**Ministry of Health**

**Registration of Interest**

**National Telehealth Service**

**Part 3 – ROI Terms and Conditions**



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| **What’s inside?** |
| The legal stuff |

Introduction

This document contains the Terms and Conditions of this ROI.

By responding to this ROI, the Supplier accepts the terms and conditions of the ROI and the ROI process, including all instructions outlined in Part 1.

**NOTE**: The Ministry may make minor changes to these *ROI Terms and* *Conditions*. Any changes will be listed under the heading “The Rules”.

# Definitions

The following words and expressions (where they appear in this document and any Schedule) have the meanings described below.

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| **Business Day** | A day when most businesses are open for business in New Zealand. It excludes Saturday, Sunday and public holidays. |
| **Business Hours** | Business hours means the period from 8.30am to 5.00pm on any Business Day. |
| **Clarification Period** | The period within which a Supplier can ask for clarification or additional information from the Ministry in relation to the ROI. |
| **Closing Date** | The deadline for Responses to be received by the Ministry. |
| **Competitors** | Any other business that is in competition with a Supplier either in relation to the goods or services sought under the ROI or in general. |
| **Confidential Information** | Information that:   1. is by its nature confidential 2. is marked by either the Ministry or a Supplier as ‘Confidential’, ‘Commercially Sensitive’ 3. is provided by the Ministry, a Supplier, or a third party ‘In Confidence’ 4. the Ministry or a Supplier knows, or ought to know, is confidential 5. is of a sensitive nature, or commercially sensitive to the Ministry, a Supplier or a third party. |
| **Conflict of Interest** | A Conflict of Interest arises if a Supplier’s personal or business interests or obligations do, could or be perceived to, conflict with its obligations to the Ministry under the ROI or in the anticipated provision of the goods or services. It means that the Supplier’s independence, objectivity or impartiality can be called into question. A Conflict of Interest may be:   1. actual: where the conflict currently exists 2. potential: where the conflict is about to happen or could happen, or 3. perceived: where other people may reasonably think that a person is compromised. |
| **Contact Person** | Both the Ministry and Suppliers are required to appoint a Contact Person. This is the person who is the single point of contact for all communications during the ROI process and negotiations. The Ministry’s Contact Person is identified in this ROI. The Supplier’s Contact Person is identified in its Response. |
| **Contract** | The legally enforceable written contract for the supply of the goods or services between the successful supplier and the Ministry using the Proposed Conditions of Contract as agreed between the parties and arising as a result of a subsequent RFP process. |
| **Evaluation Methodology** | The methodology set out in this ROI and used by the Ministry to evaluate ROI Responses. |
| **GETS** | Government Electronic Tenders Services [www.gets.govt.nz](http://www.gets.govt.nz) |
| **GST** | The goods and services tax payable in accordance with the New Zealand Goods and Services Tax Act 1985. |
| **Indicative timeline** | The suggested dates and times for the ROI process as described in this ROI. These may be subject to change at the Ministry’s sole discretion. |
| **Intellectual Property** | All Intellectual Property rights and interests, including copyright, trademarks, designs, patents and other proprietary rights, recognised or protected by law. |
| **Ministry** | The Ministry is the purchaser of the Requirements. The Ministry is the Sovereign in right of New Zealand who acts by and through the government agency named as The Ministry of Health. |
| **Proposal** | The Response a Supplier submits in reply to this ROI. It comprises the Supplier’s tender bid and should include all information specified by the Buyer in this ROI. |
| **Proposed Conditions of Contract** | The contract terms and conditions proposed by the Ministry if stated in this ROI. |
| **Registration of Interest (ROI)** | The ROI comprises Part 1, Part 2, this set of Standard Conditions and any other Schedule attached by the Buyer. The ROI is the first part of an open competitive process resulting in a qualified shortlist of suppliers who will likely be invited to respond to a closed RFP. |
| **Representative of the Ministry** | A person who represents the Ministry. This can be a member of staff, contractor, consultant, agent or secondee. Suppliers must not directly or indirectly approach, lobby or solicit information from a representative of the Ministry, other than the Ministry’s Contact Person named in the Response. |
| **Requirements** | The goods and/or services described in the ROI. |
| **Response** | The response a Supplier submits in reply to an ROI. It should include all information specified by the Ministry in the ROI. |
| **Schedule** | Any schedule to this ROI that is to be read in conjunction with this ROI. |
| **Standard Conditions** | The instructions to Suppliers, containing an outline of the process and the terms and conditions which apply to the process. |
| **Shortlisted Suppliers** | The suppliers shortlisted as a result of evaluating their responses to the ROI. |
| **Successful Supplier** | Following the evaluation of any subsequent RFP Proposals and successful negotiations the Supplier/s awarded the contract to deliver the Requirements. |
| **Supplier** | A person, organisation, business or other entity that responds to the ROI. It includes subcontractors, successors and permitted assignees. |

# Preparing a Response

1. Suppliers must provide in their Response all information requested by the Ministry in the ROI. The information must be supplied in the format specified by the Ministry.
2. Failure to provide all information requested or in the correct format may result in the Response being rejected as non-conforming.
3. If asked to provide hard copies please print Responses double-sided and minimise the use of non-recyclable or non-reusable materials.

## Language and Time zone

1. Responses must be in English.
2. All dates and times used in this ROI refer to New Zealand Standard Time.

## Clarification Period

1. Each Supplier must satisfy itself as to the interpretation of the ROI. If there is any perceived ambiguity or uncertainty in the ROI documents Suppliers should seek clarification before the end of the Clarification Period.
2. All requests for clarification must be made by email to the Ministry’s Contact Person. Please allow a reasonable period of time for the Ministry to respond to a request. Requests will be dealt with by the Ministry during Business Hours.
3. The Ministry will not answer questions submitted after the Clarification Period ends, although it reserves the right to do so.
4. If the Ministry considers a request to be of sufficient importance to all Suppliers it may provide details of the question and answer to other Suppliers. This information may be posted on GETS. In deciding whether or not to publish the question and answer, the Ministry will take into account the risk of disclosing information which may be commercially sensitive to the Supplier making the request.
5. If a Supplier identifies an inaccuracy or inconsistency in the ROI please notify the Ministry as soon as possible.

## Joint Responses

1. The Ministry encourages interested suppliers to submit joint responses where this is believed to add value, provided that the requirements of this ROI are met.
2. Any joint Response must:
3. identify all of the parties to the Response
4. state the nature of the relationship between the parties for the purpose of the joint Response
5. confirm that all parties are committed to the relationship and the joint Response
6. specify the parts of the Requirements each party will be responsible for delivering
7. identify the structure and systems that support joint governance, accountability and financial and contract management
8. be signed by all parties.
9. In evaluating a joint Response the Ministry may take into account, in its evaluation, any complexity or risk presented by a joint Response, or how it adds value.
10. Suppliers submitting a joint Response are required to identify only one Contact Person who will represent all parties to the Joint Response. Each supplier to the joint Response must complete a Supplier’s Declaration.
11. A joint Response must be a genuine joint venture with the provision of the goods or services to be provided on a joint and fully integrated basis. A joint Response is not to be used as a cover for price fixing between Competitors.
12. If a joint Response to a subsequent RFP is successful each party to the joint Proposal will be jointly and severally liable for the provision of the Goods or Services to the Requirements and the contract between the Ministry and the joint suppliers will include a clause to this effect.

## Submitting a Response

1. Responses must be received by the Ministry before the Closing Date.
2. The Ministry accepts no responsibility for a Response delivered to the wrong address or, for whatever reason, is not received by the Ministry.
3. The Ministry will acknowledge receipt of each Response by email.
4. By submitting a Response each Supplier warrants that all information provided is complete and accurate in all material respects. Each Supplier also warrants that the provision of that information, or its use by the Ministry for the purposes of the ROI process, will not breach any third party Intellectual Property rights.
5. Where the Ministry has requested the Response in hard copies and an electronic copy and there is a difference between the hard copy and the electronic copy the hard copy will prevail.

## Late Responses

1. The Ministry reserves the right to accept late Responses only in exceptional circumstances where it considers that there is no material prejudice to other Suppliers. The Ministry will not accept a late Response if it considers that:
2. there is any risk of collusion on the part of a Supplier or Suppliers
3. the Supplier may have knowledge of the content of any other Response
4. it would be unfair to any other Supplier to accept the late Response.

## Evaluation

1. The Ministry will convene an evaluation panel comprising members chosen for their relevant expertise and experience. The Ministry may, at its sole discretion, invite independent advisors to evaluate any Response, or any aspect of any Response. Suppliers must not communicate with any member of the evaluation panel.
2. The Ministry will evaluate each Response in accordance with the Evaluation Methodology set out in the ROI.

## Clarification

1. The Ministry may request clarification and additional information from any Supplier about any aspect of a Response. The Ministry is not required to request the same clarification or information from each Supplier.
2. The Supplier must provide the clarification or additional information in writing and within the time notified by the Ministry. The evaluation team may take such clarification or additional information into account in evaluating the Response.
3. If a Supplier fails to respond adequately or within the time stipulated by the Ministry to any request for clarification or additional information, the Ministry may cease evaluating the Supplier’s Response.

## Collection of further information

1. Each Supplier authorises the Ministry to collect further information (except commercially sensitive pricing information) from any relevant third parties (such as a referee or a previous or existing client) organisations or members of the public who may be affected, and to use that information as part of its evaluation of the Supplier’s Response.
2. Each Supplier must ensure that all referees provided in support of its Response agree to provide a reference and are appropriately briefed on the Response.
3. To facilitate discussions between the Ministry and third parties each Supplier waives any confidentiality obligations that would otherwise apply to information held by any third party, with the exception of commercially sensitive pricing information.
4. The Ministry reserves the ability to adjust its evaluation and scoring of a Supplier’s Response following the collection of further information.

## Shortlisted Suppliers

1. Following the evaluation process the evaluation team aims to shortlist those Suppliers who are qualified to deliver on Requirements and rank them in order of their evaluated scores. At this stage in the process the Ministry does not intend to publicise the names of the Shortlisted Suppliers.
2. The Ministry will notify the Shortlisted Suppliers. Such notification does not constitute acceptance by the Ministry of the Response, or imply or create any obligation on the Ministry to enter into negotiations with, or award a contract to, any of the Shortlisted Suppliers.
3. The Shortlisted Suppliers will be invited to respond to the second stage of the procurement process.
4. Where there is only one shortlisted supplier the Ministry reserves the right to enter into contract negotiation with that supplier rather than conducting a Request for Proposal process.

## Supplier debrief

1. Following the awarding of the Contract, the Ministry will offer a debrief to all unsuccessful Suppliers. The debrief may be provided by letter, email, phone or face to face meeting. The debrief will aim to:
2. provide the reasons why a Response was not successful
3. explain how the Response performed against the evaluation criteria
4. indicate the relative advantages/strengths of the successful Response
5. answer any concerns or questions from the Supplier; and
6. Seek feedback from the Supplier on the ROI and the RFP process (if relevant).

# General terms and conditions

## Ministry’s terms

1. The ROI comprises Part 1, this set of Standard Conditions, Part 2 – the Supplier Response and any other Schedules attached by the Ministry. The ROI sets out the Ministry’s terms upon which Suppliers may submit Responses. These terms are non-negotiable.
2. Each Supplier should carefully read the ROI to ensure that its Response complies with the Ministry’s terms. By submitting a Response the Supplier accepts that it is bound, without reservation or variation, by the terms set out in the ROI.
3. The Ministry is not required to accept any Response for evaluation that does not comply with these terms.

## Suppliers’ obligations

1. Each Supplier will be considered to have:
2. examined the ROI and any documents referenced in the ROI and any other information provided by the Ministry, including any changes to this ROI.
3. considered all the risks, contingencies and other circumstances relating to the delivery of the goods or services and included adequate provision in its Response to manage such risks and contingencies
4. documented in its Response any assumptions made in the preparation of the Response; and
5. Satisfied itself as to the correctness and sufficiency of its Response.

## Reliance on the response

1. Each Supplier must ensure that all information provided to the Ministry is complete and accurate. The Ministry may rely upon all information provided by a Supplier in its Response and in any correspondence or subsequent negotiations with the Ministry, or the Ministry’s representatives.

## Indicative timeline

1. The Indicative Timeline for the ROI process is stated in Part 1. Please note that these dates and times may be changed at the sole discretion of the Ministry. The Ministry will notify Suppliers of any material changes to these dates or times. This may be by notice posted on GETS.

## Ministry’s Contact Person

1. All enquiries regarding the ROI must be directed to the Ministry’s Contact Person, whose details are provided in Part 1. The Ministry requests that email be used for all communications in relation to the ROI.
2. Only the Contact Person, and any person authorised by the Contact Person, are authorised to communicate with Suppliers regarding any aspect of the ROI.
3. The Ministry will not be bound by any written or oral statement made by any person, other than the Contact Person.
4. The Ministry may change the Contact Person at any time. The Ministry will notify Suppliers of any such change. This notification may be posted on GETS.
5. Where a Supplier has an existing contract with the Ministry then business as usual communication, for the purpose of that contract, will continue using the usual contacts. Suppliers must not use business as usual contacts to lobby the Ministry, solicit information or discuss aspects of the ROI.

## Conflict of interest

1. Each Supplier must include a Conflict of Interest Declaration with its Response. Each Supplier must immediately inform the Ministry should a Conflict of Interest arise during the ROI process. In evaluating a Response the Ministry may take into account, in its evaluation, any complexity or risk involved in managing any Conflict of Interest of a Supplier.

## Ethics

1. Suppliers must direct all enquiries to the Ministry’s Contact Person. Suppliers must not directly or indirectly approach, contact, lobby or solicit information concerning any aspect of the ROI from any other representative of the Ministry.
2. Suppliers must not attempt to influence or provide any form of personal inducement, reward or benefit to any representative of the Ministry.
3. A representative of the Ministry includes any employee, consultant, contractor or advisor engaged by the Ministry.
4. Any Supplier, who attempts to do anything prohibited by the above clauses 48 and 49 may be disqualified from the ROI.

## Anti-collusion / bid rigging

1. In submitting its Response each Supplier warrants that its Response has not been prepared with consultation, communication, arrangement or understanding with any Competitor (unless for joint venture, consortium or sub-contracting purposes).
2. There is no expectation or obligation for Suppliers to submit Responses to the ROI solely to remain on any prequalified or preferred supplier list. Any Supplier on such a list will not be penalised for failure to submit a Response.
3. Suppliers must indicate if they intend any person or organisation (who is not an employee, a party to a disclosed joint Response or a disclosed sub-contractor) to deliver any part of the deliverables.
4. The Ministry reserves the right, at its discretion, to report suspected collusive or anti-competitive conduct by Suppliers to the appropriate authority and to provide that authority with any relevant information including a Supplier’s Response.

## Confidentiality

1. Subject to clause 57 the Ministry, and each Supplier, will keep confidential all Confidential Information provided by the other. No Confidential Information will be provided to a third party without the other’s prior written consent.
2. Where a Supplier’s Response contains information, such as Intellectual Property, that it considers should be held confidential, the Supplier must clearly identify the information and mark it confidential and commercially sensitive. The Supplier may be asked by the Ministry to indicate the reason why such information should be held as confidential.
3. Suppliers acknowledge that the Ministry’s obligations under the above clause are subject to the requirements imposed by the Official Information Act 1982, the Privacy Act 1993, parliamentary convention and any other obligations imposed by the law. The Ministry’s obligation to keep the Supplier’s information confidential will not be breached if the information is disclosed by the Ministry to the appropriate authority because of suspected collusive or anti-competitive tendering behaviour, or any obligation imposed by law.

## Response costs

1. Each Supplier must meet all of its own costs associated with the preparation and presentation of its Response.

## Ownership of documents

1. All documents forming the Response will, when delivered to the Ministry, become the property of the Ministry. Responses will not be returned to Suppliers at the end of the process.
2. Ownership of Intellectual Property rights does not pass on a Response being delivered to the Ministry. However, the Supplier grants to the Ministry a license to retain, use, disclose and copy information contained in the Response for any purpose related to the ROI process or under clause 59.

## No binding legal relations

1. Responses are submitted on the basis that no contract or binding legal relations with the Ministry are created unless, and until, a written contract between the Ministry and the Successful Supplier is signed by both parties.

## Form of contract

1. Each Supplier agrees that any legally binding contract entered into between the successful Supplier and the Ministry will be essentially in the form set out in Proposed Conditions of Contract in any subsequent RFP, except as agreed in writing between the Ministry and the Supplier.

## Status of ROI

1. The Ministry aims to demonstrate fair dealing and due process, and to act lawfully, fairly and reasonably in its interactions with Suppliers.
2. Neither the ROI nor the ROI process shall create any legal relationship or rights between the Ministry and a Supplier other than the contractual obligations set out in this ROI. This ROI process does not give rise to a process contract however obligations expressed in this ROI other than those which relate to process are intended to be binding.

## Ministry’s rights

1. In addition to any other term described in the ROI the Ministry may at any time:
2. amend, suspend, re-issue or cancel the ROI, or any part of the ROI on notice to the Suppliers
3. change any date in the Indicative Timeline contained in Part 1 on the proviso that any material change is notified to Suppliers
4. delete, change or add to the Requirements contained in Part 1 on the proviso that any material change is notified to Suppliers
5. reject or accept any non-compliant Response on notice to the Supplier
6. reject or accept any alternative Response on notice to the Suppliers
7. waive any irregularities or information in the ROI process
8. amend the processes outlined in the ROI for subsequent steps in the procurement process, including not issuing an RFP.
9. not shortlist, invite to submit a proposal for an RFP, or enter into a contract with any Supplier
10. select for shortlisting, invite to submit a proposal for an RFP, or enter into a contract with, any Supplier regardless of that Supplier’s ranking as a result of the evaluation methodology
11. exclude any Supplier from the ROI process where the Supplier has breached a term or condition of the ROI on notice to the Supplier
12. liaise or negotiate with any Supplier without disclosing this to, or doing the same with, any other Supplier
13. provide or withhold from any Supplier information in relation to any question arising in relation to the ROI. Information will only be withheld if it is deemed unnecessary, is commercially sensitive to a Supplier, or is inappropriate to supply at the time of the request
14. deal separately with any divisible element/s of the Requirements or any Response, unless the Response specifically states that those elements must be taken collectively; and
15. Split the provision of the Requirements and enter into separate contracts with separate suppliers.

## Public statements

1. Suppliers must not issue any public statement in relation to the ROI, or any subsequent contract awarded, without the prior written approval of the Ministry.

## New Zealand law

1. The laws of New Zealand shall govern the ROI and each Supplier agrees to submit to the exclusive jurisdiction of the New Zealand courts in respect of any dispute concerning the ROI or the ROI process.

## Disclaimer

1. While all reasonable care has been taken in compiling the ROI, the information and details are presented in good faith. No warranty (expressed or implied) is given by the Ministry as to the completeness or accuracy of the documents or information.
2. The Ministry and its agents or advisors will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by any Supplier or any other person in respect of the ROI process.