



PART A - Invitation to apply for inclusion on a Multi-Use List
for the provision of expert services related to the Australian
Energy Regulator's Rate of Return Activity

Reference Number: MUL 2012-12

Applications must be submitted via the following email address:

RFO@acc.gov.au

FURTHER INFORMATION: Further information relating to the invitation to apply
for inclusion on the Multi-Use List may be obtained from:

General Enquiries and Technical Enquiries:

Email: RFO@acc.gov.au

PART A:

APPLICATION INFORMATION

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SUMMARY OF REQUIREMENT

1. Overview of Requirement

- 1.1 The Australian Competition and Consumer Commission (ACCC) is an independent Commonwealth statutory authority. It was formed in 1995 to administer the Competition and Consumer Act 2010 (CCA) and other acts. The ACCC promotes competition and fair trade in the market place to benefit consumers, business and the community. It also regulates national infrastructure services. Its primary responsibility is to ensure that individuals and businesses comply with the Commonwealth competition, fair trading and consumer protection laws. The ACCC is the only national agency dealing generally with competition matters and the only agency with responsibility for enforcing the CCA and the state/territory application legislation. In fair trading and consumer protection its role complements that of the state and territory consumer affairs agencies which administer the mirror legislation of their jurisdictions, and the Competition and Consumer Policy Division of the Commonwealth Treasury.
- 1.2 The Australian Energy Regulator (AER) was established by legislation in June 2004 as a single regulator responsible for both gas and electricity markets within Australia and is responsible for;
- the economic regulation of the electricity transmission and distribution networks in the national electricity market National Electricity Market (NEM);
 - the economic regulation of gas transmission and distribution networks; and
 - enforcing the national gas law and national gas rules in all jurisdictions except Western Australia.
- 1.2.1 More information about the ACCC and AER and its mission, goals, objectives and structure is available from the website:
<http://www.accc.gov.au>
- 1.3 The ACCC is seeking to establish a Multi-use List (MUL) for the purpose of provision of expert services to assist with the Rate of Return process detailed in Attachment A.
- 1.4 Participants please note that ACCC has an existing panel for expert services. The MUL is to act as an alternative source of supply when services are unavailable from the Expert Panel.

2. Information for Applicants

- 2.1 A Multi-Use List (MUL) is a list, intended for use in more than one procurement, of pre-qualified potential suppliers who have satisfied the conditions for participation for inclusion on the list.

- 2.2 The process of establishing an MUL is not a procurement. It is a procurement activity which pre-qualifies suppliers who may wish to participate in future procurement processes.
- 2.3 Inclusion on an MUL does not guarantee a potential supplier that they will be included in any future tender processes. It only provides certainty that potential suppliers have been recognised as meeting the conditions for participation.
- 2.4 This MUL process aims to provide the ACCC with a pool of prequalified suppliers who have satisfied the conditions for participation for inclusion on the list and who can provide the Services outlined at Attachment A - Statement of Requirement.
- 2.5 Inclusion on the MUL may be used as an essential criterion or condition of participation in an open tender process, or as the basis for selecting suppliers to participate in a restricted tender process.
- 2.6 Once the MUL is established, the ACCC may seek submissions for specific scopes of work from members of the MUL. A more detailed description of the type of Services the ACCC anticipates it is likely to require is at Attachment A (Statement of Requirement).
- 2.7 The ACCC may distribute a number of scopes of work at the same time.
- 2.8 The ACCC may, at its discretion, conduct either an open tender process, where inclusion on the MUL may be used as an essential criterion or condition of participation, or approach a select number of suppliers from the MUL where such an approach is commensurate with the value of the contract to be entered into. The ACCC may also exercise its discretion and approach just a single member of the MUL for a specific requirement where it deems this method is appropriate.
- 2.9 The ACCC may, at its discretion, use the MUL to establish a Standing Offer Panel for some or all of the Services listed on the MUL through either an open tender process, where inclusion on the MUL may be used as an essential criterion or condition of participation, or a select tender process from suppliers on the MUL.
- 2.10 The ACCC may, at its discretion, conduct financial checks on any of the members of the MUL.
- 2.11 Applicants are required to read the MUL Terms and Conditions (Part A, Attachment B) before completing and submitting their Application (Part B).

3. Applications

- 3.1 Applicants should respond to this MUL by completing Part B and

providing a response to each of the matters identified.

- 3.2 Applications should be marked in accordance with the instructions on the front page of this invitation to apply for inclusion on the MUL.

4. ACCC Contacts

- 4.1 All enquiries about this MUL should be directed to:

Jenny Bush
02 6243 1062
RFO@acc.gov.au

ATTACHMENT A – STATEMENT OF REQUIREMENT

A.1 Objectives and Rate of Return Process

The ACCC is responsible for the economic regulation of electricity networks and gas pipelines in Australia.¹ In undertaking this role the ACCC sets the allowed revenues or prices for these monopoly service providers over a fixed period determined in advance (usually 5 years),² in accordance with the relevant legislation.³ As part of determining the total revenues that a service provider may earn, the ACCC applies a ‘building block’ framework that includes a return on capital building block, which is derived from a regulated rate of return.⁴

The Australian Energy Market Commission (AEMC) published draft rules on 23 August 2012 that propose to amend the regulatory framework, such that the ACCC is to undertake consultation with industry and stakeholder in developing rate of return guidelines that meet the rate of return objective.

This requires the ACCC to take account of available relevant market evidence in forming a view about the methodologies that will best meet the rate of return objective.

Rate of Return objective

The AEMC has proposed the rate of return objective as:

The allowed rate of return for a Distribution Network Service Provider must correspond to the efficient financing costs of a benchmark efficient entity with a similar nature and degree of risk as that which applies to the Distribution Network Service Provider in respect of the provision of standard control services.⁵

¹ Excludes Western Australia.

² This period is known in an electricity context as a regulatory control period or in a gas context as an access arrangement period.

³ For electricity networks, this means the National Electricity Law (NEL) and National Electricity Rules (NER). For gas networks, this means the National Gas Law (NGL) and National Gas Rules (NGR). At the time of writing, these rules are subject to amendments by the rule making body, the Australian Energy Market Commission, with the aim of providing the AER with added flexibility in setting revenues and prices for electricity and gas network service providers. The most significant changes are in the way the AER determines the rate of return that service providers can earn on their assets.

⁴ That is, the rate of return on capital is multiplied by the regulated asset base (for electricity networks) or the capital base (gas networks) to derive the return on capital building block for a given year.

⁵ AEMC, Draft Rule Determinations, Draft National Electricity Amendments (Economic Regulation of Network Service Providers) Rule 2012; Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012, Mark up of draft Rule–Chapter 6 of NER, 23 August 2012, p.p. 607-608.

An identical provision is proposed for Transmission network service providers.⁶

A key feature of this rule is that the ACCC must focus on whether the overall rate of return meets this objective, rather than using a formulaic approach to estimating the rate of return. With input from consultant's evidence on analytical techniques and relevant evidence, the ACCC will be able to exercise judgment about the best approach that will meet the objective.

Rate of Return Guideline

As part of the AEMC's draft rule determination⁷, the ACCC is required to make and publish Rate of Return Guidelines (**Guidelines**) that set out:

- Methodologies that the ACCC proposes to use in estimating the allowed rate of return, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent with the allowed rate of return objective.
- The estimation methods, financial models, market data and other evidence the ACCC proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits⁸

The ACCC intends to publish an issues paper in November 2012 that sets out high level thinking on a range of issues associated with developing methodologies for setting the allowed rate of return. At this stage, consultants are not expected to be required to assist the ACCC with this process.

Of relevance to this expression of interest is the requirement on the ACCC to publish a consultation paper in March 2013 and a draft guideline in July 2013. A final guideline will be published in late November 2013. The ACCC seeks expressions of interest from consultants to assist with the development of material for these documents, including responding to stakeholder submissions.

In coming to its decision in the Guidelines, the ACCC intends to have regard to the use of the Sharpe-Lintner capital asset pricing model (CAPM) and alternatives to the CAPM when determining the return on equity.

To do this, the ACCC seeks the assistance of consultants to research and provide advice to the ACCC of such alternatives and methods, including their relative

⁶ AEMC, Draft Rule Determinations, Draft National Electricity Amendments (Economic Regulation of Network Service Providers) Rule 2012; Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012, Mark up of draft Rule—Chapter 6A of NER, 23 August 2012, p.695.

⁷ AEMC, Draft Rule Determinations, Draft National Electricity Amendments (Economic Regulation of Network Service Providers) Rule 2012; Draft national gas amendment (Price and Revenue Regulation of Gas Services) Rule 2012, 23 August 2012.

⁸ AEMC, Draft Rule Determinations, Draft National Electricity Amendments (Economic Regulation of Network Service Providers) Rule 2012; Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012, Mark up of draft Rule—Chapter 6 of NER, 23 August 2012, p. 610.

advantages and weaknesses. The consultant should demonstrate a capacity to take into account the academic literature and market evidence in arriving at an appropriate measurement methodology for these metrics.

Additionally, the ACCC may seek advice from consultants on other aspects concerning the rate of return, including but not limited to:

- the definition of the benchmark firm and benchmark market (domestic (fully segmented), international (fully integrated), alternative) for a benchmark efficient regulated electricity and gas network service provider
- the appropriate term of the rate of return for a benchmark efficient regulated electricity and gas network service provider
- the estimation of the market risk premium
- the empirical estimation of the equity beta of a benchmark efficient electricity and gas network service provider
- conceptual / theoretical considerations in relation to the equity beta of a benchmark efficient electricity and gas network service provider
- the approach to the cost of debt, including the assessment of adopting prevailing conditions at the time of each reset determination, a historical average, or a moving historical average with annual updates
- the estimation of the cost of debt for a benchmark efficient network service provider, possibly including the development of a fair value curve method
- the estimation of the value of imputation credits and the approach to recognising imputation credits within the regulatory framework

A.2 Service Requirements

The Australian Energy Regulator (ACCC) requires qualified experts to inform the ACCC's assessment of the weighted average cost of capital, such that the ACCC can produce rate of return guidelines by November 2013 for regulated electricity and gas transmission and distribution businesses.

ACCC seeks suitably qualified applicants with the capacity, knowledge and experience in financial markets and theory and/or regulatory economics.

A.3 Location of Services

The services will be supplied to the ACCC Melbourne office.

A.4 Technical Minimum Requirements to be met by Applicants

ACCC seeks suitably qualified applicants with the relevant capacity, knowledge and experience in financial markets and theory and/or regulatory economics to assist with the Rate of Returns process as described in A.1.

A.5 Quality and Standards

MUL members must maintain consistency and high quality in the provision of any Services. For any particular scope of work, the ACCC may set a level of quality or standards which must be adhered to in performing the Services. These quality levels of standards, where applicable, will be used as performance indicators in assessing the work provided by a member of the MUL.

A.6 Timing

Members of the MUL will be asked to provide the Services within timeframes set by the ACCC or agreed with the ACCC. Members of the MUL may be asked to provide Services in urgent timeframes or over a planned program of work including milestones or phases.

Timeframes for the Rate of Return process is as follows:

AEMC draft rules released	23 August 2012
AEMC final rules released	by November 2012
ACCC guideline issues paper	by 30 November 2012
ACCC guideline consultation paper	by 29 March 2013
ACCC guideline draft decision	by 31 July 2013
ACCC guideline final decision	by 29 November 2013

A.7 Period of Services

The MUL will be operational until the 31 December 2013. Invitations to apply for inclusion to the MUL will be advertised continuously for the life of the MUL.

Attachment B – Terms and Conditions of MUL

1 AusTender - Australian Government Tendering System

- 1.1 AusTender is the Commonwealth's business opportunities website, located at www.tenders.gov.au. AusTender allows Applicants to download documentation electronically.
- 1.2 The ACCC accepts no responsibility if an Applicant fails to become aware of any alteration, correction or notice, which would have been apparent from a visit to the AusTender website or from other information available from the ACCC.
- 1.3 Applicants should direct all communications relating to this MUL to the Contracts Officer listed in clause 4 of Part A.

2. Invitation Documents

- 2.1 The invitation for inclusion on this MUL consists of the following documents:
 - a. Part A (Application Information); and
 - b. Part B (Application Form).

3. Application Lodgement

- 3.1 Applications must be lodged in accordance with the Statement of Requirement (Attachment A) and must include:
 - a. a completed Part B; and
 - b. copies of any requested documentation.
- 3.2 The MUL remains open for lodgement of Applications until the 31 December 2013. Invitations to apply for inclusion to the MUL will be advertised continuously for the life of the MUL.

4. Errors & Alterations

- 4.1 Applicants should immediately notify the Contracts Officer in writing at the address detailed in clause 4 of the Part A if an Applicant reasonably believes there is a discrepancy, error, ambiguity, inconsistency or omission in this MUL.

5. Disclosure of Information

- 5.1 Subject to clause 5.2, the ACCC will keep all Applications submitted confidential.
- 5.2 Applicants should note that the ACCC may disclose any information contained in or regarding an Application without written authority of the Applicant to:
 - a. Parliamentary Committees;
 - b. Employees and advisers engaged by the Commonwealth; and
 - c. other Commonwealth departments, agencies, bodies, enterprises, authorities and Ministers, for the purposes of this Application process,

and any legal, policy or other Commonwealth accountability requirements and

d. any person or entity as required by law to be disclosed.

6. Freedom of Information

6.1 Applicants should be aware that the Freedom of Information Act 1982 gives members of the public certain rights of access to documents in the possession of the Commonwealth and its agencies. The Act extends as far as possible the right of the Australian community to access information (generally documents) in the possession of the Commonwealth, which may include the Application, any subsequent Contract and related documents.

7. Applicable Law

7.1 The law applying in the Australian Capital Territory applies to the MUL, and the Application process. Each Application must comply with all relevant laws in preparing and lodging its Application and taking part in the MUL process.

8. Ownership of Application and Intellectual Property

8.1 All documents submitted in response to this MUL shall become the property of the Commonwealth. The Commonwealth may use, reproduce or modify any Application for the purposes of assessing the Application, but will keep Applications confidential (subject to clause 5).

8.2 Intellectual Property in all Material vests or will vest in the ACCC.

9. Financial Viability

9.1 Applicants should provide the financial data concerning the Applicant as specified in the MUL. The ACCC may conduct detailed evaluations of an Applicant's financial position. For this purpose, Applicants should be prepared to provide details of relevant financial data concerning the Applicant.

9.2 In agreeing to supply relevant financial statements, the Applicant also agrees that the information supplied represents a true and fair statement of the affairs of the Applicant.

10. Applicants to Meet Own Costs

10.1 An Applicant's participation in any stage of the MUL process is at the Applicant's sole risk, cost and expense. The onus is on the Applicant to inform itself appropriately.

11. Right to Terminate

11.1 The ACCC may terminate this MUL process at any time if it is in the public interest to do so.

12. Right to Request Further Information

12.1 Notwithstanding any other requirement of the MUL, the ACCC may require the Applicant to submit additional information to allow further consideration of its Application.

12.2 Should the Applicant fail to submit any of the information so required by the date and time stipulated by the ACCC, its Application may be excluded from further consideration.

12.3 Any request by the ACCC for further information shall not be, nor be deemed to be, a representation by the ACCC that the Application will be, or is likely to be, accepted.

14. ACCC's Right to Negotiate

14.1 The ACCC may negotiate the contents of an Application with any Applicant.

14.2 Any request by the ACCC to negotiate all or any part of an Application shall not be, nor be deemed to be, a representation by the ACCC that the Application will be, or is likely to be, accepted.

15. Addenda

15.1 If the ACCC amends this MUL, electronic advice will be issued to current suppliers listed on the MUL. Applicants should ensure details provided in their Application are correct and up to date.

16. No Contract

16.1 Nothing in this MUL shall be construed so as to give rise to any Contract between the ACCC and any Applicant until a Contract is entered into with one of the Successful Applicants.

17. Removal from the Multi-Use List

17.1 The ACCC may at any time after the establishment of the MUL exercise its discretion to remove a Successful Applicant from the MUL if the ACCC becomes aware that the Successful Applicant ceases to meet the conditions for participation.

18. Evaluation Process

18.1 Applications will be assessed on a pass/fail basis consistent with Commonwealth purchasing policies. The Commonwealth Procurement Guidelines may be found at the Department of Finance & Deregulation website: www.finance.gov.au.

18.2 Applicants must complete Part B and submit the completed document as their Application. Applicants must provide the evidence required at a particular item and confirm compliance with the rules outlined in Attachment B in order to be considered for membership of the MUL.

18.3 The Commonwealth reserves the right to contact the Applicant's referees, or any other person, directly and without notifying the respondent.

19. Clarification and Additional Information

19.1 The ACCC may seek clarification of Applications or require further information from all or any Applicants.

20. Successful Applicants

20.1 The ACCC will advise Successful Applicants that they have been included on the MUL in writing at the end of the evaluation process.

21. Advice to Unsuccessful Applicants

21.1 The ACCC will promptly notify each Unsuccessful Applicant in writing that its Application has not been accepted/shortlisted and, where requested, provide Unsuccessful Applicants with a debrief of the reasons for its decision.

22. Debrief

22.1 All Unsuccessful Applicants are entitled to a debrief upon request. This debrief will provide feedback on the relative merits of their Application bid against the requirements outlined in Part B, but will not refer to any other Application and will not disclose the confidential information of any other Applicant.

23. Preparing Applications

23.1 Applicants must respond to the MUL by completing Part B and addressing the matters identified.

24. Subcontracts

24.1 Any Contract entered into requires that the Applicant not subcontract the whole of its obligations under a Contract but the Applicant may, with the prior consent of the ACCC, subcontract part of its obligations.

25. General Conditions of Contract

25.1 The ACCC expects Successful Applicants to provide the Services in accordance with the ACCC's Contract terms and conditions at Attachment C.

25.2 The ACCC reserves the right to negotiate the terms and conditions of any Contract entered into with any or all of the Applicants. If the ACCC and an Applicant cannot agree on the terms and conditions to be applied to the Contracts created under this MUL, the ACCC reserves the right to remove the Applicant from the MUL in accordance with clause 17.

25.3 The ACCC does not warrant or make any representation that a Successful Applicant will be invited to participate in a tender process for any work or will be guaranteed any or any quantity of work.

25.4 The ACCC may, at its discretion, procure any of the type of Services covered by this MUL without using any of the suppliers listed on the MUL.

25.5 Where the ACCC rejects an expression of interest or an Application for inclusion on the MUL or ceases to recognise a potential supplier as having satisfied the conditions for participation in either, the ACCC will promptly inform the potential supplier and, on request, promptly provide the potential supplier with a written explanation of the reasons for its decision.

ATTACHMENT C- DRAFT CONTRACT

CONTRACT FOR SERVICES

THIS CONTRACT is made on the day of [Month 200X]

BETWEEN

The Australian Competition and Consumer Commission, a body corporate established under section 6A of the Competition and Consumer Act 2010 ('the ACCC')

AND [Full name of Supplier]

ABN: [XX XXX XXX XXX] (“the contractor”)

BACKGROUND:

- A. The ACCC requires the provision of certain services as specified in Schedule 1.
- B. The contractor has fully informed itself of all aspects of the services required to be performed and agrees to undertake these services in accordance with the terms and conditions of this contract and in consideration of the fees specified in Schedule 1.
- C. The ACCC has agreed to accept the contractor’s offer to provide the services on the terms and conditions contained in this contract.

INTERPRETATION:

In this contract, unless the contrary intention appears:

- (a) ‘the ACCC’ means the Australian Competition and Consumer Commission, and includes any department or agency of the Commonwealth which is from time to time responsible for the administration of this contract;
- (b) ‘ACCC material’ means any material:
 - (i) provided by the ACCC to the contractor for the purposes of this contract; or
 - (ii) copied or derived from material so provided.
- (c) ‘confidential information’ means information that:
 - (i) is by its nature confidential;
 - (ii) is marked as confidential;
 - (iii) is known to be confidential, or which a party ought to have known was confidential; or
 - (iv) is specified in Schedule 1 as confidential information;

but does not include information which:

- (v) is or becomes public knowledge other than by breach of this contract or by any other unlawful means; or
 - (vi) is in the possession of a party prior to disclosure by the other party, without any breach of an obligation of confidence; or
 - (vii) has been independently developed or acquired by a party.
- (d) 'contract material' means all material brought or required to be brought into existence as part of, or for the purpose of performing the services.
- (e) 'material' means any information and subject matter of any category of intellectual property rights, including, but not limited to, documents, equipment, information and data stored by any means.
- (f) 'specified personnel' means the personnel specified in Schedule 1 as personnel required to undertake the services or part of the work constituting the services.
- (g) words importing a gender include any other gender.
- (h) words in the singular number include the plural and words in the plural number include the singular.

IT IS AGREED AS FOLLOWS:

1. Operation of Contract

- 1.1. This contract records the entire agreement between the parties in relation to its subject matter.
- 1.2. Any reading down or severance of a particular provision does not affect the other provisions of this contract.

2. Priority

- 2.1. In the event and to the extent of any inconsistency between two or more documents which form part of this contract, those documents will be interpreted in the following order of priority:

- (a) Schedule 1;
- (b) these terms and conditions;
- (c) Any Attachments to Schedule 1.

3. Services/Goods

- 3.1. The contractor agrees to <perform the services or provide the goods> specified in Schedule 1 in a professional and ethical manner, with a high level of care, skill and competence expected of a contractor experienced in work of the same type as the services or goods, and in accordance with relevant ACCC and industry standards and guidelines.

4. Invoice Procedures for Payment

- 4.1. Subject to clause 1, the ACCC shall pay the contractor the fees specified in this Agreement at the times specified.
- 4.2. The contractor shall submit tax invoices for amounts payable and the ACCC undertakes to pay such amounts within 30 days of delivery of a correctly rendered tax invoice.
- 4.3. Where this contract provides that the contractor is to be paid by progressive payments the ACCC shall be entitled, without derogating from any other right it may have, to defer payment of a progressive payment until the contractor has completed to the satisfaction of the ACCC that part of the services to which the progressive payment relates.
- 4.4. The contractor will not be entitled to any payment under this clause 3 unless the contractor has an ABN.
- 4.5. Tax Invoices must be addressed as specified in clause 1.10 of Schedule 1, Statement of Requirements and shall include the following information:
 - (a) title of the services and purchase order number;
 - (b) name of the project officer;
 - (c) details of the services performed (including hours worked);
 - (d) the amount payable to the contractor for the services performed and the basis for calculation, separately identifying the amount of GST payable in respect of the invoice; and
 - (e) the contractor's A.B.N and details for payment (Bank, BSB, Account No. and Account Name).

5. Payment Policy for Small Business

- 5.1. If the ACCC fails to make a payment by the due date, then provided that the Supplier is a Small Business and the amount of interest calculated under this clause exceeds A\$10, the ACCC will pay interest on payments to the Supplier made after the due date as follows:
 - (a) for payments made between 1 day and up to 30 days after the due date, the Commonwealth will pay the interest calculated under this clause only if the Supplier issues a correctly rendered invoice under clause 4.5 for that interest; and
 - (b) for payments made more than 30 days after the due date, the Commonwealth will pay interest calculated under this clause together with payment of the unpaid amount. Interest payable under this clause will be simple interest on the unpaid amount, calculated using the formula available at:
<http://www.finance.gov.au/publications/finance-circulars/2012/docs/fc2012-02.pdf>
- 5.2. The ACCC must pay the invoiced amount to the Supplier within 30 days after receiving a correctly rendered invoice. If the Commonwealth fails to pay on a

correctly rendered invoice within 30 days of receipt and the Supplier is a Small Business, the Supplier may submit a separate invoice for payment of 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, provided the interest payable exceeds A\$10.

6. ACCC Assistance

- 6.1. The ACCC shall provide the following facilities free of charge to the contractor for the performance of this contract:
- (a) office accommodation at ACCC premises;
 - (b) such normal office services and facilities as are reasonably required by the contractor for the performance of the services;
 - (c) all magnetic media and consumables, storage facilities and messenger services reasonably required by the contractor.

7. ACCC and Contract Material

[Select from the following 3 options.]

Option 1- where the Contractor retains intellectual property of the contract materials and the ACCC is granted a right to use the material.

- 7.1. The title to and ownership of intellectual property (including copyright) in all contract material and all copies made of such material shall vest upon its creation in the Contractor.
- 7.2. The contractor grants the ACCC a perpetual, irrevocable, world-wide, royalty free, fully paid up licence to all rights to the the contract material that normally accompany IP ownership (including a right to sub license).
- 7.3. On the expiration or earlier termination of the contract, the contractor shall deliver to the ACCC all contract material and all ACCC material.
- 7.4. The contractor shall ensure that all ACCC material is used, copied, supplied or reproduced only for the purposes of the contract.

Option 2 – where it is best that the ACCC retains ownership and full control of the contract IP.

- 7.5. The title to and ownership of intellectual property (including copyright) in all contract material and all copies made of such material shall vest upon its creation in the ACCC.
- 7.6. On the expiration or earlier termination of the contract, the contractor shall deliver to the ACCC all contract material and all ACCC material.
- 7.7. The contractor shall ensure that the contract material and all ACCC material is used, copied supplied or reproduced only for the purposes of the contract.
- 7.8. The ACCC reserves all publication rights in all contract material.

Option 3- where it is best that the ACCC retains ownership but allows the contractor to use or deal with the IP as well. If you think that this type of arrangement is appropriate for your contract, you must contact the Procurement Section to make sure the most appropriate licence terms are adopted in the contract.

- 7.9. The title to and ownership of intellectual property (including copyright) in all contract material and all copies made of such material shall vest upon its creation in the ACCC.
- 7.10. The ACCC grants the Contractor a licence to use the contract material [in Australia] for a period of [X] years.
- 7.11. The licence granted in clause 7.2 [cannot\may] be:
- (a) Sub-licenced to a third party: or
 - (b) Transferred to a third party.
- 7.12. The contractor shall ensure that all ACCC material is used, copied, supplied or reproduced only for the purposes of the contract.
- 7.13. The ACCC reserves all publication rights in all contract material.

8. Disclosure of Information

- 8.1. The contractor, its officers, employees or agents, shall not disclose, publish or communicate to any other person, or otherwise make public, any confidential information acquired or produced in connection with or by the performance of the services without prior approval in writing of the ACCC. In giving written approval the ACCC may impose such terms and conditions as it sees fit.
- 8.2. Where any officer, employee or agent of the contractor is to have access to Confidential Information, the contractor will obtain from each such person a written Confidentiality Undertaking in the form at Annex A, relating to non-disclosure of confidential information.
- 8.3. Prior to providing an officer, employee or agent with access to confidential information, the contractor will provide the ACCC with the original of that person's executed undertaking in accordance with clause 8.2.
- 8.4. The obligations under this clause shall not be taken to have been breached where the information referred to is required by law to be disclosed.
- 8.5. The contractor shall not object to the disclosure of any confidential information as required by the ACCC for any administrative or statutory review, audit or inquiry (whether within or external to the ACCC), and any request for information directed to the ACCC by Parliament or a committee of Parliament of the Commonwealth of Australia.
- 8.6. The contractor must comply with the Information Privacy Principles contained in section 14 of the Privacy Act 1988 to the extent that the content of those principles apply to the types of activities the contractor is undertaking under this contract, as if the contractor were an agency as defined in the Act.

8.7. This clause will survive the expiration or termination of this contract.

9. Conflict of Interest

9.1. The contractor warrants that, at the date of entering into the contract, no conflict of interest exists or is likely to arise in the performance of its obligations under the contract. If, during the term of the contract, a conflict, or risk of conflict, of interest arises, the contractor undertakes to notify the ACCC immediately in writing of that conflict or risk.

10. Conduct at ACCC Premises

10.1. The contractor shall, when using the ACCC's premises or facilities for the purposes of the services, comply with all reasonable directions and ACCC procedures relating to security and safety in effect at those premises or in regard to those facilities, as notified by the ACCC or as might be reasonably inferred from the circumstances.

11. Work Health and Safety

11.1. The contractor must comply, and as far as practicable must ensure its subcontractors comply with:

- (a) all relevant requirements of the Work Health and Safety Act 2011 (WHS);
- (b) all relevant legislation, codes of practice and national standards relating to work health and safety ; and
- (c) all applicable policies and procedures relating to work health and safety including those that apply to the Agency's premises when using those premises.

11.2. In the event of any inconsistency between any of the policies and procedures referred to in clause 10.1, the contractor will comply with those policies and procedures that produce the highest level of health and safety.

11.3. The contractor will work with the ACCC in:

- (a) complying with all applicable work health and safety laws;
- (b) consulting, co-operating and co-ordinating with the ACCC on workplace health and safety activities so far as it is practicable;
- (c) providing the ACCC any information the ACCC reasonably requires to confirm that the Service Provider (and any subcontractor) is complying with the WHS; and
- (d) participating in all compliance activities associated with its legal obligation, including those arising under the WHS. Compliance activities may include responding to requests for information and/or

audits undertaken by the Commonwealth, its nominees and/or relevant regulators.

11.4. Any dispute in relation to WHS issues will be resolved in accordance with Clause 12 of the contract.

12. Dispute Resolution (Work Health Safety)

12.1. In this clause, parties, in relation to an issue means the following :

- (a) if the person conducting the business or undertaking or the person's representative;
- (b) if the issue involves more than 1 business or undertaking, the person conducting each business or undertaking or the person's representative;
- (c) if the worker or workers affected by the issue are in a work group, the health and safety representative for that work group or his or her representative;
- (d) If the worker or workers affected by the issue are not in a work group the worker or workers or their representative;

12.2. A person conducting a business or undertaking must ensure that the person's representative (if any)for the purposes of this Clause:

- (a) is not a health and safety representative; and
- (b) has an appropriate level of seniority and is sufficiently competent to act as the person's representative.

12.3. Resolution of health and Safety issues

- (a) This clause applies if a matter about work health and safety arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue..
- (b) The parties must make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure prescribed in the regulations
- (c) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

12.4. Referral of issue to regulator for resolution by inspector

- (a) This section applies if an issue has not be resolved after reasonable efforts have been made to achieve an effective resolution of the issue.
- (b) A request to the regulator under this clause does not prevent:
 - i) a worker from exercising the right to cease work in accordance with t the provisions of the WHS act;
 - ii) a health and safety repres4entative from issuing a provisional improvement or direction to cease work in accordance with the provisions of the WHS act .

- iii) On attending a workplace under this section, an inspector may exercise any of the inspector's compliance powers under this Act in relation to the workplace.

13. Dispute Resolution (Contract)

13.1. The parties agree that a dispute arising under this Contract will be dealt with as follows:

- (a) the party claiming that there is a dispute will give the other party a notice setting out the nature of the dispute;
- (b) within 5 Business Days each party will nominate a representative not having any prior involvement in the dispute;
- (c) the representatives will try to settle the dispute by direct negotiation between them;
- (d) failing settlement within a further 10 Business Days, the parties may agree to refer the dispute to an independent third person with power:
 - i. to intervene and direct some form of resolution, in which case the
 - ii. parties will be bound by that resolution; or
 - iii. to mediate and recommend some form of non-binding resolution;
- (e) the parties will cooperate fully with any process instigated under clause 13.1 .d in order to achieve a speedy resolution; and
- (f) if a resolution is not reached within a further 20 Business Days, either party may commence legal proceedings.

14. Negation of Employment, Partnership and Agency

14.1. The contractor shall not represent itself, and shall ensure that its officers, employees, agents and sub-contractors do not represent themselves, as being an officer, employee, partner or agent of the ACCC, or as otherwise able to bind or represent the ACCC.

14.2. The contractor shall not by virtue of this contract be or for any purpose be deemed to be an employee, partner or agent of the ACCC, nor does the contractor have any power or authority to bind or represent the ACCC.

15. Subcontracting and Assignment

15.1. The contractor shall not:

- (a) subcontract the performance of any part of the services, or
- (b) assign its obligations or rights under this contract

without, in either case, prior approval in writing from the ACCC.

16. Indemnities

16.1. The contractor agrees to indemnify the ACCC from and against any:

- (a) liability incurred by the ACCC;
- (b) loss of, or damage to, property of the ACCC;
- (c) liability of the ACCC for the death of, or injury to, any person provided by the contractor as specified personnel identified in Schedule 1 to the ACCC pursuant to this contract; or
- (d) loss or expense incurred by the ACCC 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 ACCC,

arising from:

- (e) any wrongful, unlawful or negligent act or omission by the contractor in connection with this contract;
- (f) any breach by the contractor of its obligations or warranties under this contract; or
- (g) any misuse or unauthorised disclosure by the contractor, of confidential information held or controlled by the contractor in connection with this contract;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, loss or damage, or loss or expense.

16.2. The contractor's liability to indemnify the ACCC under clause 16.1 shall be reduced proportionally to the extent that any act or omission of the ACCC or its officers, employees or agents contributed to the loss or liability.

16.3. In clause 16.1 and 16.2, a reference to:

- (a) 'ACCC' includes the officers, employees and agents of the ACCC; and
- (b) 'contractor' includes the officers, employees, agents and subcontractors of the contractor.

16.4. The indemnities referred to in this clause 14 shall survive the expiration or termination of the contract.

17. Insurance

17.1. The contractor shall effect and maintain the insurances as Schedule 1.

17.2. If and when required by the ACCC, the contractor shall provide the ACCC with a certificate of currency in respect of the insurances.

17.3. If required by law, the contractor warrants that it has a certificate of currency, evidencing cover for workers' compensation insurance, prior to commencement of this contract.

18. Variation or Termination of Contract

18.1. No variation to this contract shall be legally binding upon either party unless in writing and agreed to by both parties.

18.2. The ACCC may at any time, by written notice, terminate or suspend the contract, or reduce the scope of the services required under the contract, and upon such notice being given the contractor shall:

- (a) cease or reduce work according to the tenor of the notice;
- (b) take all reasonable steps to minimise any loss resulting from that termination and to protect the contract material; and
- (c) continue work on any part of the services not affected by the notice.

18.3. In the event that the contract is terminated pursuant to clause 16.2, the ACCC shall be liable only for:

- (a) payments under the payment provisions of the contract for services rendered before the effective date of termination; and
- (b) subject to clauses 16.2 and 16.4, any reasonable costs incurred by the contractor and directly attributable to the termination of this contract.

18.4. The contractor shall not be entitled to compensation for loss of prospective profits, and the ACCC shall not be liable to pay any sum which, in addition to any amounts paid or due or becoming due to the contractor under the contract, would together exceed the full price of the services otherwise payable under the contract.

18.5. In the event of a reduction in the scope of the services the ACCC's liability to pay the fees, in the absence of any agreement to the contrary, shall abate proportionately to the reduction in the services.

19. Default

19.1. If the contractor fails, within 14 days after receipt of written notice, to remedy any default in the performance of the following obligations, namely:

- (a) to commence or to proceed at the rate of progress strictly in accordance with the contract; or

(b) to perform or observe the terms and conditions of the contract, the ACCC may, by written notice, terminate the contract, without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party, and recover from the contractor any loss or damage suffered by the ACCC.

19.2. The contractor must advise the ACCC in writing 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; or
- (b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

20. Applicable Law

20.1. The contract shall be governed by and construed in accordance with the law for the time being in force in the Australian Capital Territory and the parties submit to the non-exclusive jurisdiction of the courts of that Territory.

20.2. The contractor agrees in carrying out this contract to comply with all relevant legislation of the Commonwealth and the State or Territory in which the services, or any part thereof, are to be performed.

21. Waiver

21.1. 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.

21.2. A single or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

21.3. In this clause, 'rights' means rights or remedies provided by this contract or at law.

Signing Page

EXECUTED as an Agreement

Signed for and on behalf of the
Commonwealth of Australia as
represented by the
**Australian Competition and Consumer
Commission ABN: 94 4104 836**
by its duly authorised delegate
in the presence of

.....

Signature of witness

Signature of delegate

.....

Name of witness (*print*)

Name of delegate (*print*)

.....

Position of delegate (*print*)

.....

ON (*insert date*)

SIGNED for and on behalf of
<insert company name of supplier>
ACN: <insert Supplier's ACN>
the **CONTRACTOR**; if a corporation
in accordance with Section 127 of
the Corporations Act 2001:

.....

Signature of witness

Signature of authorised person

.....

Name of witness (*print*)

Name of authorised person (*print*)

.....

Position of authorised person (*print*)

.....

ON (*insert date*)

SCHEDULE 1

Statement of Requirement

1.1 Term

Option A

The Parties have entered into this Contract on <insert date> and the Contract will remain in force for <insert period e.g. 6 months> from the date the Contract was entered into.

Option B

The Parties have entered into this Contract on <insert date> and the Contract will terminate on <insert date>.

1.2 The Supplies

Option A

Insert a full description of goods and/or services required. Clearly specify required outputs. Timeframes and any critical dates should be included, as well as details of any facilities and assistance that the ACCC has agreed to provide. Where an RFO was issued these details should be consistent with those included in the RFO Schedule 1 – Statement of Requirement.

Option B

The Supplies are as set out in the RFO Schedule 2 – Offer, included at Annex 1.

1.3 Timing and delivery Dates

Option A

Delivery of the Supplies will commence on the commencement date set out in clause 1.1 and is to be completed by <insert date>.

Option B

Supplies are to be delivered as specified in the following table:

Deliverable	Date
<insert deliverable>	<insert date>
<insert deliverable>	<insert date>

1.4 Delivery location and instructions

Delivery address and instruction for Supplies:	<i>For Services, insert full details of where the Services are to be undertaken. For goods, insert full delivery details including person and/or position to whom supplies should be delivered, address for delivery and, if a pre-delivered inspection is required, details of the process for approval should be included here.</i>
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1.5 Specified Personnel

Option A

The Specified Personnel are:

Name	Position	Role
<insert name>	<insert name>	<insert name>
<insert name>	<insert name>	<insert name>
<insert name>	<insert name>	<insert name>

Option B

The Specified Personnel are as set out in the RFO Schedule 2 – Offer, included in Annex 1.

1.6 Contract Price and payment.

Option A

The Contract Price is <insert amount> (including GST) which is payable to the ACCC in one instalment, in accordance with the Contract.

Option B

The Contract Price is <insert amount> (including GST) which is payable in instalments by the ACCC in accordance with the Contract, upon satisfactory completion by the Supplier (in the ACCC’s sole opinion) of the milestones as set out in the following table:

Instalment	Amount of Instalment (incl. GST)	Milestone	Expected date for completion of milestone
1	<Insert>	<Insert>	<Insert>
2			
3			

Option C

The Contract Price is as set out in the RFO Schedule 2 – Offer, included in Annex 1, which is payable by the ACCC in accordance with the Contract.

1.7 Travel and Accommodation

1.8 Insurance

Specify required insurance levels:

Public Liability - \$XM

Professional Indemnity – \$XM

1.8 Contact Managers and Addresses for Notices

The ACCC's Contract Manager:

Name/position title: The person occupying the position of <insert position title>, currently <insert name>.

Postal address: <insert postal address including postcode>

Telephone: <insert telephone area code and telephone number>

Mobile: <insert mobile number>

Email address: <insert email address>

The Supplier's Contract Manager:

Name/position title: The person occupying the position of <insert position title>, currently <insert name>.

Postal address: <insert postal address including postcode>

Telephone: <insert telephone area code and telephone number>

Mobile: <insert mobile number>

Email address: <insert email address>

Both Contract Managers will be responsible for the general liaison and accepting the issuing any written notices under this Contract.

1.10 Address for Invoices

Postal address: The Finance Unit
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
Attention: <insert name of ACCC's Contract Manager>

Email address/es: <insert email address/es>

DEED POLL - CONFIDENTIALITY UNDERTAKING

I (name).....of

[COMPANY NAME]

[COMPANY ADDRESS]

- (a) acknowledge that all information and material provided by the Australian Competition and Consumer Commission (“the ACCC”) for the purposes of the provision of services by [CONSULTANTS NAME] pursuant to [BRIEF DESCRIPTION OF WORK] was provided by the ACCC in confidence;
- (b) undertake to the ACCC :
 - (i) to use such information only for the purposes of the services; and
 - (ii) not to disclose, publish or communicate to any other person or otherwise make public:
 - (1) any such information or material provided by the ACCC; and
 - (2) any information produced in connection with or by the performance of the services;

except as permitted by the terms of the contract or otherwise with the prior approval in writing of the ACCC.

Executed as a Deed Poll:

Signed, Sealed and Delivered by:

Name.....

Signature.....

Date.....

[If there is more than one person working on this contract you will need to copy this page onto a separate page below. You must have a confidentiality undertaking for each person.]