Tenders against the evaluation criteria and Tenders that are not included on any shortlist will not generally be considered further.
 - g) PSR may request the shortlisted Tenderer(s) to provide a formal presentation of their offer to the Tender Evaluation Committee. If a presentation is required, the presentation will form part of the evaluation process.
 - h) Nominated reference sites for shortlisted Tenderers may be contacted to verify aspects of the Tender and to assess the extent to which the Tenderers meet all criteria.

- i) PSR may enter negotiations with one or more Tenderers with the goal of maximising the benefits of a Tenderer's proposal.
- 2.4. At any stage during the evaluation process, PSR may seek clarification from any or all of the Tenderers in relation to their Tender.

3. EVALUATION CRITERIA

- 3.1. Tenderers should ensure their Tenders clearly address the Tender evaluation criteria identified at clause 3.4 below. Tenderers should provide a response to each of the evaluation criteria in the format provided at Section F, Items 9(a), 9(b), 10 and 11.
- 3.2. If additional criteria are intended to be applied for the purposes of evaluation, PSR will notify Tenderers who will then be given an opportunity to respond.
- 3.3. Please note that any Tender that does not provide all required information or which contains false or misleading information may be excluded from consideration.
- 3.4. In evaluating Tenders, PSR will take into account the following Tender evaluation criteria in its consideration of value for money. The evaluation criteria are not listed in any particular order of priority.

Experience will be evaluated based on Tenderers' response to the following sub criteria:

Experience in providing similar services to those required by PSR should include names of organisations, summary of services provided and the period of time services were provided.

Capacity will be evaluated based on Tenderers' response to the following sub criteria:

Proposed strategy to provide the Services, noting in particular the processes that will be followed to achieve the required outcomes within the timeframe required.

Whole of life costs will be evaluated based on the fees tendered.

Factors that will be taken into consideration during Evaluation

The extent to which the Tenderer has relevant experience in providing similar services to Government and/or the private sector.

The extent to which the Tenderer is able to comply with Privacy and Security legislation and procedural directions as per the requirements set out in clause 18 of the Statement of Requirements

The extent to which the Tenderer is able to produce accurate transcripts of hearings recorded within the required timeframes.

If the Tenderer complies with Fair Work, WHS and EOWW requirements

The extent to which the views of any referees approached by PSR in relation to the Tenderer support the Tenderers' claims against these criteria

Section E - Draft Conditions of Contract

The following 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 (see Section C clauses 13 and 34).



PROFESSIONAL
SERVICES REVIEW

CONTRACT FOR SERVICES

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Professional Services Review

ABN 45 307 308 260

and

[name of company]

ABN XX XXX XXX XXX

in relation to the XXXXXXXX

DRAFT CONTRACT - 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. Supplies and Services to other Agencies**
- 26. Waiver**
- 27. 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 Professional Services Review ABN 45 307 308 260 (‘PSR’)

and

[name of company - ABN XX XXX XXX XXX]

RECITALS

- A. The Commonwealth requires the provision of certain services to PSR 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 the [quote / proposal dated XX/XX/XXXX]
- C. The Commonwealth has agreed to engage the Contractor to provide the Services on 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;

‘Information Commissioner’ means the Information Commissioner as that term is defined in section 3 of the *Australian Information Commissioner Act 2010*;

‘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;

‘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 individual specified in Item I and no other person.

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 identified in Item I, and no other person, will perform the activities specified in Item A.
- 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 Information 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 Information 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 Work Health 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 work 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 behaviors 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, work health 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 Information 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 Agency), 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 Information 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 Information 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. SUPPLIES AND SERVICES TO OTHER AGENCIES

25.1 Obligation to provide Supplies and Services

The Contractor offers to provide the Supplies and Services to any Nominated Agency in accordance with the requirements set out in this clause 40 of Section C.

25.2 Request

A Nominated Agency may request the supply of Supplies and Services in accordance with clause 40.1 of Section C, by giving the Contractor a completed Agency Order Form.

25.3 Separate contracts

Each Agency Order Form agreed with the Contractor in accordance with this Contract will create a separate contract between the Contractor and:

- a) The Commonwealth represented by the Nominated Agency (where that agency is subject to the Financial Management and Accountability Act 1997 (Cth)); or
- (b) the Nominated Agency,

as the case requires, for the supply by the Contractor of the requested Supplies and Services to the Nominated Agency. For the sake of clarity, the terms and conditions governing each such separate contract will be the same as the provisions of this Contract.

26. WAIVER

- 26.1 A waiver of any provision in this Contract must be in writing.
- 26.2 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.
- 26.3 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 26.4 A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

27. NOTICES

- 27.1 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.
- 27.2 The Parties agree that a notice given in accordance with clause 27.1 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 (see clause 1, 2 and 5)

The Services up to a total value of \$X (GST inclusive) to be provided by the Contractor will, [through the work, effort and skill provided by the Specified Personnel in Item I,] be:

•

Item B Required Contract Material (see clause 1.1 and 2.1)

Item C Standards and Best Practice (see clause 2.1)

Item D Time-frame (see clause 2.1)

Item E Fees (see clause 3.1 and 20.5)

Item F Allowances and Costs (see clause 3.1)

Item G Facilities and Assistance (see clause 3.1)

Item H Invoice Procedures (see clause 3)

Subject to the Contractor providing satisfactory services to the Commonwealth as outlined in Item A and in accordance with the above payment schedule, the Commonwealth will pay the Contractor within 28 days of receipt of a properly rendered tax invoice.

Item I Specified Personnel (see clauses 1.1 and 6)

The Specified Personnel for the purposes of this contract is

Item J Commonwealth Material to be provided by Commonwealth (see clause 8.1)

Item K Use of Commonwealth Material (see clause 8.3)

Item L Existing Material (see clause 9.2)

Item M Dealing with Copies (see clauses 8.4, 9.5 and 11.6)

Item N Insurance (see clause 18.1)

Item O Address for Notices (see clause 23.1)

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 Professional Services Review ABN 45 307 308 260 on:

Date

by:

Printed name of signatory

Signature

Position of signatory

in the presence of:

Printed name of witness

Signature of witness

SIGNED for and on behalf of **[name of company - ABN XX XXX XXX XXX]** on:

Date

by:

Printed name of Director/General Manager

Signature of Director/General Manager

and:

Printed name of Director/Witness

Signature of Director/Witness

Section F – ITEMS TO BE COMPLETED BY TENDERER

ITEM 1 – Tenderer Details & Declaration

Business Name:	
Corporate Status:	
Trading Name (if different to Business Name):	
ABN:	
Business Address:	
Mailing Address:	
Registered Office:	
Business Internet Address (if applicable):	
Contact Person:	
Position:	
Telephone:	
Facsimile:	
e-mail Address:	

The Tenderer declares that the information contained in this Tender is true.

Name:	
Official Position Held:	
Signature:	
Date:	
Duly Authorised to Sign on Behalf of (<i>state full name of business</i>):	

ITEM 2 - Compliance with RFT and Draft Contract

Any non-compliance with a clause of the RFT (including the draft Contract) should be identified in the table below. Unless expressly stated in the ‘Compliance Status’ column, each Tenderer is taken to ‘understand and agree’ or ‘comply’ with the RFT.

For the purposes of this item:

"comply" means:

- where a condition is imposed, that condition is agreed to; and
- where a provision specifies a characteristic or performance requirement, that the Tenderers’ offer is to provide the requirement as specified; and

"understand and agree" means in the case of a provision giving information only, that the provision has been read and understood.

In completing the ‘Compliance Status’ column in the table below, Tenderers should use **one** of the following expressions only, against each individual paragraph:

"partially comply" means the condition or characteristic or performance requirement can be met by the Tenderers’ offer, subject to certain qualifications, which are stated in full; or

"does not comply" means that the complete condition or characteristic or performance requirement of the provision is not met by the Tenderers’ offer.

Do not use non-committal terms such as "Noted".

IMPORTANT NOTE: *Unless the Tenderer expressly states otherwise, they are taken to agree or comply with all the provisions in Section E, Draft Conditions of Contract.*

State expressly those provisions with which you **do not** agree or comply with and provide reasons. If the Tenderer does not have any partial or non-compliance with any clauses of the RFT (including draft conditions of Contract), this should be stated in the table below by noting “Not applicable”.

SECTION/ CLAUSE	COMPLIANCE STATUS	COMMENTS

ITEM 3 - Conflict of Interest

Tenderers are to state here any circumstances or relationships, which constitute a conflict of interest or potential conflict of interest in respect of the RFT, or the Tenderers’ obligations under any resulting Contract if the Tenderer is ultimately awarded a Contract by PSR.

If the Tenderer does not have a conflict of interest or potential conflict of interest, this should be stated below by including the words “Not Applicable” in the column headed ‘Conflict of interest or potential conflict of interest’.

Conflict of interest or potential conflict of interest	Proposed method for managing conflict of interest

ITEM 4 – Tenderers’ Confidential Information

Tenderers should list here any information which they will be providing in the Tender or during the Tender process that they consider should be protected as Confidential Information in the event that the Tenderer and PSR enter into a Contract. The Tenderer should provide reasons why this information should be protected as Confidential Information and propose a period during which the information is to remain confidential.

If the Tenderer does not have any Confidential Information, this should be stated below by including the words “Not Applicable” in the column headed ‘Item of Information’.

Item of information	Reason(s) why this information should be protected as Confidential Information	Proposed period of confidentiality

ITEM 5 - Insurance

Tenderers are to provide details of currently held insurance as per the minimum levels of insurance identified at clause 33 of Section C (complete details in the table below).

Public Liability Insurance	
Name of insurance company	
Policy number	
Expiry date	
Limit of liability	

Professional Indemnity Insurance	
Name of insurance company	
Policy number	
Expiry date	
Limit of liability	

Workers Compensation Insurance	
Name of insurance company	
Jurisdictions Covered	
Policy number	
Expiry date	
Limit of liability	

ITEM 6 - Referees

Tenderers are to provide, in the format outlined below, details for 2 referees for whom they have recently provided similar Services to those required by PSR.

Name of Organisation	
Summary of Services Provided	
Length of time Services were provided to Organisation	
Contact Details of Person willing to act as Referee	-Name: -Title: -Work Phone: -Mobile Phone -Email address:

Name of Organisation	
Summary of Services Provided	
Length of time Services were provided to Organisation	
Contact Details of Person willing to act as Referee	-Name: -Title: -Work Phone: -Mobile Phone: -Email address:

ITEM 7 - Specified Personnel

Tenderers are to complete the following details and provide brief Résumés with their Tender for all specified key personnel. Tenderers are to provide details of any current commitments the specified personnel are likely to have that may conflict with their availability to provide the Services for PSR.

Provide details of the person nominated to be the **Relationship Manager**:

Name:	
Title:	
Qualifications:	
Experience:	
Referees:	
Current commitments that may conflict with availability at time of request:	

Provide details for any other key personnel nominated:

Name:	
Title:	
Qualifications:	
Experience:	
Current commitments that may conflict with availability at time of request:	

ITEM 8 - Major Subcontractors

If the Tenderer proposes to subcontract a component of the Services that is major in terms of quality, technical significance or price, they are to list the names of all subcontractors and details of the Services they would provide in the table below.

If the Tenderer does not propose to use any subcontractors in the provision of the Services, this should be stated below by including the words “Not Applicable” in the column headed ‘Full Name of Subcontractor’.

Full Name of Subcontractor	Services to be provided by Subcontractor

ITEM 9(a) - Response to Evaluation Criteria (experience & capacity)

Tenderers are required to provide a response to each of the sub-criteria listed in the tables below, as outlined in Section D.

Experience will be evaluated based on Tenderers' response to the following sub criteria:

Experience in providing similar services to those required by PSR. Please include names of organisations, summary of services provided and the period of time services were provided.

Response:

Capacity will be evaluated based on Tenderers' response to the following sub criteria:

Proposed strategy to provide the Services, noting in particular the processes that will be followed to achieve the required outcomes within the timeframe required.

Response:

ITEM 9(b) - Response to Evaluation Criteria (experience & capacity)

Tenderers are required to provide a response to each of the sub-criteria listed in the tables below, as outlined in Section D.

Experience will be evaluated based on Tenderers' response to the following sub criteria:

The extent to which the Tenderer has relevant experience in providing similar services to Government and / or the private sector

Response:

Other Factors that will be taken into consideration during the Evaluation

The extent to which the Tenderer is able to comply with Privacy and Security legislation and procedural directions as per the requirements set out in clause 14 of the Statement of Requirements

Response:

The extent to which the Tenderer is able to produce accurate transcript of hearings recorded within the required timeframes

Response:

The extent to which the Tenderer complies with Fair Work, WHS and EOWW requirements.

Response:

ITEM 10 - Response to Evaluation Criteria (whole of life costs)

Tenderers are required to provide details of all fees applicable over the term of the Contract in the format provided below (expand table as required to ensure all fees are identified). Fees are to be inclusive of all things necessary and incidental to the conduct of the required Services to the required standard, including consumables.

Fee Variation

Tenderers are to indicate the basis for fee variation by ticking the appropriate box:

Fees remain firm for the period of the Contract. The fees are unalterable in all respects for the period of the Contract.

OR

Fees remain firm for the first twelve (12) months of the Contract and are then variable in accordance with the fee variation information detailed below:

Fee Variation Formula

The fee variation formula that will apply for changes in economic circumstances is provided below:

$$F1 = F0 \times \text{CPI}$$

where:

F1 = Fee to apply for the subsequent year of the Contract, being the year following F0;

F0 = Fee applying in the year preceding F1, being year one in the first application of the formula; and

CPI = the Australian Bureau of Statistics published Consumer Price Index (All Groups) for the year preceding F1, divided by the Australian Bureau of Statistics published Consumer Price Index (All Groups) for the year preceding F0.

Alternative Fee Variation Arrangements

Tenderers who propose alternative fee variation arrangements are to submit full details. The effect on fees of such arrangements over the contract period will be taken into consideration in the comparative evaluation of whole of life costs.

Item 11 - Statutory Declaration for compliance with the Fair Work Principles

To enable PSR to confirm the Tenderer's compliance with the relevant requirements of Fair Work Principles discussed at clause 25 Tenderers are required to complete this Statutory Declaration in the form it is provided as part of their expression of interest response. Failure to comply for the purposes of this Request for Tender will result in a submission being excluded from further consideration.

THIS STATUTORY DECLARATION is made on the _____ day of _____ 20_____

Name of Tenderer, ABN and ACN: _____ (the Tenderer)

WHEREAS

- A. The Tenderer has submitted, or intends to submit, a Submission for the _____ 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.

NOW THIS STATUTORY DECLARATION WITNESSES as follows:

1. Compliance with Fair Work Principles

1.1 The Tenderer declares the following:

1.1.1 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/expression of interest].

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

1.1.2 The Tenderer has fully complied or is fully complying with all penalties or orders arising from any Court or Tribunal decisions.

OR

The Tenderer has not fully complied with, or is currently not fully complying with _____ [NUMBER] of the penalties or orders arising from any Court or Tribunal decisions and has provided as part of its [Submission] 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 not 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 of Tribunal decision, or have not appealed the decision prior to the end of the appeal period.

Section F – Items to be completed by Tenderer

1.1.3 The Tenderer understands its obligations under all applicable workplace relations, work health safety, and workers' compensation laws. The Tenderer confirms that it complies, with all of these obligations.

1.1.4 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:

- has consultation arrangements which encourage cooperation and engagement of employees and management; and
- 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.

1.1.5 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:

- 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.

1.1.6 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 [Agency] of that change within 7 calendar days.

EXECUTED as a Statutory Declaration for and on behalf of:

_____ by:
(insert Tenderer legal name)

(Printed Name)

(Signature)

(Title)

(Date)

In the presence of:

(Printed Name)

(Signature)

(Date)

Section G - STATEMENT OF REQUIREMENTS

1. OVERVIEW OF CURRENT SERVICE PROVISION

- 1.1. PSR seeks an external contractor to provide recording and transcribing of matters heard by a PSR Committee and Determining Authority in capital cities throughout Australia at different times of the year.

2. OUTCOMES SOUGHT FROM TENDER

- 2.1. PSR are seeking the Services, at various locations throughout Australia, of a suitably experienced provider of recording and transcription services to designated locations. A list of all locations will be provided at a later time.
- 2.2. While it is anticipated that this Request for Tender will result in the award of a contract with a single provider, PSR reserve the right to contract with one or more suppliers for the provision of the required services at differing locations at its absolute discretion.
- 2.3. The required outcomes sought under this tender are:
- (a) the delivery of cost effective recording and transcription to PSR. The services provided by the Contractor must be consistent regardless of location;
 - (b) access to digital sound recordings of proceedings;
 - (c) access to accurate transcript of conversations and hearings that are able to be relied upon in a court of law; and
 - (d) a cost effective means of efficiently and effectively servicing locations
- 2.4. It is proposed that these outcomes will be achieved by:
- ensuring that a competitive environment is established for the tender;
 - simplifying and standardising the pricing and contract management structure;
 - placing more reliance on the use of electronic forms of transcript;
 - providing a platform for the delivery of services via a cost effective integrated technology solution; and
 - introducing new technology as appropriate
- 2.5. Tenderers are required to demonstrate, in their tender responses, how they intend to achieve these outcomes.

3. SCOPE OF SERVICES REQUIRED

3.1. The services sought under this RFT are:

- Voice recording services for hearings held by a PSR committee. Hearings run for approximately 7.5 hours per day over 2 consecutive days;
- timely and accurate production and distribution of a transcript of these hearings in the format as specified;
- timely availability of digital sound recordings of these hearings to specified PSR officers;
- reliable back-up and recovery procedures for recordings;
- the provision of accurate statistical and financial management information relating to PSR use of the transcription services
- the confidential and secure protection of all transcripts and recordings collected

4. SERVICE DELIVERY LOCATION

- 4.1. Recording services are required in secure meeting rooms in all capital cities around Australia. Previously this has been the Administrative Appeals Tribunal (AAT) however this is subject to future change.
- 4.2. A detailed list of locations will be provided at a later date.
- 4.3. It will be a requirement of the Contractor to provide access to digital recordings from all locations (refer Clause 13.5)
- 4.4. Tenderers should provide location options where set-up fees may or may not be required, reduced or increased as part of their proposal

5. INDICATIVE WORK VOLUMES

- 5.1. Annex 1 to this Section G sets out the current estimated work volumes for the required services. Prospective Tenderers are advised that this information has been provided as a guide to assist in determining the pricing structure and that PSR have no independent way of validating the information.
- 5.2. While PSR have provided estimated work volumes to assist Tenderers in the development of their response, PSR do not guarantee any minimum volumes of work to the successful Tenderer.
- 5.3. Tenderers are advised that as part of the evaluation of Tenders the work volumes contained in Annex 1 to this Section G will be used, in association with prices bid for individual service items, to calculate the total cost of a Tender over the period of the contract. Where records of previous usage is

not available (or the service is new), usage estimates will be developed and uniformly applied across all tenders submitted to calculate the total cost of tenders over the period of the contract.

6. RECORDING SERVICES REQUIREMENTS

6.1. INTRODUCTION

- 6.1.1. The Contractor must provide recording services in a manner that enable the requirements of this RFT to be met, including enabling the provision of transcript at the performance levels specified herein.
- 6.1.2. When recording a hearing the Contractor will utilise its own recording equipment. Please also see clause 18 regarding the equipment to be provided by the Contractor in delivering these services.
- 6.1.3. It should be noted that PSR is not prescribing the type of technology to be used in the provision of services. This is a matter of judgement for the Tenderer and an assessment of the proposed approach will form part of the evaluation of offers received.

6.2. RECORDING SERVICES

- 6.2.1. Tenderers are required to submit tenders clearly indicating how they intend to provide recording services to achieve the outcomes set out in this RFT. The details to be included in the tenders are;
 - overview of approach
 - technology to be adopted
 - options for sites where pre-installed recording facilities are not available
 - benefits to PSR from the proposed approach

6.3. AVAILABILITY AND BOOKING OF RECORDING SERVICES

- 6.3.1. Recording services must be made available at the standard hours rate between 8.00am and 6.00pm Monday to Friday (public holidays excepted) and agreed hourly rates for periods that are outside of the standard hours.

6.4. CANCELLATION OF BOOKINGS FOR RECORDED SERVICES

- 6.4.1. If a hearing is cancelled (whether the Contractor is notified or not) the only fee payable for the service so cancelled is the prescribed cancellation fee (if any).
- 6.4.2. Bookings for the recording of proceedings may be cancelled by PSR up to 48 hours prior to the scheduled commencement of the proceeding without incurring the nominated cancellation fee (if any) Tendered in Pricing

Schedule. PSR accepts responsibility to notify the Contractor of any cancellation.

- 6.4.3. Tenderers are advised that cancellation fees will be taken into account in determining the whole of contract cost of their offer.

7. TRANSCRIPT SERVICES REQUIRED

7.1. INTRODUCTION

- 7.1.1. The Contractor shall provide transcription of audio for all recorded hearings.

7.2. Normal Transcripts

- 7.2.1. The Contractor must produce Normal Transcript by 4 p.m. no later than five working days after the hearing has been held.

7.3. Urgent Requests for Transcripts

- 7.3.1. Should PSR require Next Day Transcript, this should be produced no later than 4 p.m. the next working day.
- 7.3.2. PSR may also require the Contractor to provide three day Transcripts by 4 p.m. no later than three working days after the date of hearing.

7.4. Physical Layout Specification

- 7.4.1. The Contractor will produce all transcripts in electronic format.
- 7.4.2. All transcripts are to be produced in a format approved by the Contract Manager. The Contract Manager reserves the right to modify the formats of transcripts during the life of the contract.
- 7.4.3. The current specification of transcript is provided in Annexure 2 of this RFT.
- 7.4.4. Changes to the specification may be negotiated between the Contract Manager and the Contractor during the period of the contract. The Contractor must not vary the format without the express written approval of the Contract Manager.

8. ELECTRONIC FORMAT SPECIFICATION

- 8.1. The Contractor must provide transcript in electronic form as an encrypted attachment to a password protected e-mail, or in such other format as agreed by the Contract Manager.
- 8.2. The Contractor must provide transcript in electronic form in the following word processing and electronic formats
- Microsoft Word
 - Portable Document Format (PDF)

- 8.3. The Contractor shall provide transcript in electronic form using the most recently released version, or any such other version, of each and every product mentioned above, at the direction of the Contract Manager. The current version of Microsoft Word used by PSR is Microsoft Word 2007.
- 8.4. The Contract Manager reserves the right to specify other electronic forms during the life of the contract.

9. COPYRIGHT

- 9.1. Copyright in all recordings and transcripts produced during the term of this Contract, whether in paper, disc or electronic form will remain with the Commonwealth of Australia.
- 9.2. The first page of each transcript is to carry as a header the following endorsement:
- “Copyright in this document is reserved to the Crown in right of the Commonwealth of Australia. Reproduction of this document (or part thereof), in any format except with prior written consent is prohibited.”*
- 9.3. The wording of the above endorsement may vary, from time to time at the direction of the Contract Manager.

10. CERTIFICATION OF TRANSCRIPT

- 10.1. All transcripts shall incorporate a statement certifying that the transcript is the record of that hearing. This statement is to also be included on the electronic version of the transcript. No additional charge can be made for this statement.
- 10.2. The Contract Manager reserves the right to vary the wording of the certification during the course of the Contract

11. BOOKING OF TRANSCRIPTION SERVICES

- 11.1. The Contractor will keep records of all orders for transcript. Such records will be made available for perusal by PSR at any reasonable time. The record of transcript orders will list the date and time of booking, the person requesting the booking together with full details of the proceedings or that were transcribed.
- 11.2. PSR will, in negotiation with the preferred tenderer, determine standard ordering procedures.

12. CONTRACT MANAGEMENT

- 12.1. The Contract Manager, in conjunction with the Contractor(s), will establish a management regime upon commencement of the Contract to ensure that performance requirements are met and that strategies are established for the

continuous improvement of services and equipment throughout the life of the Contract.

12.2. Managing the Provision of Services

12.2.1. Each year on the anniversary of the Contract, the Contractor must submit a draft Contract Management Plan to effectively manage and improve performance during the course of the following year. The plan is to address the issues as listed below or as otherwise agreed by the parties:

- A description of how the Contractor will manage the delivery of services specified in the Contract during the following year taking into account factors such as trends in workload, changes in technology and human resource issues.
- Recommended amendments to the Contract specifications that may be adversely affecting the delivery of services. A description of how those issues are affecting service delivery will be required along with an outcome of how services will be changed if those improvements are made. Some outcomes may have a financial implication that will require negotiation between the parties before they can be accepted or declined (a cost estimate is to accompany each of those particular items).

12.2.2. The draft plan will be submitted to the Authorised Officer(s). Once the content of the Plan has been agreed to by PSR, a schedule for implementation with assigned responsibilities will be developed by the Contractor and approved by the Contract Manager.

12.2.3. Progress on the implementation of the plan will be addressed by the respective parties at quarterly meetings.

12.3. Reporting

12.3.1. The Contractor must provide comprehensive management information to the Contract Manager concerning the operations of the Contractor in providing the required service.

12.3.2. The following minimum information (reports) is required to be provided to the Contract Manager.

(a) Hearings Recorded

- number of hearings monitored using centralised facilities;
- number of hearings recorded;
- total fees paid for the services for the reporting month;
- total fees paid for the services year to date;
- number of late bookings;

- number of cancellations;
- total amount charged for cancellations; and
- any downtime in relation to service availability of audio recordings.

The Authorised Officer may request other or additional statistical / financial information from time to time during the duration of the contract and should the Authorised Officer seek to do so, he or she will liaise with the contractor on arrangements for effecting any changes required.

(b) Transcripts

- the proportion of total transcripts supplied within the prescribed timeframes by category (ie next day, three day and normal transcript) referred to in sub-sections 7.2 – 7.3
- Total number of folios of transcript;
- Total fees paid for the services for the reporting month;
- Total fees paid for the services year to date;
- Total number of pages of transcript provided at copy charge rate;
- Total amount charged for provision of copies of transcript; and
- Number of cancellations

The Authorised Officer may request other or additional statistical / financial information from time to time during the duration of the contract and should the Authorised Officer seek to do so, he or she will liaise with the contractor on arrangements for effecting any changes required.

(c) Miscellaneous

- Details of any additional services provided under the Contract.

12.3.3. The Contractor must provide the required statistical information in a form as specified by the Contract Manager, including, but not limited to the provision of required information in an electronic form suitable for loading into a software package or Excel spreadsheet.

13. PERFORMANCE MEASURES

13.1. The service to be provided by the Contractor will be measured by PSR against the standards outlined in the following sections.

13.2. Recording Services

13.2.1. The Contractor shall record hearings at the times and locations ordered by the PSR.

13.3. Errors in Transcripts

13.3.1. A typographical error in a transcript shall be defined as:

- An error in printed or typewritten matter resulting from striking the improper key of a keyboard.

A material error in a transcript shall be defined as:

- incorrect naming of the person speaking;
- a misspelling of any word. This includes names of people, places, goods, events and medical terminology;
- a mis-transcribed word, (i.e. a different word was typed into the transcript from that recorded on the audio recording or the wrong spelling of a word when it is clear from the context of the text what the correct spelling should have been e.g. sight, cite, site); and
- the format of the transcript is not strictly adhered to. This includes not typing certain features, such as witness identification or an exhibit incorrectly typed in the main body of the transcript text.

13.3.2. The Contractor shall not produce transcript that has, on average, more than eight (8) material errors in each transcript or more than eight (8) typographical errors on each page.

13.3.3. Transcripts found to contain errors will be returned to the Contractor and amended at no additional cost to PSR.

13.3.4. Any errors in relation to clause 13.3.3 are to be corrected and returned to PSR within two working days.

13.3.5. Audits of error rates will be conducted annually as per clause 13.6.

13.4. Elapsed Time to Produce Transcript

13.4.1. The Contractor must provide the paper or electronic version of Normal, Three Day and Next Day Transcripts no later than the times specified in section 7.2 – 7.3, in 98% of all instances.

13.4.2. The time for measurement for the production of transcript will be taken as the number of Australian Public Service working days, from the time the request for production of transcript is received by the Contractor, to the time that the final transcript document is provided to PSR. The measurement of such timings will be determined by the records maintained for the bookings agreed with the Contract Manager or Authorised Officer(s).

13.5. Elapsed Time to Access Digital Sound Recordings

13.5.1. Where PSR requests access to digital sound recordings the Contractor must provide access within five (5) working days unless otherwise agreed by the Authorised Officer.

13.6. Audit of Contractor Performance

13.6.1. On each anniversary of the commencement of the Contract an audit of the Contractor's performance shall be conducted by the Contract Manager, in conjunction with the Contractor.

13.6.2. The audits shall be conducted by a sample for review of compliance with:

- provision of recording services as ordered;
- specified error rates in accordance with clause 13.3
- delivery times of transcripts in accordance with clause 7.2 – 7.3

13.7. Delivery Times

13.7.1. A transcript shall be considered late if not received in line with the requirements at clause 7.

13.8. Failure to Meet Performance Standards and Dispute Resolution

13.8.1. Where the Contractor has failed to meet the contracted performance standards on two or more consecutive audits (that is, two or more consecutive months of non conformance after the annual audit) then the dispute resolution method detailed at clause 19 of the draft contract will be implemented.

14. PRIVACY AND SECURITY REQUIREMENTS

14.1. Confidentiality must be preserved at all times. The Contractor and the Contractor's sub-contractors, agents and employees will comply with all legislative provisions or procedural directions as they apply to all recording or transcription of proceedings.

14.2. PSR may require all Contractor staff, including sub-contractors, involved in the provision of the services to sign a Deed of Confidentiality, in a format satisfactory to PSR, prior to commencing work in relation to the contract.

14.3. The attention of Tenderers is drawn to s106ZR of the *Health Insurance Act 1973*. Tenderers are advised that disclosing information relating to a Committee hearing is an offence.

14.4. Any breach of confidentiality is punishable under s70 of the *Crimes Act 1914*.

15. CONFLICT OF INTEREST PROVISIONS

15.1. Where a contractor or a member of a contractor's staff or sub-contractors staff has a vested interest in a matter (for example, is a Party or closely related to the Party) that is to be transcribed, the contractor must advise the relevant Authorised Officer of the situation as soon as it becomes aware of this fact. The contractor will immediately provide an alternate solution to PSR to ensure that the services continue to be provided.

- 15.2. Where a contractor, or a sub-contractor, is directly or indirectly involved in the production of transcript is found to have a vested interest in a matter while that matter is being transcribed, the contractor must advise the relevant Authorised Officer of the situation as soon as it becomes aware of this fact. The contractor will immediately provide an alternate solution to PSR to ensure that the services continue to be provided.
- 15.3. Should the contractor, for the purposes of clauses 9.2.1 and 9.2.2, wish to sub-contract the services they shall seek permission from PSR to do so. Permission by PSR for a sub-contracting solution, for the purposes of this clause, will not be unreasonably withheld.
- 15.4. Where a member of a contractor's staff or a sub-contractors staff, is directly or indirectly involved in the production of transcript is found to have a vested interest in a matter while that matter is being transcribed, the contractor will immediately remove that member of their staff and replace them, at no additional cost to PSR, with another member of staff that does not have a conflict of interest.
- 15.5. PSR reserves the right to engage an alternative contractor to prepare transcripts where a conflict of interest exists, or make such arrangements regarding the production of the transcript as it deems appropriate.
- 15.6. Where a contractor or a member of a contractor's staff directly or indirectly involved in the production of transcript is found to have a vested interest in a matter after that matter has been transcribed, PSR shall be entitled to request that an alternative contractor certify the transcript as being a true and accurate record (in accordance with clause 6.6). The certification shall involve word for word checking of the transcript against the audio recording and the prescribed charge in the Contract for this service in these circumstances will be met by the initial contractor.

16. TEMPORARY INABILITY TO HANDLE WORKLOAD

- 16.1. Where the contractor is temporarily unable to handle the workload, the contractor shall make such arrangements to ensure the Services continue to be provided, at no additional cost to the PSR, in accordance with their responsibilities under the contract. Should the Contractor, for the purposes of this clause, wish to sub-contract the Services they shall seek permission from PSR to do so. Permission by PSR for a sub-contracting solution, for the purposes of this clause, will not be unreasonably withheld.
- 16.2. Should the Contractor be granted permission to sub-contract the Services, for the purposes of this clause, the Contractor will retain full responsibility and accountability for the provision of the sub-contracted Services. All sub-contracted Services must be provided in accordance with the terms and conditions of the contract.

17. PAYMENT FOR SERVICES

- 17.1. The rates to be charged for the services rendered by the Contractor will be as specified in the pricing schedule approved by PSR.
- 17.2. The Contractor must make arrangements with the Contract Manager for the implementation of a process under which the services provided are appropriately authorised for payment on the day that the service is delivered or as soon thereafter as mutually agreed.
- 17.3. The Contractor shall provide, via electronic means and in a format acceptable to PSR, a compliant and correctly rendered tax invoice on a monthly basis to the Contract Manager. These invoices must include evidence of authorisation to provide the services.
- 17.4. Tenderers are required to provide details of the electronic invoicing that they propose to use to reduce the administrative costs to the PSR in the invoice acquittal process. This may include invoicing and acquittal processes utilising the Tenderers' own IT infrastructure.
- 17.5. Invoices shall fully itemise all work performed during the period, including details of all hearings monitored or transcribed (especially including case numbers, the location of recording, dates, times (start and finish), and number of folios of transcript provided).
- 17.6. Payments will be paid monthly in arrears by electronic funds transfer. The terms of payment are 30 days from the receipt of a correctly rendered invoice or the receipt of the services, whichever is the latter.
- 17.7. The Contractor will provide a monthly reconciliation statement indicating debit advices issued, payments received and outstanding debits at the end of the period
- 17.8. The Commonwealth will be entitled, in addition to any other right it may have, to withhold 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.

18. EQUIPMENT AND SOFTWARE

- 18.1. The Contractor **must** provide and maintain to an appropriate standard all recording equipment and software necessary to meet its obligations to provide recording or monitoring services, including appropriate electrical equipment and cabling.
- 18.2. The Contractor is required to provide technical support services to maintain and support the following equipment / technology:-
 - all audio recording equipment provided by the contractor; and
 - all other equipment (“infrastructure” technology) provided by the Contractor

18.3. Technical support is required to be provided onsite at each of PSRs locations within one (1) hour of a system failure of any provided equipment.

18.4. Technical support is required to be provided onsite at regional locations within three (3) hours of a systems failure of any provided equipment.

19. SUCCESSFUL TENDERER CONTACTS

19.1. The successful Tenderer will be required to provide a point of contact to assist in any matters arising in relation to the requirements under the arrangement, but particularly in relation to orders placed.

20. TRAVEL AND SUBSISTENCE COSTS

20.1. All travel and subsistence costs are at the expense of the Contractor.

21. MAINTENANCE AND BACK UP OF RECORDS

21.1. The Contractor will maintain in an approved format, a register of hearings monitored, and / or transcribed, including the location of monitoring or transcription, dates, times and output. This register shall be available for inspection by PSR at any reasonable time.

21.2. The Contractor will maintain a detailed record of tapes, discs, other recording material and other material received, issued or returned.

21.3. It will be the duty of the Contractor to ensure the security and integrity of the recordings and transcripts while in the Contractor's control and custody.

21.4. Access to material, subject to direction of PSR with regards to access or confidentiality, is to be restricted accordingly. Any access to the material is to be recorded and only provided in accordance with such direction. These records are to be provided to PSR at the expiration of the contract and will be available for inspection, as required by PSR during the contract period.

21.5. When and where required, PSR will direct the contractor to destroy copies of transcripts and recordings. The destruction of these or any associated media is to be carried out in such a manner as to render the transcripts totally unreadable and recordings inaudible by any means and a Certificate of Destruction issued.

21.6. Any destruction of transcripts or recordings in relation to clause 21.5 is to be carried out by a minimum of two authorised staff members.

21.7. The Certificate of Destruction must detail the date and method of destruction and be signed by the two authorised staff members mentioned at clause 21.6 above.

22. SUCCESSION PLANNING

- 22.1. It will be a requirement for the successful Tenderer to produce a succession plan (transition in and out) and this will be included as part of the deliverables within the contract.
- 22.2. Tenderers must provide details in their tender response of how any transitional arrangements (transition in) will be implemented and managed should they be successful in the tender.

Pricing Schedule

CONTRACT PRICING SCHEDULE

Service Item	Charging Basis	Unit Price (ex GST)	GST Component	Total Unit Price (ex GST)
Set up fee				
Cancellation fee				
Recording Fee – Monitor NOT in room	Per hour			
Recording Fee – Monitor in room	Per hour			
Recording Fee – After hours	Per hour			
Transcript – One (1) day Turnaround	Per 100 word folio			
Transcript – Three (3) Day Turnaround	Per 100 word folio			
Transcript – Normal (5 Day Turnaround)	Per 100 word folio			
Minimum Recording Fee				
Minimum Transcript Fee				
Audio / Transcript Supplied on CD	Per CD			
Access fee to enable the PSR to access digital sound recordings	Please state basis of fee eg. Per MB			

Any available reduction of charges in relation to specified locations				
Details of any additional charges				
Details of any additional reduction to charges that may be available				

**ANNEXURE TO STATEMENT OF
REQUIREMENTS FOR THE
PROVISION OF TRANSCRIPTION
AND RECORDING SERVICES**

ANNEX 1 - INDICATIVE WORK VOLUMES

1. INTRODUCTION

1.1. In an endeavor to provide prospective Tenderers with an indication of workload, the following table has been derived from the financial records of PSR. However, prospective Tenderers should be aware of the shortcomings inherent in using financial records as an indication where the work was actually performed.

1.2. Break-up of Usage per State 2009 – 2010

Location	Number of Hearing Days Recorded and Transcribed
New South Wales	40
Victoria	23
Queensland	22
ACT	6
WA	6
SA	15
Total	112

1.3. Break-up of expected Usage per State for 2012 - 2013 period (indicative only based on previous years usage).

Location	Number of Hearing Days Recorded and Transcribed
New South Wales	20
Victoria	20
Queensland	20
ACT	8
WA	8
SA	20
TAS	8
Total	104

ANNEX 2 - FORMAT OF TRANSCRIPT

1. COVER PAGE OF TRANSCRIPT

The first page of transcript produced for matters heard shall contain the following information:

- Copyright message:

Copyright in this document is reserved to the Crown in right of the Commonwealth of Australia. Reproduction of this document (or part thereof, in any format) except with prior written consent is prohibited

- Contractor details
- Professional Services Review
- Committee Number
- Person Under Review
- Name of Chairperson and Members hearing the matter
- City or location in which the Matter is heard
- Time the Matter commenced, day and date
- Day of Matter (eg Day Three) where case is continuing
- Date continued from (Where applicable)

2 PAGE SPECIFICATIONS

Each page of the transcript shall be formatted as follows:

Paper Size:	A4 (210mm x 297mm) paper
Left Margin:	35mm (to commencement of line numbering) 45mm (to commencement of text of transcript)
Right Margin:	30mm
Top Margin:	25mm
Bottom Margin:	15mm (to footer)

Line Height: Approx. 5mm

Line Spacing: Single

Character Spacing: 12 point (proportional spacing)

Font: Times New Roman

Paragraph Spacing: There shall be two blank lines before and after key events such as acceptance of exhibits.

Justification: The text of the transcript is to be left justified

Bolding of Text: All key events in the text of the transcript are to be bold type eg:

- Witness events
- Acceptance of exhibits
- Adjournment and re-commencement
- Close of proceedings for the day

2.3 Line and Page Numbering

Line numbering every fifth line, on the left hand side of the text, commencing 35mm from the edge of the page (with the text of proceedings indented a further 10mm)

Line numbering should count only lines of transcribed proceedings. Blank lines between text and footers not to be included in the line count.

Page numbering in the footer. All page numbering to be strictly sequential.

2.4 Footer

Footer to occupy two lines and to be separated from the text by at least one blank line and a single unbroken line across the page, from the commencement of the indented text on the left hand side to the right hand margin.

Footer to include the following fields, as appropriate:

2.5 Line 1:

- The name of the Person Under Review, represented by a full stop”.
- The PSR case number
- The date of the proceedings (in dd.mm.yy format)
- The page number (to be recorded as “P-xxx”)

2.6 Line 2:

- Copyright message:
© Commonwealth of Australia (in size 8 font)
- A “Transcript-in-Confidence” message

3 Transcript Conventions

Names of Parties to the Matter

All parties names shall be shown in upper case, in the following way:

DR

MR

MS (can be varied to MRS or MISS if requested)

followed by their surname.

e.g. DR SMITH

MS SMITH

The text of their speech shall follow directly.

4 Exhibits

The tendering of exhibits should be recorded in the transcript in the following way:

The word EXHIBIT, followed by the exhibit number, then a single tab character, then the name or description of the party tendering the exhibit, then a single tab character, then the word DATE, then the date, then a hard return, followed by the description of the exhibit.

To ensure consistency in this area, the information provided should include:

- Exhibit number
- The party tendering
- The date and time, where appropriate, and
- A brief description of the exhibit.

This shall appear in the transcript as follows:

EXHIBIT 3 Mr Smith DATE XX/XX/XX

Notice to Produce Documents

All exhibit information must be provided in the transcript. The effectiveness of searches through the transcript will be diminished if the product is not complete in these areas, and may cause entries to be overlooked in automatically generated exhibit lists and indexes.

5 Times Recorded

The time at which any of the following events occur should be recorded in the transcript, against the left hand margin, as shown:

[1:20 p.m.]

Section G – Statement of Requirements

- a witness is sworn or affirmed;
- a witness finishes giving evidence;
- an adjournment is called;
- proceedings resume following an adjournment; and
- in the case of abridged transcript, the time at which transcribing of proceedings commences and stop