



Australian Government

Department of Health

CONTRACT FOR SERVICES

***INDIGENOUS PROCUREMENT POLICY HIGH VALUE
CONTRACT***

between the

COMMONWEALTH OF AUSTRALIA

as represented by the

Department of Health
ABN 83 605 426 759

and

[Insert Contractor's Name and ABN]

in relation to Services for

***provision of the National Best Practice Unit for Tackling
Indigenous Smoking***

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This Contract is made between the

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

and

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

RECITALS

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

OPERATIVE PART

1. INTERPRETATION AND OPERATION OF CONTRACT

1.1 In this Contract, unless the contrary intention appears:

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

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

'Business Day' means, in relation to the doing of any action in a place, any day other than a Saturday, Sunday, or public holiday in the place where the act is to be performed;

'Commonwealth' means the Commonwealth of Australia;

'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;

'Contract' means this document as amended from time to time and includes its Schedules and any attachments;

'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;

'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;

'Department' means the Commonwealth as represented by the Department of Health or any department or agency of the Commonwealth that is from time to time responsible for the administration of this Contract;

'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 includes Material identified as Existing Material in Item L but excludes Commonwealth Material;

'Government Agency' means:

- (a) a 'Commonwealth entity' or 'Commonwealth company' as defined in the *Public Governance, Performance and Accountability Act 2013*;
- (b) an unincorporated body established or constituted for a public purpose by Commonwealth legislation, or an instrument made under that legislation;

- (c) a body established by the Commonwealth Parliament, or either House of Parliament, or by the Governor-General or by a Minister of State of the Commonwealth; or
- (d) any body that may exercise any of the powers of the Commonwealth under the Commonwealth Constitution,

acting directly or through an agent;

'Indigenous Participation Plan' means the plan set out at Annexure 1;

'Indigenous Procurement Policy' means the policy of that name, as amended from time to time, available on the Indigenous Procurement Website;

'Indigenous Procurement Website' means the website at www.dpmc.gov.au/ipp;

'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);

'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' has the meaning given in the *Privacy Act 1988*;

'Privacy Commissioner' means any of the information officers appointed under the *Australian Information Commissioner Act 2010* when performing the 'privacy functions' as defined in the Act;

'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;

'Specified Personnel' means the Contractor Personnel specified in Item I;

'Web Content Accessibility Guidelines 2.0' means the Guidelines available at [Web Accessibility Guidelines](#);

'WHS legislation' means the *Work Health and Safety Act 2011*, any regulations made under that act and any 'corresponding WHS law' within the meaning of section 4 of the *Work Health and Safety Act 2011* and Regulation 6A of the *Work Health and Safety Regulations 2011*; and

'World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.0 (2010)' means the advisory notes released by the Australian Human Rights Commission available at [Disability Discrimination Act Advisory Notes](#).

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) a 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 This Contract may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement.
- 1.7 No variation of this Contract is binding unless agreed in writing between the Parties.
- 1.8 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.
- 1.9 A waiver of any provision of this Contract must be in writing.
- 1.10 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.
- 1.11 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.
- 1.12 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.
- 1.13 The Contractor must not assign or transfer its rights or obligations under this Contract without prior approval in writing from the Department.
- 1.14 The Contractor agrees not to consult with any person for the purposes of entering into an arrangement that will require novation of this Contract without first consulting the Department.

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 either Item B or Item C;
 - (b) ensure that the Services and Contract Material are fit for the purpose for which they are provided;
 - (c) ensure that any Contract Material which is to be placed on a Departmental website or the intranet complies with the:

- (i) Level AA accessibility requirements in the Web Content Accessibility Guidelines 2.0; and
 - (ii) World Wide Web Access: Disability Discrimination Act Advisory Notes, version 4.0 (2010);
 - (d) comply with the time frame for the performance of the Services specified in Item D;
 - (e) liaise with the Department, provide any information the Department may reasonably require, and comply with any reasonable directions of the Department; and
 - (f) 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 Department or the Commonwealth more broadly in the community.
- 2.2 The Contractor acknowledges that:
- (a) the Department 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 Department conducting its affairs; and
 - (b) subject to clause 2.3, the Department may use that information when considering the Contractor's ability to perform this Contract.
- 2.3 The Department may consult with the Contractor if any information referred to under clause 2.2 is a cause of concern to the Department.
- 2.4 Subject to clauses 12 and 13, 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 entities, officers, employees or agents.

3. FEES, ALLOWANCES AND ASSISTANCE

- 3.1 The Department 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 Department 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 Department 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 Department 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 Department 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 Department 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 Department 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 Department in full.
- 3.7 The Contractor must provide the Department 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 Department 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 5.

4. PAYMENTS

- 4.1 The Department will pay the Contractor within 30 days after receipt of a correctly rendered invoice. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.
- 4.2 For payments made by the Department more than 30 days after the amount became due and payable, the Department must pay the interest accrued on the payment where:
- (a) the value of this Contract is not more than A\$1 million (GST inclusive);
 - (b) the amount of the interest payable exceeds A\$10; and
 - (c) the fee will be paid by the Department from Departmental items.
- 4.3 Interest payable under clause 4.2 will be 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 and payable, up to and including the day that the Department effects payment as represented by the following formula:
- $$SI = UA \times GIC \times D$$
- Where:
- SI = simple interest amount;
 - UA = the unpaid amount;
 - GIC = General Interest Charge Rate 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.
- 4.4 In this clause '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.

- 4.5 For the purposes of this clause an invoice is correctly rendered if it:
- (a) is correctly addressed and calculated in accordance with this Contract; and
 - (b) relates only to supplies that have been delivered to the Department in accordance with this Contract; and
 - (c) is a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999*.

5. TAXES, DUTIES AND GOVERNMENT CHARGES

- 5.1 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.
- 5.2 The provisions of this clause in respect of GST apply where the Contractor is registered, or is required to be registered for GST.
- 5.3 The goods, services and other supplies made by the Contractor under this Contract are Taxable Supplies within the meaning of the GST Law.
- 5.4 The Contractor will issue the Department 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.
- 5.5 The amounts payable by the Department 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.
- 5.6 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.
- 5.7 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).
- 5.8 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.

6. SUBCONTRACTORS

- 6.1 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 Department; 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 Department to do so.
- 6.2 The Department may impose any terms and conditions it considers appropriate when giving its approval under clause 6.1(a).

- 6.3 Where a subcontractor specified in Item A or approved by the Department under clause 6.1(a) is unable to perform the work, the Contractor agrees to notify the Department immediately.
- 6.4 Where clause 6.3 applies, the Department may request the Contractor to secure a replacement subcontractor acceptable to the Department 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 Department may terminate this Contract in accordance with the provisions of clause 22.
- 6.6 In respect of subcontractors listed in Item A or approved by the Department 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 Department 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, 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 Department by clauses 21 and 22, 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 Department 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 Department; and
 - (h) if requested, the Contractor will promptly provide a copy of the relevant subcontract to the Department.

7. SPECIFIED PERSONNEL AND OTHER PERSONNEL

- 7.1 The Contractor agrees that the Specified Personnel will perform the activities specified in Item I.

- 7.2 Where Specified Personnel are unable to perform the activities, the Contractor must notify the Department immediately.
- 7.3 The Department may, at its absolute discretion, request the Contractor to remove Contractor Personnel (including Specified Personnel) from work in relation to the Services.
- 7.4 Where clauses 7.2 or 7.3 apply, the Department may request the Contractor to provide replacement personnel acceptable to the Department at no additional cost and at the earliest opportunity.
- 7.5 If the Contractor does not comply with any request made under clause 7.3 or clause 7.4, the Department may terminate this Contract in accordance with the provisions of clause 22.

8. RESPONSIBILITY OF CONTRACTOR

- 8.1 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 Department of replacement Contractor Personnel (including Specified Personnel).

9. COMMONWEALTH MATERIAL

- 9.1 The Commonwealth agrees to provide Material to the Contractor as specified in Item J.
- 9.2 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 Department under clause 6) to use, reproduce, modify, adapt, publish, perform, broadcast and communicate the Intellectual Property in the Commonwealth Material for the purposes of this Contract.
- 9.3 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 Department.
- 9.4 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 Department, or, in accordance with Department directions erase or otherwise deal with all such copies,

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

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

10. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

10.1 Intellectual Property in all Contract Material vests or will vest in the Commonwealth.

10.2 Clause 10.1 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.

10.3 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.

10.4 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.

10.5 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 Department, or, in accordance with Department directions, erase or otherwise deal with all such copies,

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

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

11. MORAL RIGHTS

11.1 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.

- 11.2 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.
- 11.3 This clause survives the expiration or earlier termination of this Contract.

12. DISCLOSURE OF INFORMATION

- 12.1 The Contractor agrees not to disclose any Confidential Information relating to this Contract or the Services without prior approval in writing from the Department.
- 12.2 The Department may impose any conditions it considers appropriate when giving its approval under clause 12.1 and the Contractor agrees to comply with these conditions.
- 12.3 The Department 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 Department, relating to the non-disclosure of Confidential Information.
- 12.4 If the Contractor receives a request under clause 12.3, it agrees to promptly arrange for all such undertakings to be given.
- 12.5 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.
- 12.6 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 Department, or, in accordance with Department directions, erase or otherwise deal with all such copies,
- unless any provision to the contrary is set out in Item M.
- 12.7 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.

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

13. ACCESS TO DOCUMENTS

13.1 In this clause, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982*.

13.2 This clause only applies if this is a Contract which complies with the description of 'Commonwealth contract'.

13.3 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.

13.4 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.

14. PROTECTION OF PERSONAL INFORMATION

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

14.2 In this clause, the terms:

- (a) agency;
- (b) contracted service provider;
- (c) registered APP code (RAC); and
- (d) Australian Privacy Principle (APP),

have the same meaning as they have in 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.

14.3 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 APP;
 - (c) to notify individuals whose Personal Information the Contractor holds, that complaints about acts or practices of the Contractor may be investigated by the Privacy Commissioner who has power to award compensation against the Contractor in appropriate circumstances;
 - (d) comply with the obligations contained in the APPs that apply to the Contractor;
 - (e) not to use or disclose Personal Information or engage in an act or practice that would breach an APP or a RAC, whichever is applicable to the Contractor, unless 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 APP or RAC, whichever is applicable to the Contractor;
 - (f) to comply with any request under section 95C of the Privacy Act ;
 - (g) to immediately notify the Department if the Contractor becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in this clause, whether by the Contractor or any subcontractor;
 - (h) to comply with any directions, guidelines, determinations or recommendations of the Privacy Commissioner to the extent that they are consistent with the requirements of this clause; and
 - (i) to ensure that any officers, employees or agents of the Contractor who are required to deal with Personal Information for the purposes of this Contract are made aware of the obligations of the Contractor set out in this clause.
- 14.4 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.
- 14.5 The Department 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 Department, relating to the non-disclosure of Personal Information.
- 14.6 If the Contractor receives a request under clause 14.5, it agrees to promptly arrange for all such undertakings to be given.
- 14.7 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 14.4.

- 14.8 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.
- 14.9 This clause survives the expiration or earlier termination of this Contract.

15. COMPLIANCE WITH LAWS AND POLICIES

- 15.1 The Contractor agrees, in carrying out this Contract, to comply with all Laws and any relevant policies, including:
- (a) the *Crimes Act 1914*;
 - (b) the *Racial Discrimination Act 1975*;
 - (c) the *Sex Discrimination Act 1984*;
 - (d) the *Disability Discrimination Act 1992*;
 - (e) the *Charter of United Nations Act 1945* and the *Charter of United Nations (Dealing with Assets) Regulations 2008*;
 - (f) the *Archives Act 1983*;
 - (g) the *Privacy Act 1988*;
 - (h) the *Freedom of Information Act 1982*;
 - (i) the *Criminal Code Act 1995*;
 - (j) the *Public Interest Disclosure Act 2013*;
 - (k) any occupational health and safety legislation applicable to the Contractor;
 - (l) the Australian Government's *Lobbying Code of Conduct*;
 - (m) the *Protective Security Policy Framework* which is available at: [Protective Security Policy Framework website](#)
 - (n) any fraud control guidelines issued by the Department of Finance from time to time; and
 - (o) any other policies notified to the Contractor in writing or listed in Item C.
- 15.2 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.
- 15.3 The Contractor agrees, when using the Department's premises or facilities, to comply with all reasonable directions and procedures relating to occupational health, safety and security in operation at those premises or in regard to those facilities (including the Department's smoke-free work-place policy) whether specifically drawn to the attention of the Contractor or as might reasonably be inferred from the circumstances.
- 15.4 Without limiting the effect of clause 25, the Contractor must comply with, and require Contractor Personnel to comply with, the behaviours specified in:

- (a) the Code of Conduct in section 13 of the *Public Service Act 1999* as if the Contractor and those Contractor Personnel were APS employees as defined in that Act; and
 - (b) the general duties of officials at sections 25-29 of the *Public Governance, Performance and Accountability Act 2013* as if the Contractor and those Contractor Personnel were officials as defined in that Act.
- 15.5 Clauses 15.6 to 15.9 only apply to the extent that:
- (a) this Contract is entered into following a procurement which is at, or above, the relevant procurement thresholds as defined in the *Commonwealth Procurement Rules* but not where that procurement is listed in Appendix A to those Rules; and
 - (b) the Contractor is a 'relevant employer' for the purposes of the *Workplace Gender Equality Act 2012* ('the WGE Act').
- 15.6 The Contractor must comply with its obligations, if any, under the WGE Act.
- 15.7 If the Contractor becomes non-compliant with the WGE Act during the term of this Contract, the Contractor must notify the Department.
- 15.8 If the term of this Contract exceeds 18 months, the Contractor must provide a current letter of compliance within 18 months from the commencement date of this Contract and following this, annually, to the Department.
- 15.9 Compliance with the WGE Act does not relieve the Contractor from its responsibility to comply with its other obligations under this Contract.

15A. Indigenous Procurement Policy

- 15A.1 It is Commonwealth policy to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy (see the Indigenous Procurement Policy).
- 15A.2 The Contractor must use its reasonable endeavours to increase its:
- (a) purchasing from Indigenous enterprises; and
 - (b) employment of Indigenous Australians,
- in the delivery of the Services as specified in the Schedule.
- 15A.3 Purchases from Indigenous enterprises may be in the form of engagement of an Indigenous enterprise as a subcontractor, and use of Indigenous suppliers in the Contractor's supply chain.
- 15A.4 Without limiting clause 15A.2, the Contractor must comply with the Indigenous Participation Plan.
- 15A.5 The Contractor must provide a written report on its compliance with the Indigenous Participation Plan to the Department:
- (a) at least once every quarter during the time frame specified in Item D; and

- (b) within [5] Business Days after the end of the time frame specified in Item D (End of Term Report).

The End of Term Report must identify whether the Contractor:

- (c) met the mandatory minimum requirements; and
- (d) complied with the Indigenous Participation Plan.

If the Contractor did not comply with the Indigenous Participation Plan it must provide an explanation for its non-compliance.

15A.6 If the Department considers, in its absolute discretion at any time during the time frame specified in Item D, that it has concerns in relation to the Contractor's:

- (a) compliance with the Indigenous Participation Plan; or
- (b) overall ability to meet the mandatory minimum requirements as set out in the Indigenous Participation Plan,

the Department may request the Contractor to provide additional detail in relation to its implementation of and overall ability to comply with the Indigenous Participation Plan. The Contractor must comply with all reasonable directions issued by the Department in relation to the Contractor's implementation of the Indigenous Participation Plan.

15A.7 Without limiting its other rights under the Contract or at law, any material failure by the Contractor to:

- (a) implement the Indigenous Participation Plan; or
- (b) comply with a direction issued by the Department under clause 15A.6,

will be a breach of this Contract, and the Department may terminate this Contract in accordance with clause 22.

15A.8 Notwithstanding any other clause of this Contract, the Contractor acknowledges and agrees that the reports it submits under clause 15A.5:

- (a) will be recorded in a central database that is able to be accessed by Commonwealth entities and may be made publicly available;
- (b) will not be considered to be Contractor Confidential Information; and
- (c) may be used by Commonwealth entities for any purpose, including for evaluation of an offer to provide Services to a Commonwealth entity.

16. CONFLICT OF INTEREST

16.1 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.

16.2 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 Department 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 Department, take such steps as the Department may reasonably require to resolve or otherwise deal with the Conflict.

16.3 If the Contractor fails to notify the Department under this clause or is unable or unwilling to resolve or deal with the Conflict as required, the Department may terminate this Contract in accordance with the provisions of clause 22.

16.4 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 Department fairly and independently.

17. ACCOUNTABILITY AND ACCESS

17.1 The Contractor must give to:

- (a) the Auditor-General or his/her delegate;
 - (b) the Privacy Commissioner or his/her delegate;
 - (c) the Ombudsman or his/her delegate;
 - (d) the persons appointed under the *Australian Information Commissioner Act 2010* as the Information Commissioner and the FOI Commissioner or his/her delegate; and
 - (e) any persons authorised in writing by the Commonwealth,
- (referred to in this clause collectively as 'those permitted') access to premises :
- (f) at which Materials associated with this Contract are stored; or
 - (g) work associated with this Contract is undertaken, and
 - (h) 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.

17.2 The rights referred to in clause 17.1 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.

17.3 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.

- 17.4 Without limitation to the generality of clause 17.3:
- (a) the assistance to be provided by the Contractor under clause 17.3 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 17.3 will include any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Commonwealth, and any inquiry conducted by Parliament or any Parliamentary committee.
- 17.5 The Commonwealth will endeavour to notify the Contractor as early as possible of any assistance required under clause 17.4, provided always that the Contractor acknowledges that such notice may be oral and is not subject to any minimum notice period requirement.
- 17.6 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.
- 17.7 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 this clause.
- 17.8 Nothing in this Contract limits or restricts in any way any duly authorised function, power, right or entitlement of the Auditor-General, the Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates. The rights of the Commonwealth under this Contract are in addition to any other duly authorised power, right or entitlement of the Auditor-General, the Commonwealth Ombudsman, the Privacy Commissioner, the Information Commissioner, the FOI Commissioner or their respective delegates.
- 17.9 This clause survives the expiration or earlier termination of this Contract for a period of seven years.

18. INDEMNITY

- 18.1 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.
- 18.2 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.

18.3 The Contractor's liability to indemnify the Commonwealth under clause 18.2 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.

18.4 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.

18.5 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.

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

19. INSURANCE

19.1 The Contractor warrants that it has taken out or will take out, and will maintain for the period specified in clause 19.2 or 19.3 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.

19.2 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 seven years after the expiry or earlier termination of this Contract.

19.3 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.

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

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

20. DISPUTE RESOLUTION

20.1 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 in clause 20.1(a) 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.

20.2 Despite the existence of a dispute, the Contractor will (unless requested in writing not to do so) continue to perform the Services.

20.3 This clause:

- (a) does not apply to action by the Department under or purportedly under clauses 3.2, 21 or 22; and
- (b) does not preclude either Party from commencing legal proceedings for urgent interlocutory relief.

21. TERMINATION AND REDUCTION FOR CONVENIENCE

21.1 The Department may, at any time by notice and at its sole discretion, terminate this Contract in whole or reduce the scope of the Services immediately.

21.2 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.

21.3 Where there has been a termination under clause 21.1, the Department 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.

- 21.4 The Department will not be liable to pay compensation under clause 21.3(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.
- 21.5 The Contractor will not be entitled to compensation for loss of prospective profits.
- 21.6 If there is a reduction in the Services, the Department's obligation to pay any fee will abate proportionately to the reduction in the Services.
- 21.7 To avoid doubt, the Department has an unfettered discretion to terminate this Contract or reduce the scope of the Services in accordance with this clause.

22. TERMINATION FOR DEFAULT

- 22.1 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 clause 22.1(b), by further notice, terminate this Contract immediately.
- 22.2 The Department 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; or
 - (c) breaches a warranty listed in clause 24.

23. DEEMED TERMINATION FOR CONVENIENCE

- 23.1 If a purported termination for cause by the Department under clause 22 is determined by a competent authority not to be properly a termination for cause, then that termination by the Department will be deemed to be a termination for convenience under clause 21 which termination has effect from the date of the notice of termination referred to in clause 22.

24. CONTRACTOR WARRANTIES AND UNDERTAKINGS

- 24.1 The Contractor represents, warrants and undertakes to the Department that:
- (a) it will promptly notify and fully disclose to the Department 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 Department 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; or
 - (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 Department 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 Department 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.

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

24.3 The Contractor:

- (a) acknowledges that it has been chosen to provide the Services in an area of expertise that is outside those of the Department; and
- (b) represents to the Department that it has the necessary knowledge and expertise to provide the Services,

and the Department:

- (c) relies on the Contractor's representation that it is an expert; and
- (d) has engaged the Contractor to provide the Services on that basis.

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

25. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

25.1 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

25.2 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.

26. WORK HEALTH AND SAFETY

26.1 In carrying out this Contract the Contractor must ensure that the Services are performed in a safe manner and in compliance with the WHS legislation.

27. NOTICES

27.1 A Party giving notice under this Contract must do so in writing, including by email or 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, email 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 email or facsimile, when received by the addressee or when the sender's computer or facsimile machine generates written notification that the notice has been received by the addressee, whichever is earlier. .

THE SCHEDULE

Item A Services and Subcontractors

Background

The Department of Health (the Department) requires the services of the Contractor to establish and maintain the National Best Practice Unit (NBPU) for Tackling Indigenous Smoking (TIS), to support the implementation and ongoing delivery of the TIS programme nationally. The NBPU will be instrumental in supporting the implementation of an outcomes-focused approach to the TIS programme.

The Contractor will be required to work primarily with grant recipients funded under TIS for regional tobacco control activities (referred to hereafter as grant recipients), with support and leadership from the National Coordinator Tackling Indigenous Smoking (Professor Tom Calma, AO).

In particular, the NBPU will support grant recipients to develop local approaches to tobacco control which are outcomes-focused, whilst being flexible to meet the needs of different population groups within a region. An outcomes-focused approach in effect means:

- expected outcomes are defined while the means of achieving outcomes can vary, which allows for tailoring activities to local needs.
- outcome measures will show how much progress is being made towards achieving the Programme objectives.
- outcome measures are both short term (e.g. increase in referrals to quit services) and long term (e.g. decrease in number of current smokers and no take-up of smoking)

To support an outcomes-focused approach, the NBPU will need to provide guidance on what evidence exists and how to apply it, adaptation methods for local needs, and advice and tools to monitor, measure and further improve activities.

Support from the NBPU will assist the Department and grant recipients to:

- plan evidence-based approaches to tobacco control which are adapted to meet local needs;
- implement best practice approaches to programme delivery;
- minimise duplication through network building and information sharing;
- undertake ongoing monitoring and evaluation to enable continuous improvement;
- develop relevant performance measures and data collection methods to measure the impact of tobacco control activities funded under TIS; and
- build the evidence base for tobacco control in Aboriginal and Torres Strait Islander communities.

Services

[Note the following services will be further negotiated with the successful Tenderer]

In performing the Services, the Contractor must undertake the following tasks:

1. Developing and maintaining operational guidelines for tobacco reduction among Aboriginal and Torres Strait Islander people and communities.
2. Providing a range of organisational support to grant recipients to implement evidence-based approaches to tobacco control.

3. Providing support to grant recipients to develop and implement performance indicators and data collection methods, and contributing to an overarching programme evaluation to measure the impact of TIS funded activities.
4. Facilitating workforce development to support the reduction of tobacco use, primarily for individuals and organisations funded by the TIS programme.
5. Disseminating evidence and information on best practice, building a community of practice, and promoting a culture of evaluation and continuous improvement for the TIS programme.
6. Providing advice and assistance to the Department to implement an outcomes-focused approach to the TIS programme.

Outcomes and Deliverables

A. Developing and maintaining national operational guidelines

The Contractor must develop and maintain national operational guidelines on what evidence exists and how to apply it. The operational guidelines will need to provide examples of best practice, adaptation methods for local needs, in addition to advice and tools to monitor, measure and further improve activities. The guidelines must be maintained by the Contractor as a living, interactive tool that incorporates new evidence and information as it becomes available.

B. Providing organisational support

Organisational support to be provided by the Contractor will include, but is not limited to:

- Assisting grant recipients to review Activity plans to ensure they are suitable to achieve targeted outcomes (in line with operational guidelines).
- Assisting grant recipients to develop performance measures and implementing data collection processes (in line with operational guidelines – also detailed further below).
- Facilitating network building and building a community of practice among the tobacco control workforce nationally (see also information below on dissemination of information).
- Providing ongoing support, advice and leadership to grant recipients on emerging evidence and effective initiatives related to tobacco prevention and cessation.

The Contractor will be required to organise and deliver a series of small annual workshops for grant recipients in each jurisdiction, in addition to an annual national TIS workshop for tobacco control workers and relevant partners.

The aims of TIS workshops will include:

- sharing evidence and best practice, and strategies for adaptation at local and regional levels
- resolving implementation challenges
- enhancing support, collaboration, network building and communication
- providing training and tools to assist in programme delivery.

The smaller jurisdictional workshops will support these aims and also allow for more targeted support that may be required by organisations.

C. Providing input to evaluation of TIS programme

The Department will engage an organisation through a separate tender process to develop an overarching monitoring and evaluation framework for the TIS programme, and to conduct an evaluation of the programme as a whole. The Contractor must work with the organisation/s

contracted by the Department to provide input on the regional tobacco control grants and NBPU components of the programme.

D. *Develop performance indicators and data collection methods*

The Contractor will work with grant recipients, the Department, the National Coordinator Tackling Indigenous Smoking, the programme evaluator, and relevant programme reference group/s to develop performance measures for the TIS programme for the regional and national level. In line with the overarching evaluation framework for the TIS programme, the Contractor must provide support to grant recipients to:

1. develop performance indicators for locally delivered tobacco control activities funded under TIS
2. implement methods for data collection and reporting that minimise the reporting burden on organisations whilst also providing meaningful measures of the impact of TIS funded activities.

The Contractor will be required to work with the Department, the programme evaluator and other relevant organisations and experts (such as the Australian Institute of Health and Welfare) on the data collection and reporting methodology to utilise existing data sources.

The Contractor will be required to plan and run sessions on performance reporting and evaluation at annual TIS workshops (detailed further below). The Contractor will also need to disseminate information and tools on performance reporting, data collection and evaluation.

E. *Workforce development to support the reduction of tobacco use*

The Contractor will need to assess the development needs of the tobacco control and broader health workforce to implement tobacco control in their regions, and to consider how these needs could be met.

The successful Tenderer will work with training providers to facilitate access to relevant training and professional development opportunities to build the capacity and skills of grant recipients to achieve TIS programme outcomes. Training could include web-based training, workshops and conferences, culturally appropriate mentoring and career pathway planning.

F. *Disseminating evidence and information on best practice, building a community of practice, and promoting a culture of evaluation and continuous improvement for the TIS Programme.*

The Contractor must implement a cost effective model to disseminate evidence, information and resources, and build a community of practice for tobacco control for Aboriginal and Torres Strait Islander communities. The Contractor must actively promote and maintain stakeholder involvement in the community of practice.

G. *Advice and assistance to the Department*

The Contractor must provide ongoing advice and assistance to the Department, as detailed below.

- Provide advice and assistance with development and assessment of performance measures for the TIS programme.
- Report to the Department on TIS programme outcomes including regional successes and challenges, identification of potential partners, and provide ad hoc reports and advice as required.

- Participate in external reviews, evaluation or research activities related to the programme.
- Build networks and manage relationships with key stakeholders, such as the national Aboriginal Community Controlled Health and state-based peak bodies, other private organisations, state/territory and local governments, to promote tobacco control for Aboriginal and Torres Strait Islander communities.
- Promote evidence-based approaches to Aboriginal and Torres Strait Islander tobacco control within the broader health sector (including Aboriginal Community Controlled Health Organisations and Primary Health Networks)

The Contractor may be required to communicate with the broader community about the TIS programme, presenting at health conferences and other forums as requested by the Department.

The Contractor will need to develop a communications and engagement strategy that sets out all communication and engagement activities in planning, implementing and maintaining the programme from December 2015 to June 2018.

Should a change of provider for the NBPU occur during or at the end of the contract period, the Contractor must provide the new organisation with a handover for a transitional period of two months to be agreed with the Department.

Understanding of Aboriginal and Torres Strait Islander cultures and people

In providing the services, the Contractor will need to work with people from a wide range of cultural and linguistic backgrounds, primarily Aboriginal and Torres Strait Islander people. All advice, communications, materials, resources and tools disseminated as part of the services must reflect cultural awareness and be culturally safe and responsive to the diverse needs of Aboriginal and Torres Strait Islander communities nationally.

Evaluation and monitoring requirements

The Contractor will be required to report on the outcomes of the TIS programme at a regional level in addition to other monitoring requirements detailed at (f) Reporting requirements). The Contractor will be required to provide input to an evaluation of the TIS programme as a whole, which will be sourced through a separate tender process.

Item B Required Contract Material

Please note that there are mandated accessibility requirements which may affect the content of Item B – see obligation on Contractor at clause 2.1(c).

To be determined through negotiation with successful Tenderer.

Item C Standards and Best Practice

In providing the services, the Contractor must comply with the Australian Government Web Publishing Guide.

Further information may be determined through negotiation with successful Tenderer.

Item D Time-frame

To be determined through negotiation with successful Tenderer.

Item E Fees

To be determined through negotiation with successful Tenderer.

Item F Allowances and Costs

To be determined through negotiation with successful Tenderer.

Item G Facilities and Assistance

To be determined through negotiation with successful Tenderer.

Item H Invoice Procedures

The Contractor must forward correctly addressed invoices that are in the form of a tax invoice and include the following:

- (a) the title of the Services or other identification of this Contract;
- (b) the name of a Commonwealth contact officer;
- (c) the fees, allowances and costs due; and
- (d) a written statement signed by the Contractor, or where the Contractor is a body corporate, by a representative of the Contractor authorised to sign on behalf of the body corporate, verifying that no wages are due and owing by the Contractor in respect of the performance of the Services at the time the claim for payment is made

Item I Specified Personnel

The Contractor agrees that:

- *[insert name of relevant individual].will undertake the following work [insert description of that part of the Services the individual will perform]; and*
- *[insert name of relevant individual].will undertake the following work [insert description of that part of the Services the individual will perform].'*

Item J Commonwealth Material to be provided by Commonwealth

To be determined through negotiation with successful Tenderer.

Item K Use of Commonwealth Material

To be determined through negotiation with successful Tenderer.

Item L Existing Material

To be determined through negotiation with successful Tenderer.

Item M Dealing with Copies

To be determined through negotiation with successful Tenderer.

Item N Insurance

The Contractor agrees to maintain:

- (a) workers' compensation insurance for an amount required by the relevant State or Territory legislation; and
- (b) public liability insurance for an amount of not less than **[10]** million dollars (\$10,000,000).

Item O Address for Notices

The Commonwealth's contact officer is the person for the time-being holding, occupying or performing the duties of **Director, Chronic Disease Section**, currently **Helen Cameron**, available at the address and on the number set out below:

Department's Address for Notices:

MDP 750
GPO Box 9848
Canberra ACT 2601
Phone: 02 6289 2866

Contractor's Address for Notices:

[insert details]

ANNEXURE 1 INDIGENOUS PARTICIPATION PLAN

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

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

Date

by:

Printed name of signatory

Signature

Position of signatory

in the presence of:

Printed name of witness

Signature of witness

COMPANY – MULTIPLE DIRECTORS: SIGNED for and on behalf of ***[insert name of Participant/Contractor]***, ABN ***[insert number]*** in accordance with the requirements of section 127 of the *Corporations Act 2001* on:

Date

by:

Printed name of Director

Signature of Director

and:

Printed name of Director / Secretary

Signature of Director / Secretary

COMPANY – SOLE DIRECTOR: SIGNED for and on behalf of ***[insert name of Participant/Contractor]***, ABN ***[insert number]*** in accordance with the requirements of section 127 of the *Corporations Act 2001* on:

Date

by authority of its sole director and secretary:

Printed name of Sole Director and Secretary

Signature of Sole Director and Secretary

in the presence of:

Printed name of Witness

Signature of Witness

INDIVIDUAL: SIGNED by ***[insert name of individual Participant/Contractor]***, ABN ***[insert number]***:

Signature of [insert name]

on:

Date

in the presence of:

Printed name of witness

Signature of witness

PARTNERSHIP: SIGNED for and on behalf of *[insert name of partnership]*, ABN *[insert number]*, on:

Date

by:

Printed name of Partner

Signature of Partner

who warrants that they have authority to bind the partnership in this regard, in presence of:

Printed name of witness

Signature of witness

INCORPORATED ASSOCIATION: SIGNED for and on behalf of *[insert name of Participant/Contractor]*, ABN *[insert number]*, on:

Date

by affixing its common seal in accordance with its rules in the presence of:

Printed name of Public Officer

Signature of Public Officer

and:

Printed name of committee Member/secretary

Signature of committee member/secretary

OTHER AUTHORITY: SIGNED for and on behalf of *[insert name of Participant/Contractor]*, ABN *[insert number]*, on:

Date

by:

Printed name of Signatory

Signature

who warrants that they have authority to bind ***[the authority or other descriptor]*** in this regard, in the presence of:

Printed name of witness

Signature of witness

Signature of Director/Secretary