



Attachment I – Tenderer’s Declaration

Note to Tenderers:

The Tenderer Declaration, in the 360 Public Portal, contains a provision for the Tenderer to provide their Declaration for the benefit of Finance, the Commonwealth and other Entities.

Compliance with Request for Tender

- 1 The Tenderer undertakes to participate in the Request for Tender (RFT) in accordance with the requirements of the RFT and on the basis of its Tender. The Tenderer represents that:
 - a) it has examined the RFT, the Head Agreement, all documents referred to in the RFT, all other information made available to the Tenderer (including any and all addenda) and all applicable legislation and policies, including those set out at paragraph 9 of the RFT;
 - b) it has examined all further information which is obtainable by making reasonable enquiries relevant to the risks, contingencies and other circumstances having an effect on its Tender;
 - c) its Tender is submitted in accordance with the RFT and the Tenderer (if successful) will properly provide the Offered Services in accordance with the Head Agreement;
 - d) the information contained in its Tender is true and correct and the Tenderer has satisfied itself as to the sufficiency of its Tender;
 - e) it complies with all the Conditions for Participation that apply to the RFT as stated in paragraph 8.2 of the RFT;
 - f) its Tender meets all Minimum Content and Format Requirements as set out in paragraph 8.3 of the RFT;
 - g) it has relied entirely on its own enquiries and has not relied on any representation, warranty or other conduct by or on behalf of Finance, except as expressly provided in the RFT or in notices received by the Tenderer;
 - h) it has obtained independent advice, as appropriate; and
 - i) it has not relied on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending the RFT other than amendments made by Finance in accordance with paragraph 5.2 of the RFT.
- 2 The Tenderer acknowledges each of the matters set out in paragraph 8.7 and 8.18.1 of the RFT.
- 3 The Tenderer releases Finance and the Commonwealth from any claim it might otherwise have been able to bring against Finance or the Commonwealth, arising out of or in connection with any of the matters set out in paragraph 8.19.4 of the RFT.

- 4 If the Tenderer is a Successful Tenderer, if any information provided in this Declaration changes, the Tenderer undertakes to advise Finance of that change within five (5) Business Days and in any event prior to execution of a Head Agreement.

Financial Viability

- 5 The Tenderer declares that:
- (a) it is solvent and financially capable of performing the Services on an ongoing basis; and
 - (b) no Insolvency Event has occurred and is subsisting with respect to the Tenderer.

Ethical dealing

- 6 The Tenderer represents that its Tender has not been prepared with:
- (a) the improper assistance of any Commonwealth officer or employee or the use of any information obtained unlawfully or in circumstances that constitute a breach of confidentiality or fidelity on the part of that person or a breach of section 122.4 of the Schedule to the *Criminal Code Act 1995* (Cth) or the *Public Service Act 1999* (Cth); or
 - (b) information otherwise improperly obtained from Finance or any other Commonwealth entity, or from an employee, ex-employee, contractor or ex-contractor of Finance or any other Commonwealth entity.
- 7 The Tenderer through its officers, employees or agents, has not attempted and will not attempt, to improperly influence any officer or employee of Finance or another Commonwealth entity in connection with the assessment of the Tender.
- 8 The Tenderer represents that is has not previously engaged in discrimination of the kind prohibited by section 354 of the *Fair Work Act 2009* nor has it previously entered into or not entered into any subcontracting arrangement as a result of the coercion or duress of another person.
- 9 The Tenderer represents that it has not engaged in misleading or deceptive, collusive, anti-competitive or any other unlawful or unethical conduct (including with any other Tenderer or person) in relation to its Tender or the RFT process or contravened any applicable laws or Commonwealth policies regarding the offering of inducements.
- 10 The Tenderer has notified Finance as part of its Tender of any actual, potential, or perceived conflict of interest in relation to this RFT process or which could affect the performance of its obligations if the Tenderer was to enter into the Head Agreement.

Employee entitlements

- 11 The Tenderer represents that it has not had a judicial decision made against it (not including any decisions under appeal) relating to employee entitlements. Alternatively, the Tenderer represents that it has satisfied any order resulting from a judicial decision made against it relating to employee entitlements and is able to meet its obligations in relation to the timely payment of employee entitlements.
- 12 The Tenderer represents that, in respect of its personnel it has in place appropriate systems and processes to ensure that it is able to pay all wages, salaries, and other payments or entitlements due to its personnel in a timely manner, and comply with all applicable statutory requirements in relation to its personnel including, without limitation, in respect of superannuation, workers compensation, taxation, non-discrimination, privacy, work health and safety, leave and any other award or entitlements.

Anti-collusion requirements

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- 13 The Tenderer warrants that its Tender has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor, other than, and in accordance with law:
- (a) certain joint venture arrangements exist between the Tenderer and a competitor;
 - (b) when the Tenderer and a competitor have an agreement that has been authorised by the Australian Competition and Consumer Commission; and
 - (c) when the Tenderer has communicated with a competitor for the purpose of subcontracting for the provision of a portion of the Services, and provided that the communication with that competitor is limited to the information required to facilitate that particular subcontract.
- 14 The Tenderer warrants that its Tender has not been prepared with any consultation, communication, contract, arrangement or understanding with any competitor regarding:
- (a) prices;
 - (b) methods, factors or formulas used to calculate prices;
 - (c) the intention or decision to submit, or not submit a Tender;
 - (d) the submission of a Tender that is non-conforming;
 - (e) the quality, quantity, specifications or delivery particulars of the products or services to which the RFT relates; or
 - (f) the terms of the Tender.

Confidential Information

- 15 The Tenderer warrants that it and any Tenderer personnel (including any subcontractors) will ensure that any Related Bodies Corporate, including officers, employees, agents and subcontractors of a Related Body Corporate or any third party that the Tenderer proposes will provide services (whether directly or indirectly) to Finance or an Entity:
- (a) comply with paragraph 8.24 of the RFT;
 - (b) keep confidential and not, either directly or indirectly record, or disclose to any person:
 - (i) any confidential information concerning the affairs of Finance, the Commonwealth, an Entity or any third party acquired or obtained during the course of preparing the Tender or the RFT process; and
 - (ii) any documents, data or information provided by Finance to the Tenderer is confidential or which the Tenderer knows, or reasonably ought to know, is confidential.

Shadow Economy Policy

- 16 The Tenderer acknowledges that it has read the guidelines provided at **Attachment F – Guidance on the Shadow Economy Procurement Connected Policy** and:
- (a) has attached all correct Statement of Tax Record(s) (**STRs**) required for its entity type in its submission; and
 - (b) the STRs submitted, or requested from the ATO, is for the ABN of the Tenderer.
- 17 The Tenderer represents that if it is successful and its Satisfactory STRs are or will be no longer Valid at the time the Head Agreement will be entered into with Finance, it will, if requested by Finance, provide Finance with a renewed Valid and Satisfactory Statement of Tax Record prior to the Head Agreement being entered into.

- 18 The Tenderer acknowledges that if it is successful it will be required to hold all Valid and Satisfactory STR required for its entity type for the duration of the Head Agreement entered into with Finance and, on request by Finance, provide to Finance a copy of any such STR.
- 19 The Tenderer acknowledges that if it is successful and it does not comply with the requirements outlined in paragraph 18 that it will be a breach of the Head Agreement.
- 20 The Tenderer acknowledges that if it is successful it will be required to:
- (a) ensure that any first tier subcontractor it engages to deliver goods or services as part of a contract resulting from this procurement with an estimated value of \$4 million or more (GST inclusive) holds all Valid and Satisfactory STR required for its entity type for the duration of any subcontract in relation to those goods or services; and
 - (b) retain a copy of all STRs held by any first tier subcontractor in accordance with paragraph 20(a) and, on request by Finance, provide to the customer a copy of any such STR.

Significant Events

- 21 The Tenderer has notified Finance as part of its Tender, of:
- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body:
 - (i) regarding the conduct or performance of the Tenderer; or
 - (ii) impacting on the professional capacity or capability of its Personnel to deliver the Services; and
 - (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving the Tenderer or its officers, employees, agents or Subcontractors, that may adversely impact on:
 - (i) the Tenderer's compliance with Commonwealth policy and legislation or the Commonwealth's reputation;
 - (ii) Finance's or an Entity's compliance with Australian Government policy or legislation;
 - (iii) the Commonwealth's reputation; or
 - (iv) the professional capacity or capability of the Tenderer or its Personnel to deliver the Services.

Consents

- 22 The Tenderer hereby consents to and authorises Finance and its officers, employees, agents or advisers to:
- (a) undertake such confidential reference, probity, security, criminal history, financial, credit and regulatory investigations and procedures as Finance considers appropriate; and
 - (b) seek any financial information required for the purpose of establishing the financial viability of the Tenderer.
- 23 The Tenderer agrees to provide at the Tenderer's expense reasonable assistance to Finance to assist it in any checking it wishes to undertake or has undertaken under the RFT or in respect of the Tender.

Notification of changes

- 24 The Tenderer will, during the Tender Validity Period set out in paragraph 8.13 of the RFT, promptly notify Finance of any changes to its corporate or ownership structure,

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its ability to deliver the Services as proposed under the Head Agreement, or any other circumstances that alter any of the information or assurances that the Tenderer has provided in its Tender, this Declaration or otherwise. The Tenderer will specifically identify in detail any alterations to its Tender required by such changes.

Reliance by Finance

- 25 The Tenderer acknowledges that Finance will evaluate the Tender in reliance on this Declaration. The Tenderer acknowledges that Finance and other Entities may suffer loss if any of the representations, undertakings, consents or other statements in this Declaration or the Tenderer's Tender are false, incomplete, misleading or deceptive.

Enforcement of Declaration

- 26 The Tenderer acknowledges that the obligations in this Declaration are for the benefit of Finance, Commonwealth and other Entities and that a false or misleading Declaration may result in the Tenderer having committed an offence under Division 137 of the *Criminal Code Act 1995* (Cth).