

Commonwealth Deed of Standing Offer Terms

D.E.1 Background and Scope

- 1.1 Some terms used in these Commonwealth DoSO Terms have been given a special meaning. Their meanings are set out in the Commonwealth Contracting Suite (CCS) Glossary and Interpretation, these Commonwealth DoSO Terms or the DoSO.
- 1.2 The Lead Customer is establishing a Standing Offer Arrangement to enable efficient procurement of the Required Capabilities specified in the DoSO.
- 1.3 Customers able to access the Standing Offer Arrangement are:
 - a) the Lead Customer and,
 - b) any Potential Customer, specified in the DoSO.
- 1.4 The Supplier may not be the only supplier under the Standing Offer Arrangement. The Supplier acknowledges:
 - a) there is no guarantee of work under the DoSO, and
 - b) that Customers may obtain Goods and/or Services covered by the DoSO from any other supplier, including a supplier not part of the Standing Offer Arrangement.
- 1.5 The Lead Customer may add new suppliers to the Standing Offer Arrangement during the term of the Standing Offer Arrangement by issuing an additional ATM, provided that the additional ATM uses the same scope as the original ATM. Where the Lead Customer issues an additional ATM to add new suppliers to the Standing Offer Arrangement, existing Suppliers may only respond to that ATM in relation to those Required Capabilities not already included in their DoSO.
- 1.6 Before the DoSO End Date, the Lead Customer reserves the right to extend the duration of the Standing Offer Arrangement in accordance with the DoSO.

D.E.2 Standing Offer to provide Goods and/or Services

- 2.1 The Supplier offers to provide the Goods and/or Services, consistent with the DoSO Required Capabilities, in accordance with the DoSO. The Supplier's offer will remain open for acceptance for the term of the DoSO.

D.E.3 Relationship of the Parties

- 3.1 By virtue of the DoSO, neither Party is the employee, agent, officer or partner of the other Party nor authorised to bind or represent the other Party.
- 3.2 Each Party must ensure that its officers, employees, agents or Subcontractors do not represent themselves as being an officer, employee, partner or agent of the other Party.
- 3.3 In all dealings related to this Standing Offer Arrangement, the Parties agree to:
 - a) communicate openly with each other and cooperate to achieve contractual objectives
 - b) act honestly and ethically
 - c) comply with reasonable commercial standards of fair conduct

- d) consult, cooperate and coordinate activities to identify and address any overlapping work health and safety responsibilities aimed at ensuring the health and safety of workers and workplaces, and
- e) comply with all reasonable directions and procedures relating to work health and safety, record keeping and security in operation at each other's premises or facilities whether specifically informed or as might reasonably be inferred from the circumstances.

D.E.4 Conflicts of Interest

- 4.1 The Supplier warrants that, other than as previously declared in writing to the Lead Customer at the commencement of the DoSO, no Conflicts of Interest exist, relevant to the performance by the Supplier of its obligations under the DoSO.
- 4.2 At any time during the term of the Standing Offer Arrangement, the Lead Customer may require the Supplier to execute a Conflicts of Interest declaration in the form specified by the Lead Customer.
- 4.3 As soon as the Supplier becomes aware that a Conflict of Interest has arisen, or is likely to arise during the term of the Standing Offer Arrangement, the Supplier will:
 - a) immediately report it to the Lead Customer
 - b) provide the Lead Customer with a written report setting out all relevant information within three (3) Business Days, and
 - c) comply with any reasonable requirements notified by the Lead Customer relating to the Conflict of Interest.
- 4.4 If the Supplier fails to notify the Lead Customer as set out in this clause or does not comply with the Lead Customer's reasonable requirements to resolve or manage Conflicts of Interest, the Lead Customer may suspend or terminate the DoSO in accordance with D.E.15 [Termination or Suspension for Cause].

D.E.5 Precedence of Documents

- 5.1 This Standing Offer Arrangement is comprised of:
 - a) this Deed of Standing Offer, which includes:
 - i. the Additional DoSO Terms
 - ii. the DoSO Standing Offer Details
 - iii. the DoSO Required Capabilities
 - iv. these Commonwealth DoSO Terms
 - v. the CCS Glossary and Interpretation
 - vi. additional DoSO annexes (if any), and
 - b) any Contract under the DoSO.
- 5.2 If there is ambiguity or inconsistency between any of the documents comprising the DoSO, the document higher in the list will have precedence to the extent of the ambiguity or inconsistency.
- 5.3 If there is ambiguity or inconsistency between any of the documents comprising the DoSO and a Contract under the DoSO, the Contract will have precedence to the extent of the ambiguity or inconsistency.

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5.4 The DoSO may be signed and dated by the Parties on separate, but identical, copies. All signed copies constitute one (1) DoSO.

D.E.6 Governing Law

6.1 The laws of the Australian Capital Territory apply to the DoSO.

D.E.7 Entire agreement

7.1 The DoSO represents the Lead Customer and Supplier's entire agreement in relation to the subject matter, at the time the DoSO was executed.

7.2 Anything that occurred before the making of the DoSO shall be disregarded (unless incorporated into the DoSO in writing). However, the Supplier represents that the claims made in its Response to the DoSO ATM remain correct including the anticipated economic benefit to the Australian economy (if any).

7.3 Any agreement or understanding to vary or extend the DoSO or a Contract under the DoSO will not be legally binding unless in writing and agreed by the relevant Parties.

7.4 If a Party does not exercise (or delays in exercising) any of its contractual rights, that failure or delay will not prejudice those rights.

D.E.8 Survival

8.1 All Additional DoSO Terms (if any), plus clauses D.E.17 [Liability of the Supplier] and D.E.18 [Compliance with Laws and Policy] survive termination or expiry of the DoSO.

8.2 Unless otherwise notified by the relevant Customer, a Contract under the DoSO survives termination or expiry of the DoSO.

8.3 All Commonwealth DoSO Terms survive termination or expiry of the DoSO during the performance of any Contract under the DoSO.

D.E.9 Notices

9.1 A Notice under the DoSO is only effective if it is in writing, and:

- a) if given by the Supplier to the Lead Customer - addressed to the DoSO Manager at the address specified in the DoSO or as otherwise notified by the Lead Customer, or
- b) if given by the Lead Customer to the Supplier - given by the DoSO Manager (or any superior officer to the DoSO Manager) and addressed to the Supplier at the address specified in the DoSO or as otherwise notified by the Supplier.

9.2 A Notice is deemed to be delivered:

- a) by hand - on delivery to the relevant address
- b) if sent by registered post - on delivery to the relevant address, or
- c) if transmitted by email or other electronic means - when it becomes capable of being retrieved by the addressee at the relevant email or other electronic address.

9.3 A Notice received after 5:00 pm, or on a day that is not a working day in the place of receipt, is deemed

to be delivered on the next working day in that place.

D.E.10 Assignment

10.1 The Supplier may not assign any rights under the DoSO without the Lead Customer's written consent.

D.E.11 Contracts under the DoSO

11.1 Before issuing a Contract under the DoSO, a Customer may issue a Request for Quote (RFQ) to one or more Supplier(s) to provide some or all of the Goods and/or Services specified in the DoSO Required Capabilities.

11.2 Issuing an RFQ does not commit a Customer to obtaining any Goods and/or Services. Each RFQ will specify the Requirement of the Customer.

11.3 When a Customer issues an RFQ under the DoSO for the provision of Goods and/or Services, the Supplier will fully inform itself on all aspects of the Customer's Requirement and only respond to that RFQ if it is able to meet the Requirement to the specified standard.

11.4 A Contract under the DoSO between a Customer and the Supplier for the provision of Goods and/or Services is formed only when both the Supplier and the Customer execute a Contract under the DoSO for those Goods and/or Services under these Commonwealth DoSO Terms. No Contract under the DoSO is binding until executed. Suppliers must not start work until the Contract under the DoSO has been executed.

D.E.12 Performance

12.1 The Supplier agrees to promptly notify the Lead Customer of any material change in its circumstances that may affect its ability to promptly meet the Required Capabilities or perform its obligations under the DoSO, including its capacity to accept any future Contract under the DoSO.

12.2 The Supplier acknowledges that information about any change in the Supplier's circumstances, the Supplier's performance, licences, and other relevant information about the Supplier under the DoSO and any Contract under the DoSO may be shared between the Lead Customer and Potential Customers.

D.E.13 Fees and Charges

13.1 The Contract Price to be paid to the Supplier for any Goods and/or Services will be specified in the relevant Contract under the DoSO and must not exceed pricing rates specified in the Pricing Schedule.

13.2 The mechanism for adjustments to pricing during the term of the DoSO, if any, will be set out in the Pricing Schedule.

D.E.14 Termination or Reduction in Scope of DoSO for Convenience

14.1 In addition to any other rights either the Lead Customer or the Supplier has under the DoSO, at any time either Party, acting in good faith, may

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terminate or reduce the scope of the DoSO by providing a Notice to the other Party.

- 14.2 No amount is payable by the Lead Customer or any Customer to the Supplier as a result of the termination or reduction in scope of the DoSO.
- 14.3 All Contracts under the DoSO between any Customer and the Supplier survive termination or reduction in scope of the DoSO that occurs under this clause 14.

D.E.15 Termination or Suspension for Cause

- 15.1 The Lead Customer may issue a Notice to immediately suspend, terminate or reduce the scope of the DoSO if:
- a) the Supplier breaches the DoSO and the breach is not capable of remedy
 - b) the Supplier does not remediate a breach of the DoSO which is capable of remediation as specified by the Lead Customer in a Notice issued to the Supplier
 - c) the Supplier seriously breaches a Contract under the DoSO which results in termination of that Contract under the DoSO
 - d) the Supplier repeatedly does not remediate a breach of a Contract under the DoSO which is capable of remediation as specified by the Customer in a Notice issued to the Supplier, or
 - e) subject to the Lead Customer complying with any requirements in the *Corporations Act 2001* (Cth), the Supplier:
 - i. is unable to pay all its debts when they become due
 - ii. if incorporated – has a liquidator, receiver, administrator or other controller appointed or an equivalent appointment is made under legislation other than the *Corporations Act 2001* (Cth), or
 - iii. if an individual – becomes bankrupt or enters into an arrangement under Part IX or Part X of the *Bankruptcy Act 1966* (Cth).
- 15.2 Where the Lead Customer terminates the DoSO in whole or in part or suspends the Supplier from the DoSO under this clause, a Customer may issue a Notice terminating any Contract issued by that Customer under the DoSO.
- 15.3 Unless such a Notice is issued by a Customer, all Contracts under the DoSO survive termination of the DoSO or suspension of the Supplier by the Lead Customer under this clause 15.
- 15.4 If the Supplier is suspended from the Standing Offer Arrangement, the Supplier must not enter into any new Contracts under the DoSO with any Potential Customer until the suspension is lifted.
- 15.5 The Lead Customer may by Notice lift the suspension of the Supplier where the Supplier has remediated the relevant breach or otherwise complied with any reasonable direction of the Lead Customer.

D.E.16 Dispute Resolution

- 16.1 For any disputes arising under the DoSO, the Supplier and the Lead Customer agree to comply with a) to e) of this clause sequentially:
- a) both DoSO Managers will try to settle the dispute by direct negotiation
 - b) if unresolved within five (5) Business Days, the DoSO Manager claiming that there is a dispute will give the other DoSO Manager a Notice setting out details of the dispute and proposing a solution. The date the dispute Notice is issued will be the date of the Notice ("Notice Date")
 - c) if the proposed solution is not accepted by the other DoSO Manager within five (5) Business Days of the Notice Date, each DoSO Manager will nominate a more senior representative, who has not had prior direct involvement in the dispute. These representatives will try to settle the dispute by direct negotiation
 - d) failing settlement within twenty (20) Business Days of the Notice Date, the Lead Customer, will, without delay, refer the dispute to an appropriately qualified mediator selected by the Lead Customer or, at the Lead Customer's discretion, to the chairperson of an accredited mediation organisation to appoint a mediator, for mediation to commence within thirty (30) Business Days of the Notice Date or such other period as agreed by the Parties, and
 - e) if the dispute is not resolved within sixty (60) Business Days of the Notice Date, either the Supplier or the Lead Customer may commence legal proceedings or, by agreement, continue the mediation process for a period agreed by the Parties.
- 16.2 Representatives for the Supplier and the Lead Customer must attend the mediation. The nominated representatives must have the authority to bind the relevant Party and act in good faith to genuinely attempt to resolve the dispute.
- 16.3 Each Party will bear their own costs for dispute resolution. The Lead Customer will bear the costs of a mediator.
- 16.4 Despite the existence of a dispute, the Supplier will continue to perform its obligations under the DoSO and any Contract unless requested in writing by the Lead Customer not to do so.
- 16.5 This dispute resolution process does not apply to any termination action under clause D.E.15 [Termination or Suspension for Cause] or any legal proceedings for urgent interlocutory relief.
- ### D.E.17 Liability of the Supplier
- 17.1 The Supplier will indemnify the Lead Customer for any and all damage, claim, cost or loss resulting from any negligent or wilful breach of its obligations or representations under the DoSO by the Supplier or its officers, employees, agents or Subcontractors.
- 17.2 The Supplier's obligation to indemnify the Lead Customer will reduce proportionally to the extent

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that the Lead Customer has contributed to the damage, cost or loss.

17.3 Where a Supplier is a member of a scheme operating under Schedule 4 of the *Civil Law (Wrongs) Act 2002* (ACT), or any corresponding Commonwealth, State, or Territory legislation that limits civil liability arising from the performance of their professional services and where that scheme applies to the Goods and/or Services offered under the Standing Offer Arrangement, the Supplier's liability under this clause will not exceed the maximum amount specified by that scheme or legislation.

17.4 Where a Supplier has included insurance policy details in its Response to the DoSO Approach to Market, the Supplier will maintain those insurances for the DoSO and provide the Lead Customer with proof when requested.

D.E.18 Compliance with Law and Policy

18.1 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with all laws applicable to the performance of the DoSO and warrants that it will not cause the Lead Customer to breach any laws.

18.2 The Supplier must comply with, and ensure its officers, employees, agents and Subcontractors comply with any Commonwealth policies relevant to its performance of the DoSO.

18.3 The Supplier agrees to provide such reports and other information regarding compliance with applicable law and Commonwealth policy as reasonably requested by the Lead Customer or as otherwise required by relevant law or policy.

18.4 If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses 20.A to 20.L below, or any other applicable law or Commonwealth policy, it must:

- a) immediately report it to the Lead Customer and provide a written report on the matter to both the Lead Customer and the relevant Customer within three (3) Business Days unless otherwise set out in these Terms, and
- b) comply with any reasonable directions by the Lead Customer in relation to any investigation or further reporting of the actual or suspected breach.

18.A Access to Supplier's Premises and Records

A.1 The Supplier must maintain and ensure its Subcontractors maintain proper business and accounting records in relation to its performance of the DoSO.

A.2 The Supplier agrees to provide to the Lead Customer, or its nominee, access to the Supplier's or its Subcontractor's premises, personnel, computer systems, documents and other records, and all assistance reasonably requested, for any purpose associated with the DoSO or any review of the Supplier's or the Lead Customer's performance under the DoSO, including in connection with a

request made under the *Freedom of Information Act 1982* (Cth) or an audit or review by the Australian National Audit Office.

A.3 Unless the access is required for an urgent purpose, the Lead Customer will provide reasonable prior notice to the Supplier.

A.4 If requested by the Supplier, the Lead Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Lead Customer's request, unless access is required for the purpose of a criminal investigation into the Supplier, its officers, employees, agents or Subcontractors.

A.5 The Supplier must not transfer, or permit the transfer of, custody or ownership, or allow the destruction, of any Commonwealth record (as defined in the *Archives Act 1983* (Cth)) without the prior written consent of the Lead Customer. All Commonwealth records, including any held by Subcontractors, must be returned to the Lead Customer at the conclusion of the DoSO.

18.B Privacy Act 1988 (Cth) Requirements

B.1 In providing any Goods and/or Services, the Supplier agrees to comply, and to ensure that its officers, employees, agents and Subcontractors comply with the *Privacy Act 1988* (Cth) and not to do anything, which if done by the Lead Customer would breach an Australian Privacy Principle as defined in that Act.

18.C Notifiable Data Breaches

C.1 If the Supplier suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier as a result of the DoSO or a Contract under the DoSO, the Supplier must:

- a) immediately report it to the Lead Customer and provide a written report within three (3) Business Days, and
- b) carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).

C.2 Where the Supplier is aware that there has been an Eligible Data Breach in relation to the DoSO or a Contract under the DoSO, the Supplier must:

- a) take all reasonable action to mitigate the risk of the Eligible Data Breach causing serious harm to any individual to whom the Personal Information relates
- b) take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth), and
- c) take any other action as reasonably directed by the Lead Customer and relevant Customer.

18.D Personal Information

D.1 The Supplier agrees to provide the Lead Customer and relevant Customer, or its nominee, relevant information (including personal information) relating to the Supplier, its officers, employees, agents or Subcontractors, for the purposes of preventing, detecting, investigating or dealing with

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a fraud or security incident relating to a Contract under the DoSO.

D.2 When providing personal information of a natural person under this clause, the Supplier warrants it will have obtained the consent of or provided reasonable notification to the person in accordance with the *Privacy Act 1988* (Cth).

D.3 Nothing in these clauses limits or derogates from the Supplier's obligations under the *Privacy Act 1988* (Cth).

18.E Confidential Information

E.1 The Supplier agrees not to disclose to any person, other than the Lead Customer, any Confidential Information relating to the DoSO, without prior written approval from the Lead Customer.

E.2 This obligation will not be breached where:

- a) the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation), or
- b) the Supplier is required by law, an order of the court or a stock exchange to disclose the relevant information, but any such request must be reported by Notice to the Lead Customer without delay and the text of the disclosure provided in writing to the Lead Customer as soon as practicable.

E.3 The Lead Customer may at any time require the Supplier to arrange for officers, employees, agents and Subcontractors to give a written undertaking relating to nondisclosure of the Lead Customer's Confidential Information in a form acceptable to the Lead Customer.

E.4 The Lead Customer will keep any information in connection with the DoSO confidential to the extent it has agreed in writing to keep such specified information confidential.

E.5 The Lead Customer will not be in breach of any confidentiality agreement if the Lead Customer discloses the information for the purposes of managing the Standing Offer Arrangement or if it is required to disclose the information by law, a Minister, or a House or Committee of Parliament, or for accountability or reporting purposes.

18.F Security and Safety

F.1 When accessing any Commonwealth place, area or facility, the Supplier must comply with any security and safety requirements notified to the Supplier by the Lead Customer or of which the Supplier is, or should reasonably be aware. The Supplier must ensure that its officers, employees, agents and Subcontractors are aware of, and comply with, such security and safety requirements.

F.2 If directed by the Lead Customer, the Supplier and its officers, employees, agents and Subcontractors are required to undertake a security briefing prior to being able to work inside a Commonwealth office, area or facility.

F.3 The Supplier must ensure that all information, material and property provided by a Lead Customer

is protected at all times from unauthorised access, use by an unauthorised third party, misuse, damage and destruction and is returned as directed by the Lead Customer.

F.4 The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation (including the *Criminal Code Act 1995* (Cth)) contains provisions relating to the protection of certain information and sets out the penalties for the unauthorised disclosure of that information.

18.G Criminal Code

G.1 The Supplier acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the *Criminal Code Act 1995* (Cth).

G.2 The Supplier must ensure that its officers, employees, agents and Subcontractors engaged in connection with this DoSO are aware of the information contained in this clause.

18.H Fraud

H.1 The Supplier must take all reasonable steps to prevent and detect Fraud in relation to the performance of the DoSO. The Supplier acknowledges the occurrence of Fraud in relation to the DoSO or any Contract under the DoSO will constitute a breach of the DoSO.

H.2 If an investigation finds that the Supplier or its officers, employees, agents or Subcontractors have committed Fraud, or the Supplier has failed to take reasonable steps to prevent Fraud, the Supplier must reimburse or compensate the Lead Customer in full.

18.I Taxation

I.1 If the Supplier fails to comply with all applicable laws relating to taxation, the Lead Customer may terminate the DoSO and a Customer may terminate a Contract under the DoSO in accordance with D.E.15 [Termination or Suspension for Cause].

18.J Public Interest Disclosure

J.1 The Supplier must familiarise itself with the *Public Interest Disclosure Act 2013* (Cth) and acknowledges that public officials, including service providers and their Subcontractors under a Commonwealth contract, who suspect wrongdoing within the Commonwealth public sector may raise their concerns under the *Public Interest Disclosure Act 2013* (Cth).

J.2 Information for disclosers is available at <https://www.ombudsman.gov.au/Our-responsibilities/making-a-disclosure>.

18.K Workplace Gender Equality

K.1 Where the Supplier is a relevant employer under the *Workplace Gender Equality Act 2012* (Cth) (WGE Act) the Supplier must provide evidence that it complies with its obligations under the WGE Act before commencement of the DoSO and, if the term

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is more than 18 months, within 18 months of commencement, and annually thereafter for the duration of the Standing Offer Arrangement and any Contract under the DoSO.

- K.2 If the Supplier becomes non-compliant with the WGE Act during the term of the DoSO, the Supplier must notify the Lead Customer's DoSO Manager and each Customer's Contract Manager, in writing within ten (10) Business Days.

18.L Shadow Economy Policy

- L.1 The Supplier warrants that at the commencement of the Deed of Standing Offer it has a Valid and Satisfactory Statement of Tax Record.
- L.2 The Supplier must hold a Valid and Satisfactory Statement of Tax Record at all times during the term of the Standing Offer Arrangement (including any extension).
- L.3 The Supplier must ensure that any Subcontractor engaged under a Contract to deliver Goods and/or Services with an estimated value of over A\$4 million (GST inclusive) holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant subcontract.
- L.4 The Supplier must provide to the Lead Customer and, other Customers if required, a copy of any Statement of Tax Record that it holds in accordance with clause L.2 and L.3.



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