ACCC 2019-03
EXPERT CONSULTANCY PANEL
JUNE 2019

PART C – Deed of Standing Offer
Introduction

This Part C contains the Draft Deed of Standing Offer that will govern the Expert Consultancy Panel to be established through this ATM.

The Lead Customer will prepare and enter into a Deed with each Panelist based on this Part C.

Tenderers are to note that this Deed is part of the Commonwealth Contracting Suite (CCS) and based on the CCS Deed of Standing Offer (DoSO).

As such it is not open for negotiation between the Lead Customer and the Tenderers.

Tenderers do not need to submit this Part C with their response to this ATM.
Deed of Standing Offer
for the provision of Expert Consultancy Panel

Standing Offer ID: XXX
ATM Reference ID: ACCC 2019-03
UNSPSC: 80100000  Management Advisory Services

Parties:

Lead Customer

<table>
<thead>
<tr>
<th>Name</th>
<th>Australian Competition and Consumer Commission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Business Number</td>
<td>94 410 483 623</td>
</tr>
<tr>
<td>Address</td>
<td>Po Box 3131 CANBERRA ACT 2601</td>
</tr>
</tbody>
</table>

Supplier

<table>
<thead>
<tr>
<th>Full Legal Name:</th>
<th>XXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Business Number:</td>
<td>XXX</td>
</tr>
<tr>
<td>Main Business Address:</td>
<td>XXX</td>
</tr>
</tbody>
</table>

Potential Customer(s)

This Standing Offer Arrangement is available for use by all Commonwealth entities and companies, refer to Flipchart available at https://www.finance.gov.au/resource-management/governance/.
D.D.1  Key Events and Dates
This DoSO commences on the Start Date or the date this DoSO is signed by the second party, whichever is the latter, and continues until the End Date unless:

a) it is terminated earlier, in accordance with the Commonwealth DoSO Terms; or
b) the Standing Offer Arrangement is extended by agreement between the Parties.

<table>
<thead>
<tr>
<th>Event</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Start Date:</td>
<td>Proposed 1 October 2019</td>
</tr>
<tr>
<td>End Date:</td>
<td>Proposed 30 September 2022</td>
</tr>
<tr>
<td>DoSO Extension Option</td>
<td>The Lead Customer may issue a Notice seeking agreement to exercise an Extension Option no less than 30 days prior to the End Date. This DoSO may be extended as follows: Two periods each of one year in duration</td>
</tr>
</tbody>
</table>

D.D.2  Required Capabilities
The Supplier is only approved to provide the following capabilities under this DoSO:

- Categories to be determined upon completing of the Deed - reference of services will be in accordance with the Tenderer’s response in Parts E and F.

D.D.2(a) Standards
The Supplier must ensure that any goods and services provided under this DoSO comply with relevant standards. If requested by any Customer, the Supplier must enable that Customer, or an independent assessor nominated by the Customer, to conduct periodic audits to confirm compliance with all applicable standards, including, but not limited to, those specified in this DoSO and its attachments.

D.D.2(b) Security Requirements
Unless otherwise agreed in a Contract under this DoSO, Supplier personnel undertaking work will not require a security clearance.
Specific additional security requirements, if any, will be documented in Contracts under this DoSO.

D.D.2(c) Work Health and Safety
As applicable prior to commencement of any Contract under this DoSO, representatives of the Customer and the Supplier will identify any potential work health and safety (WHS) issues anticipated to arise during the term of the relevant Contract and assign management of each issue identified to the party best able to manage it. The Supplier will provide the Customer with a plan for approval and no work will commence until the plan is approved.
Throughout the term of any Contract under this DoSO, the Customer and the Supplier will proactively identify and cooperate to manage any WHS issues that arise.
Specific WHS requirements may be documented in each Contract under this DoSO.

D.D.2(d) Delivery and Acceptance
For each Contract under this DoSO, the Supplier will be required to meet the general Delivery and Acceptance requirements set out in Clause C.C.11 [Delivery and Acceptance] of the Commonwealth Contract Terms as well as any specific Delivery and Acceptance requirements documented in any Contract under this DoSO.
D.D.2(e) Meetings
To facilitate management of this DoSO, the Lead Customer and the Supplier will make themselves available to attend ad hoc meetings if required.
Any meetings a Supplier is required to attend with a Customer will be documented in any Contract under this DoSO.

D.D.2(f) Facilities and Assistance
Facilities and assistance which a Customer may provide from time to time, if any, will be documented in any Contract under this DoSO.

D.D.2(g) Conflicts of Interest
For the duration of this DoSO, the Supplier is required to declare any actual, perceived or potential Conflicts of Interest relevant to the Supplier’s capabilities. Where a conflict arises, the Supplier may be required to implement a Conflicts of Interest management strategy.

D.D.2(h) Complaints Handling
In the first instance, any complaints relating to this DoSO should be directed to either the Lead Customer’s DoSO Manager or:

<table>
<thead>
<tr>
<th>Name/Position:</th>
<th>Bruce Paul</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email Address:</td>
<td><a href="mailto:bruce.paul@accc.gov.au">bruce.paul@accc.gov.au</a></td>
</tr>
<tr>
<td>Telephone:</td>
<td>(02) 62434991</td>
</tr>
</tbody>
</table>


D.D.2(i) Notices under this DoSO
Any Notices relating to this DoSO should be issued to the DoSO Managers, listed below and as amended from time to time, in accordance with Clause D.E.9 [Notices]. DoSO Managers are responsible for issuing or accepting any written Notices under this DoSO and are the contact points for general liaison.

**Lead Customer’s DoSO Manager**

<table>
<thead>
<tr>
<th>The person occupying the position of:</th>
<th>XXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Currently:</td>
<td>XXX</td>
</tr>
<tr>
<td>Telephone:</td>
<td>XXX</td>
</tr>
<tr>
<td>Mobile:</td>
<td>XXX</td>
</tr>
<tr>
<td>Email Address:</td>
<td>XXX</td>
</tr>
<tr>
<td>Postal Address:</td>
<td>XXX</td>
</tr>
</tbody>
</table>

**Supplier’s DoSO Manager**

<table>
<thead>
<tr>
<th>Name:</th>
<th>XXX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone:</td>
<td>XXX</td>
</tr>
<tr>
<td>Mobile:</td>
<td>XXX</td>
</tr>
<tr>
<td>Email Address:</td>
<td>XXX</td>
</tr>
<tr>
<td>Postal Address:</td>
<td>XXX</td>
</tr>
</tbody>
</table>
D.D.3  Additional DoSO Terms

An executed Contract under this DoSO will incorporate the Commonwealth Contract Terms current at the date of the Request for Quote and also the following Additional DoSO Terms:

D.D.3(a) Intellectual Property

Intellectual Property Rights will be addressed in Service Orders Contracts under this DoSO. Item D.D.3c of this Part C contains three models the ACCC/AER will chose from at the time of issuing a Service Order taking into consideration the particularities of a specific engagement.

Pre-Existing Intellectual Property of the Supplier

XXX (Tenderer to provide in Part E)

D.D.3(b) Confidential Information of the Supplier

The Customer agrees that the following information meets the Commonwealth’s confidentiality guidelines and agrees to treat the information as confidential unless required by law to disclose the information. The Customer retains the right to disclose any other information contained in this DoSO.

<table>
<thead>
<tr>
<th>Information to be kept confidential</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXX (Tenderer to provide in Part E)</td>
</tr>
</tbody>
</table>

D.D.3 (c) additional terms

<table>
<thead>
<tr>
<th>DoSO Term Reference</th>
<th>Description of additional Clause</th>
</tr>
</thead>
<tbody>
<tr>
<td>D.E.1.6</td>
<td>Clause 1.6 of the DoSO Terms and Conditions to be clarified as follows:</td>
</tr>
<tr>
<td></td>
<td>The Lead Customer reserves the right to extend the term of the Standing Offer Arrangement with the Supplier with at least 30 day’s written notice before the initial expiry date of 30 September 2022 for two (2) one (1) year option periods with commencement dates of the DoSO:-</td>
</tr>
<tr>
<td></td>
<td>a. 1 October 2022</td>
</tr>
<tr>
<td></td>
<td>b. 1 October 2023</td>
</tr>
<tr>
<td></td>
<td>Subject to Clause 1.6 a. and b., any extension will be on the same terms and conditions and cover the same Services as set out in the original DoSo.</td>
</tr>
<tr>
<td></td>
<td>Once the extension periods have been exercised and implemented between the parties the new expiry date of the DoSO will be 30 September 2023 and potentially 30 September 2024.</td>
</tr>
<tr>
<td>Additional clause J.1</td>
<td>Intellectual Property includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, trademarks (including service marks), designs and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields, but does not include Moral Rights, the rights of performers or rights in relation to Confidential Information.</td>
</tr>
<tr>
<td></td>
<td>a. Selecting an ownership model for Intellectual Property Rights in Contract Material</td>
</tr>
<tr>
<td></td>
<td>i. The ownership model for Intellectual Property Rights in Contract Material is that contained in either, but only one of, clauses b to d and will be set out in the Service Order.</td>
</tr>
</tbody>
</table>
ii. If no ownership model is selected in the Service Order, clause b applies, and clause c and d in their entirety do not apply to this Contract.

iii. Each party must at its own cost, do all things and execute all documents necessary or convenient to give effect to the ownership model

b. **Ownership model 1**: Contractor ownership of Intellectual Property Rights in Contract Material

   i. The title to and ownership of intellectual property (including copyright) in all contract material and all copies made of such material shall vest upon its creation in the Contractor.

   ii. The contractor grants the ACCC a perpetual, irrevocable, worldwide, royalty free, fully paid up licence to all rights to the Contract Material that normally accompany IP ownership (including a right to sub license).

   iii. On the expiration or earlier termination of the Contract, the Contractor shall deliver to the ACCC all Contract Material and all Commonwealth Material.

   iv. The Contractor shall ensure that all Commonwealth Material is used, copied, supplied or reproduced only for the purposes of the Contract.

c. **Ownership model 2**: The ACCC retains ownership of Intellectual Property Rights in Contract Material

   i. The title to and ownership of intellectual property (including copyright) in all Contract Material and all copies made of such material shall vest upon its creation in the ACCC.

   ii. On the expiration or earlier termination of the Contract, the Contractor shall deliver to the ACCC all Contract Material and all Commonwealth Material.

   iii. The Contractor shall ensure that the Contract Material and all Commonwealth Material is used, copied supplied or reproduced only for the purposes of the Contract.

   iv. The ACCC reserves all publication rights in all Contract Material.

d. **Ownership model 3**: The ACCC retains ownership of Intellectual Property Rights in Contract Material and grants the Contractor a right to use Contract Material.

   i. The title to and ownership of intellectual property (including copyright) in all Contract Material and all copies made of such material shall vest upon its creation in the ACCC.

   ii. The ACCC grants the Contractor a licence to use the Contract Material in the location and for the services and period specified in the Order for Service.

   iii. If specified in the Order for Service the licence granted in clause ii may be
<p>| | |</p>
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>sub-licenced to a third party: or</td>
</tr>
<tr>
<td>2.</td>
<td>transferred to a third party.</td>
</tr>
<tr>
<td>iv.</td>
<td>The Contractor shall ensure that all Commonwealth Material is used, copied, supplied or reproduced only for the purposes of the Contract.</td>
</tr>
<tr>
<td>v.</td>
<td>The ACCC reserves all publication rights in all Contract Material.</td>
</tr>
</tbody>
</table>
Attachments

This Deed of Standing Offer (DoSO) includes:

<table>
<thead>
<tr>
<th>Document Description</th>
<th>Document Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Additional DoSO Terms (if any)</td>
<td>D.D.3 (c)</td>
</tr>
<tr>
<td>DoSO Required Capabilities (including Pricing Schedule)</td>
<td>D.D.2</td>
</tr>
<tr>
<td></td>
<td>Pricing Schedule to be inserted at Annexure A</td>
</tr>
<tr>
<td>CCS DoSO Annexes (if any)</td>
<td>XXX</td>
</tr>
<tr>
<td>Commonwealth DoSO Terms</td>
<td>XXX</td>
</tr>
<tr>
<td>Commonwealth DoSO Glossary</td>
<td>XXX</td>
</tr>
<tr>
<td>Economic Benefit to the Australian Economy (if any)</td>
<td>XXX</td>
</tr>
<tr>
<td>XXX</td>
<td>XXX</td>
</tr>
</tbody>
</table>
Annex

Annex A – Pricing Schedule

XXX

Annex XXX
SIGNING PAGE

SIGNING, SEALED AND DELIVERED

on behalf of the

COMMONWEALTH OF AUSTRALIA AS

REPRESENTED BY THE AUSTRALIAN

COMPETITION & CONSUMER COMMISSION

ABN 94 410 483 623

By [insert name of signatory]

[insert signatory’s position]

IN THE PRESENCE OF

[insert name of witness]

SIGNING, SEALED AND DELIVERED

on behalf of the

CONTRACTOR

By [insert name of signatory]

[insert signatory’s position]

IN THE PRESENCE OF

[insert name of witness]
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.
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].

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 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.
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;

b) 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;

c) 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.
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 willful 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 (Wrong) 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:
   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).

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:
   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.

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:
   a) immediately report it to the Lead Customer and provide a written report on the matter to both within three (3) Business Days; 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.

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,
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).


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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