

Commonwealth Deed of Standing Offer Terms (Commonwealth DoSO 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 DoSO Glossary, these Commonwealth DoSO Terms, the DoSO or the Commonwealth Contracting Suite Glossary.
- 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) 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 term of the Standing Offer Arrangement.

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; and
 - b) act honestly and ethically; and

- c) comply with reasonable commercial standards of fair conduct; and
- 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, relative 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 and
 - 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 comprises:
 - a) This Deed of Standing Offer, which includes:
 - i. the Additional DoSO Terms;
 - ii. the DoSO Required Capabilities;
 - iii. Additional DoSO Annexes (if any);
 - iv. these Commonwealth DoSO Terms;
 - v. the Commonwealth DoSO Glossary; and
 - vi. the Economic Benefit to the Australian Economy (if any).
 - 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.

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- 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.
- 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 entered.
- 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.
- 7.3 The parties agree that no agreement or understanding varying or extending the DoSO or a Contract under the DoSO will 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]*
D.E.18 *[Notifiable Data Breaches]*
D.E.19 *[Personal Information]*
D.E.20 *[Compliance with Commonwealth Laws and Policies]*,
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 Contact Officer 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 Contact Officer (or any superior officer to the Contact Officer) and addressed to the Supplier at the address specified in in the DoSO or as otherwise notified by the Supplier.

- 9.2 A Notice is deemed to be delivered:
- a) by hand - upon delivery to the relevant address;
- b) if sent by registered post - upon 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 or obligations under the DoSO.

D.E.11 Contracts under the DoSO 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 a RFQ does not commit a Customer to obtaining any Goods and/or Services. Each RFQ will specify the requirements of the Customer.
- 11.3 Where a RFQ is issued through AusTender, Potential Suppliers must use AusTender to indicate their intent to respond or not respond.
- 11.4 When a Customer issues a RFQ or Contract under the DoSO for the provision of Goods and/or Services, the Supplier will fully inform itself on all aspects of the Customer's requirements and only respond or accept that Contract if it is able to meet the Contract to the specified standard.
- 11.5 The 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 requirements of or perform its obligations under the DoSO, including its capacity to accept any future Contract under the DoSO.

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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 DoSO.

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 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; or
- 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; or
- c) the Supplier seriously breaches a Contract under the DoSO which results in termination of that Contract under the DoSO; or
- 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 d) of this clause sequentially:

- a) both parties will try to settle the dispute by direct negotiation;
- b) if unresolved, the party claiming that there is a dispute will give the other party a Notice setting out details of the dispute and proposing a solution;
- c) if the proposed solution is not accepted by the other party within five (5) Business Days, each party 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 a further ten (10) Business Days, 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 fifteen (15) Business Days of the request. Representatives for the Supplier and the Lead Customer must attend the mediation.

16.2 Each party will bear their own costs for dispute resolution. The Lead Customer will bear the costs of a mediator. 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 If the dispute is not resolved within thirty (30) Business Days after mediation commences, either party may commence legal proceedings.

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- 16.4 Despite the existence of a dispute, the Supplier will continue to perform its obligations 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 be responsible for any and all damages, claims, costs or losses 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 Any such claim will reduce proportionally to the extent 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 corresponding Commonwealth, State, or Territory legislation that limits civil liability arising from the performance of their professional services, 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 DoSO Approach to Market, the Supplier must maintain those insurances for the DoSO and provide the Lead Customer with proof when requested.

D.E.18 Notifiable Data Breaches

- 18.1 If the Supplier suspects that there may have been an Eligible Data Breach in relation to any Personal Information held by the Supplier under the DoSO, the Supplier agrees to:
- immediately report it to the Lead Customer and provide a written report within three (3) Business Days; and
 - carry out an assessment in accordance with the requirements of the *Privacy Act 1988* (Cth).
- 18.2 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:
- 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;
 - take all other action necessary to comply with the requirements of the *Privacy Act 1988* (Cth); and
 - take any other action as reasonably directed by the Lead Customer and relevant Customer.

D.E.19 Personal Information

- 19.1 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 and/or Subcontractors,

for the purposes of preventing, detecting, investigating or dealing with a fraud or security incident relating to a Contract under the DoSO.

- 19.2 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).
- 19.3 Nothing in these clauses limits or derogates from the Supplier's obligations under the *Privacy Act 1988* (Cth).

D.E.20 Comply with Commonwealth Laws and Policies

- 20.1 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.
- 20.2 If the Supplier becomes aware of any actual or suspected breach of the requirements set out in clauses A to I below, it must:
- immediately report it to the Lead Customer and provide a written report on the matter to both within three (3) Business Days; and
 - comply with any reasonable directions by the Lead Customer in relation to any investigation or further reporting of the actual or suspected breach.

A. Access to Supplier's Premises and Records

- 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, documents and other records, and all assistance reasonably requested, for any purpose associated with the DoSO.
- A.3 Reasons for such access may include, but are not limited to, a request made under the *Freedom of Information Act 1982* (Cth) or for an audit or review of the Supplier's and/or the Lead Customer's performance under the DoSO by the Australian National Audit Office.
- A.4 Unless access is required for the purpose of a criminal investigation into the Supplier, its officers, employees, agents and/or Subcontractors, the Lead Customer will reimburse the Supplier's substantiated reasonable cost for complying with the Lead Customer's request.

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.

C. Confidential Information

- C.1 Other than information available in the public domain, the Supplier agrees not to disclose to any person,

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other than the Lead Customer, any confidential information relating to the DoSO, without prior written approval from the Lead Customer.

C.2 This obligation will not be breached where the Supplier is required by law, an order of the court or a stock exchange to disclose the relevant information or where the relevant information is publicly available (other than through breach of a confidentiality or non-disclosure obligation).

C.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.

C.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.

C.5 The Lead Customer will not be in breach of any confidentiality agreement if the Lead Customer is required to disclose the information by law, a Minister or a House or Committee of Parliament.

D. Security and Safety

D.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.

D.2 The Supplier should note that its officers, employees, agents and Subcontractors are generally required to undertake a Security briefing prior to being able to work inside a Commonwealth office, area or facility.

D.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. The Supplier acknowledges that unauthorised disclosure of security-classified information is an offence. Legislation including, but not limited to, the *Crimes Act 1914* (Cth) contains provisions relating to the protection of prescribed official information and sets out the penalties for the unauthorised disclosure of that information.

E. Criminal Code

E.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).

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

F. Fraud

F.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.

F.2 If an investigation finds that the Supplier or its officers, employees, agents and/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.

G. Taxation

G.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*].

H. Public Interest Disclosure

H.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).

H.2 Information for disclosers is available at <http://www.ombudsman.gov.au/about/making-a-disclosure/information-for-disclosers>.

I. Workplace Gender Equality

I.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, if any, under the WGE Act before commencement of the DoSO and annually thereafter for the duration of the Standing Offer Arrangement and any Contract under the DoSO.

I.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 14 days.



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