

Part 1: Standing offer terms

1 EXPLANATION OF DEED

1.1 The following documents make up this Deed and apply to any Order placed under this Deed:

- this Deed of Standing Offer;
- these Standing Offer Terms (which set out the process for requesting quotes and placing Orders); and
- the Glossary.

1.2 Some terms used in this Deed have been given a special meaning. Their meanings are set out in the Glossary.

1.3 'Agency' means the DTO or any Agency that places an Order.

1.4 The Agency may vary the documents forming part of this Deed by no less than 20 business days' prior notice to You. You may terminate this Deed (including any current Orders) by written notice prior to the date of the variation coming into effect if You do not accept the variation.

1.5 The DTO may invite You to offer additional Services for possible inclusion in this Deed at any time.

2 DURATION OF PANEL

2.1 This Deed begins on the Commencement Date and (unless otherwise lawfully terminated) continues until terminated by written notice from the Agency.

2.2 The DTO may invite additional organisations to join the Panel at any time.

3 REQUEST FOR QUOTATIONS

3.1 The Agency may issue an RFQ prior to issuing an Order.

3.2 Unless a fixed price is requested, the fees proposed in Your Quote must be based on rates that are no more than the Agreed Rates.

3.3 If the Agency wishes to proceed to obtain the Services referred to in Your Quote, the Agency will issue an Order to You.

4 ORDERS

4.1 The Agency may issue You with an Order, without having issued an RFQ. In that case the Service Charges payable to You for performing the Services will be Agreed Rates, unless both parties agree otherwise.

4.2 An Order is effective when You confirm that You have accepted the Order.

4.3 Orders placed by an Agency create a separate contract on the terms of this Deed.

5 CHANGES TO AGREED RATES

5.1 The Agreed Rates are fixed for the first 12 months. After the first 12 months, You may apply in writing to have the Agreed Rates increased by no more than the percentage increase in the Consumer Price Index (all groups), published by the Australian Bureau of Statistics for remaining period of this Deed.

5.2 The Agency will act reasonably and either approve or deny any variation to the Agreed Rates applied, by notice, to You.

5.3 Despite clauses 5.1 and 5.2, the Agency will accept a proposal to increase the Agreed Rates by no more than 3% every two years during the term of the Panel.

6 NON EXCLUSIVE ARRANGEMENT

6.1 You acknowledge that this Deed:

- does not guarantee that You will receive any RFQs or Orders; and
- is non-exclusive and that the Agency can buy services from any other person.

7 TERMINATION OF THIS DEED FOR ANY REASON

7.1 The Agency may, at any time, by notice, terminate this Deed for any reason without any liability to You.

7.2 Unless otherwise notified to You, any Orders that are current at the date of termination of this Deed will continue until their expiration or termination, on the terms of this Deed.

8 NOTICES

8.1 A notice under this Deed must be in writing and addressed to the intended recipient's contact person at their address for notice specified in this Deed, as varied by any notice.

8.2 A notice given in accordance with clause 8.1 takes effect at the time of receipt under the *Electronic Transactions Act 1999* (Cth), unless a later time is specified in the notice.

9 CONFLICT OF INTEREST

9.1 You represent and warrant that, to the best of Your knowledge after making diligent inquiry, no Conflict of Interest exists or is likely to arise in the performance of Your obligations under this Deed.

9.2 If, during this Deed a Conflict of Interest arises, or appears likely to arise, You must:

- notify the Agency immediately in writing with all relevant information; and
- take such steps as the Agency requires to resolve or otherwise deal with the conflict.

10 YOUR OBLIGATIONS

10.1 You must supply the Services specified in an Order:

- to the reasonable satisfaction of the Agency;

- in a manner that equals or exceeds the standard expected of a service provider experienced and qualified in the performance of similar services;

- in accordance with relevant standards, industry best practice and guidelines and, including any specified in the Order;

- in accordance with all applicable laws; and

- in accordance with the Agency policies and specific requirements, set out in an Order or notified to You.

10.2 You must ensure that:

- You and your Personnel have all rights, title, licences, interests and property necessary to lawfully perform the Services;

- the Services will be fit for the purpose as set out in the Categories of Services and any Order, and will be complete and accurate; and

- You will continue to hold worker's compensation insurance as may be required by law and all insurance policies specified in the Order or appropriate for the Services.

11 PERFORMANCE ASSESSMENT

11.1 You must ensure that:

- the Services comply with the Performance Criteria; and

- Your Personnel comply with any directions of the Agency issued in respect of Your compliance with (or failure to comply with) the Performance Criteria.

12 SUBCONTRACTING

12.1 Except as set out in an Order, You must not subcontract any aspect of the Services without obtaining the Agency's prior written consent.

13 USE OF SPECIFIED PERSONNEL

13.1 Where Specified Personnel are specified in an Order, You must provide the Services using the expertise of the Specified Personnel.

13.2 Where one or more of the Specified Personnel is or will become unable or unwilling to provide the Services, You must notify the Agency immediately.

13.3 You must promptly remove any of Your Personnel (including Specified Personnel) from the provision of Services if requested to do so by the Agency.

13.4 You must:

- if requested by the Agency, provide a replacement person of suitable ability and qualifications at no additional charge and at the earliest opportunity; and
- obtain the Agency's written consent prior to appointing any such replacement person.

13.5 You must ensure Your Personnel comply with the security requirements of the Agency.

14 THE AGENCY MATERIAL

14.1 The Agency will provide to You any Agency Material relevant to the Services, and You must ensure that the Agency Material is used strictly in accordance with any conditions or restrictions specified in the Order or any direction by the Agency.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 Intellectual Property Rights in Order Material vest in the Agency immediately from the date they come

into existence. You must ensure the Agency is provided with any intellectual property, licence or usage rights it needs to use any Material provided with (or needed for use of) the Order Material.

15.2 You grant to the Agency and its Personnel a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify and communicate any Material in which the Intellectual Property Rights are owned by You or a third party for the purpose of the Agency obtaining the benefit of the Services.

15.3 You must ensure that the Agency's use of the Materials You provide will not infringe the Intellectual Property Rights of any person.

15.4 If someone claims, or the Agency reasonably believes that someone is likely to claim, that all or part of the Materials provided as part of the Services infringe their Intellectual Property Rights, You must, promptly, at Your expense:

- use Your best efforts to secure the rights for the Agency to continue to use the affected Materials free of any claim or liability for infringement; or
- if requested to do so by the Agency, replace or modify the affected Materials so that the Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Materials.

15.5 You must deliver to the Agency Representative all Order Material (and any Materials needed to use the Order Material) before completion of the Order.

15.6 You must obtain any moral rights consents necessary for the Agency to use the Deliverables and exercise its

Intellectual Property Rights provided in this Deed.

16 PAYMENT

- 16.1 Subject to this clause 16 and to the Services meeting the requirements of the applicable Order, including the Performance Criteria, the Agency will pay the Service Charges to You.
- 16.2 You must provide a correctly rendered invoice to the Agency for the Service Charges in accordance with the requirements specified below.
- 16.3 Correctly rendered invoices must meet the requirements of a tax invoice and contain the information required by the Agency.
- 16.4 The Agency will pay You within 30 days of its receipt of a correctly rendered invoice. If this period ends on a day that is not a business day, payment is due on the next business day.
- 16.5 If after payment by the Agency, it is found that an invoice was rendered incorrectly, any underpayment or overpayment will be recoverable by or from You, as the case may be, and, without limiting other available means, may be offset against any amount subsequently due by the Agency to You under any Order.
- 16.6 The Agency will be entitled (in addition and without prejudice to any other right it may have) to defer payment or reduce the amount of any payment if and for so long as You have not completed, to the satisfaction of the Agency, that part of the Services to which the payment relates.

17 EXPENSES

- 17.1 Unless specified otherwise in the Order, You must not charge the Agency for any fees, charges or expenses (including travel and accommodation, document reproduction, transportation and courier charges, and telecommunications charges) in addition to the Service Charges.

18 INTEREST FOR LATE PAYMENT

- 18.1 This clause 18 only applies where the Agency is a non-corporate Commonwealth entity and:
- the total Service Charges payable under the Order do not exceed \$1 million (GST inclusive); and
 - the amount of interest payable exceeds \$10.
- 18.2 Where payment is made more than 30 days after the amount due under the applicable Order became due and payable, the Agency will pay interest on the amount calculated in accordance with the Commonwealth's Supplier Pay On-Time or Pay Interest Policy or any policy that replaces it.

19 TAXES

- 19.1 Except as provided by this clause 18, You must pay all taxes, duties and government charges that are due in Australia or overseas in connection with the performance of the Order.
- 19.2 Unless otherwise indicated in an Order, any consideration for any supply made under the Order is exclusive of any GST imposed on the supply.
- 19.3 If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Deed, on receipt of a tax invoice from the supplier, the recipient will pay without setoff an additional amount to the supplier equal to the GST imposed on the supply in question.
- 19.4 No party may claim or retain from the other party any amount in relation to a supply made under this Deed for which the first party can obtain an input tax credit or decreasing adjustment.

20 TERMINATION

- 20.1 Without limiting any other rights or remedies the Agency may have against You arising out of or in

connection with this Deed, the Agency may terminate this Deed or any Order effective immediately by giving notice to You if:

- You breach a provision of this Deed or an Order where that breach is not capable of remedy; or
- You breach any provision of this Deed or an Order and fail to remedy the breach within 14 days after receiving notice requiring You to do so.

20.2 On termination of this Deed or any Order You must stop work on the affected Services and comply with any directions of the Agency.

20.3 The Agency may also terminate this Deed or an Order for any reason, on five days prior written notice. The Agency will be liable only to pay Service Charges due for the period before the date of termination.

21 CONFIDENTIALITY

21.1 Subject to clause 21.3, a party (**Receiving Party**) must not, without the prior written consent of the other party (**Disclosing Party**), disclose any of the Disclosing Party's Confidential Information to any person.

21.2 The Agency may at any time require You to arrange for any Personnel to execute a non-disclosure deed in a form determined by the Agency.

21.3 Neither party will be in breach of this clause to the extent that Confidential Information of the other party:

- is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Deed;
- is disclosed to a party's internal management personnel, solely to enable effective management or auditing of activities related to this Deed;

- is disclosed by the Agency to the responsible Minister;
- is disclosed by the Agency, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia or State or Territory;
- is shared by the Agency with other Government agencies, where this serves the legitimate interests of the Commonwealth or relevant State/s or Territory/ies;
- is disclosed by the Agency to any relevant government official for an official purpose;
- is required by law to be disclosed; or
- is in the public domain otherwise than due to a breach of the Order.

22 PRIVACY OBLIGATIONS

22.1 You agree, in providing the Services:

- not to do any act or engage in any practice which, if done or engaged in by the Agency, would be a breach of an Australian Privacy Principle under the Privacy Act;
- to comply with any directions, guidelines, determinations or recommendations referred to in the Order; and
- to notify the Agency immediately if it becomes aware of a breach or possible breach of any of its obligations in this clause 22.

23 SECURITY OBLIGATIONS

23.1 You must, and must ensure that Your Personnel comply with:

- all relevant security and other requirements specified in the

*Australian Government
Protective Security Policy
Framework*; and

- any other security procedures or requirements specified in an Order, or notified in writing, by the Agency to You.

23.2 You are responsible for all costs and expenses associated with obtaining security clearances unless the parties agree otherwise.

23.3 You must not, and must ensure that its subcontractors and Personnel do not:

- remove Agency Data or allow Agency Data to be removed from the Agency's premises; or
- take Agency Data or allow Agency Data to be taken outside of Australia,

without the Agency's prior written consent.

24 WORK, HEALTH AND SAFETY

24.1 You agree, in carrying out this Deed and any Order, to comply with all relevant legislation, codes of practice, national standards relating to work health and safety, including in relation to consultation, representation and participation.

25 BOOKS AND RECORDS

25.1 You must at your own cost keep and require Your subcontractors to keep and maintain adequate books and records in accordance with Australian Accounting Standards, in sufficient detail to enable the amounts payable by the Agency under any Order to be determined.

26 AUDIT AND ACCESS

26.1 You agree:

- to give the Agency Representative, or any persons authorised in writing by the Agency

Representative, access to assets, including any computer hardware or software or other equipment, or premises where the Services are being performed; and

- to permit those persons to inspect and take copies of any Material relevant to the Services.

26.2 This clause 26 does not detract from the statutory powers of the Auditor-General or Information Officer (including their delegates).

27 SURVIVAL

27.1 The termination or expiry of this Deed for any reason will not extinguish the terms which by their nature are intended to survive termination or expiry.

28 WAIVER

28.1 Waiver of any provision of or right under this Deed and any Order is effective only to the extent set out in any written notice.

29 GOVERNING LAW

29.1 This Deed (including any Order) is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

30 MISCELLANEOUS

30.1 This Deed (including any Order) may be varied only in writing signed by both parties.

30.2 You may not assign its rights or novate Your rights and obligations under this Deed or any Order without the prior written consent of the Agency.

31 POLICY REQUIREMENTS

31.1 You agree to:

- use Your reasonable efforts to comply with the Commonwealth's Indigenous Procurement Policy;
- comply with Your obligations, if any, under the WGE Act; and
- if You become non-compliant with the WGE Act during the Order Period, to notify any Agency that has placed an Order.

Part 2: Glossary

32 DEFINED TERMS

32.1 In this Deed and any Order, the terms below have the following special meaning unless the context otherwise requires.

Agency means:

- all agencies subject to the *Financial Management and Accountability Act 1997* (Cth) and on and from 1 July 2014 entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth);
- all bodies subject to the *Commonwealth Authorities and Companies Act 1997* (Cth) and on and from 1 July 2014 entities that are subject to the *Public Governance, Performance and Accountability Act 2013* (Cth);
- all other bodies governed by the Governor-General or a Minister of the Commonwealth or over which the Commonwealth exercises control; and
- all bodies governed by a State Governor or by a Minister of a State or Territory or over which a State or Territory exercises control (including departments in State or Territory Governments), and includes local government agencies.

Agency Data means all data and information relating to the Agency, and its operations, facilities, customers, Personnel, assets and programs (including Personal Information) in whatever form that information may exist and whether entered into, stored in, generated by or processed through software or equipment by or on behalf of the Agency.

Agreed Rates means the hourly/daily rates applicable to each type of Personnel in a Category of Service set out in or determined in accordance with the schedule to this Deed.

Commencement Date means the date on which the last party to sign this Deed signs that document.

Commonwealth means the Commonwealth of Australia.

Confidential Information means information that is by its nature confidential and:

- is designated by a party as confidential;
- is described in the Order as confidential;
- is agreed in writing by the parties is confidential; or
- a party knows or ought to know is confidential,

but does not include information which is or becomes public knowledge otherwise than by breach of this Deed or an Order or any other confidentiality obligation.

Conflict of Interest means any circumstance in which You or any of the Your Personnel have an interest (whether financial or non-financial) or an affiliation that is affecting, will affect, or could be perceived to affect, Your ability to provide the Services, or meet its obligations under this Deed or an Order, fairly and independently.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights, including the following rights:

- all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions, plant varieties, trade marks

(including service marks), patents, rights in designs and circuit layouts, trademarks, designs, trade secrets, know how;

- any application or right to apply for registration of any of the rights referred above; and
- all rights of a similar nature to any of the rights referred to above which may subsist in Australia or elsewhere,

whether or not such rights are registered or capable of being registered but does not include Moral Rights, the personal rights of performers or rights in relation to Confidential Information.

Material means any software, firmware, documented methodology or process, documentation or other material in whatever form, including without limitation any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights.

Order Material means any Material created by You on or following the Services Start Date, for the purpose of or as a result of performing its obligations under an Order and includes any modifications.

Order Period means the period of time for which an Order is intended to continue, as specified in the Order.

Performance Criteria means the performance requirements set out in the Order for each Service and Deliverable and the requirements in clause 11.

Personnel means, in relation to a party, any natural person who is an employee, officer, agent, contractor, subcontractor or professional adviser of that party or, in the case of You, of a subcontractor.

Service Charges means the charges payable to You as specified in an Order.

Services means the services provided, or to be provided, under an Order (including the provision of the deliverables) as described in the Order.

Services Start Date means the date specified as such in the Order.

Specified Personnel means Your Personnel specified as such in the Order.

WGE Act means the *Workplace Gender Equality Act 2012* (Cth).

You means the party specified as the service provider in this Deed and includes Your Personnel.