



Conditions and Acknowledgements

1.1 Right Not to Proceed

1.1.1 CSIRO is not bound contractually, or in any other way to the Respondents who respond to this Expression of Interest. CSIRO reserves the right not to proceed with this Expression of Interest or any part of it, and to suspend or vary the Expression of Interest and/or its requirements at any stage.

1.2 Costs Borne by Respondent

1.2.1 All costs and expenses incurred by Respondents in any way associated with the development, preparation and submission of the Expression of Interest response, including but not limited to attendance at meetings, discussions, presentations and providing any additional material required by CSIRO, will be borne exclusively by the Respondents.

1.3 No Legal Relationship

1.3.1 No binding legal relationship will arise out of this Expression of Interest.

1.4 Information

1.4.1 The statements, opinions, projections, forecasts or other information contained in this Expression of Interest (including any supporting information such as information contained in a prospectus) may change. Where any such information relates to future matters, no steps have been taken to verify that the information is based upon reasonable grounds, and no representation or warranty, expressed or implied, is made by CSIRO, or any of its officers, employees, advisers or agents that the statements contained in this Expression of Interest will be achieved.

1.4.2 This Expression of Interest is designed to reflect and summarise the information concerning potential opportunities with Optimshare ('Transaction') only and is not a comprehensive description of them.

1.4.3 Except as required by law, and only to the extent so required, neither CSIRO, nor its respective agents or advisers will in any way be liable to any person or body for any loss, damage, cost and expense of any nature arising in any way out of or in connection with the statements, opinions, projections, forecasts or other representations, actual or implied, contained in or omitted from this Expression of Interest or other information provided to any Respondent or by reason of any reliance thereon by any person or body.

1.4.4 Any time and/or date in this Expression of Interest is for the sole convenience of CSIRO. The establishment of a time and/or date in this Expression of Interest does not create an obligation on the part of CSIRO to take any action or any right in any Respondent that any action is taken on the date established. CSIRO may change any date or time. The Department will notify affected Respondents if it changes the date and/or time but will not be obliged to provide any reasons for its actions.

1.5 Respondents to Inform Themselves

1.5.1 Respondents are considered to have:

- a. examined this Expression of Interest, any documents referenced in this Expression of Interest and any other information made available by CSIRO to Respondents for the purpose of responding

- b. examined all further information which is obtainable by the making of reasonable inquiries relevant to the risks, contingencies, and other circumstances having an effect on their Expression of Interest response
- c. undertaken their own professional advice in respect of this Expression of Interest, any other information provided to Respondents and the Expression of Interest process generally, as appropriate
- d. satisfied themselves as to the correctness and sufficiency of their Expression of Interest response including submitted prices.

1.6 Respondent Acknowledgements

1.6.1 Responses are submitted on the basis that Respondents acknowledge:

- a. they do not rely on any representation, letter, document or arrangement, whether oral or in writing, or other conduct as adding to or amending these conditions other than express amendments to these conditions that have been agreed in writing by CSIRO (which will be at CSIRO's absolute discretion) and
- b. they do not rely upon any warranty or representation made by or on behalf of CSIRO, except as are expressly provided for in this Expression of Interest, but they have relied entirely upon their own inquiries and inspection in respect of the subject of their Expression of Interest response.

1.7 Relevant Legislative Provisions

1.7.1 CSIRO policy is to not to enter into a contract with suppliers who have been named in Parliament as not complying with the Workplace Gender Equality Act 2012.

1.7.2 CSIRO expects its suppliers to always act in a safe manner and perform all relevant services in a way that is without risk to the health, safety or welfare of any person and eliminates health and safety risks so far as is reasonable practicable.

1.7.3 CSIRO will not enter into a contract with suppliers who are listed as designated entity by the Minister of Foreign Affairs by notice in the Gazette under s 15 of the Charter of the United Nations Act 1945 (Cth) or who intend to engage subcontractors who are listed as a designated entity by the Minister for Foreign Affairs by notice in the Gazette under s 15 of the Charter of the United Nations Act 1945 (Cth). A consolidated list of such persons, entities and associated assets is maintained by the Department of Foreign Affairs and Trade under the Charter of the United Nations (Dealing with Assets) Regulations 2008 and can be found at: http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html

1.7.4 CSIRO will not enter into a contract with Respondents engaging illegal workers. For more information refer to 'A Guide on Work Rights' available at www.immi.gov.au/employers.

1.8 CSIRO Rights

1.8.1 The issue of this Expression of Interest does not in any way commit CSIRO to proceed with any aspect of the Transaction, whether from any of the Respondents to this Expression of Interest or from any other source.

1.8.2 Without limiting any other part of these Expression of Interest conditions CSIRO may:

- a. amend this Expression of Interest at any time in any way including any aspect of the Expression of Interest process
- b. not negotiate with any Respondent at any time, irrespective of whether their response complies with this Expression of Interest or not
- c. at any time disqualify any Respondent from participating in the Expression of Interest process or exclude their Expression of Interest from further consideration
- d. allow any Respondent to change their Expression of Interest at any time
- e. select preferred Respondents or choose not to do so
- f. request all or certain Respondents participate in a further procurement process for the Transaction
- g. at any time use non CSIRO personnel in assessing Expression of Interests

- h. at any time use a probity auditor in connection with this Expression of Interest
- i. contract with more than one party in relation to the Transaction
- j. enter into a contract outside the Expression of Interest process
- k. negotiate with a Respondent whose Expression of Interest is for a different requirement than set out in this Expression of Interest
- l. undertake or allow any other actions or inaction in relation to this Expression of Interest, on such terms as CSIRO deems appropriate
- m. use information gained through the Expression of Interest process to feed into any further procurement CSIRO may undertake in connection with the Transaction (or one similar to it), including further development of the Expression of Interest.

1.8.2 All material submitted in response to this Expression of Interest becomes the property of CSIRO. Such intellectual property as may exist in the information contained in the response will remain vested in the Respondent.

1.8.2 By submitting an EOI, the Respondent allows CSIRO to copy and distribute the submitted material to its Evaluation Panel and other internal advisers for the purpose of evaluating the Respondent's response

1.9 Disclaimer

1.9.1 This Expression of Interest is not an invitation to treat and is not to be taken to be or relied upon as an offer capable of acceptance by any person or as creating any form of contractual (including a process contract), quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds.

1.9.2 CSIRO will not be liable to any Respondent on the basis of any promissory estoppel, quantum meruit or other contractual, quasi contractual or restitutionary grounds whatsoever or in negligence as a consequence of any matter relating or incidental to a Respondent's participation in this Expression of Interest including instances where:

- a. a Respondent is not invited to participate in any subsequent process following completion of this Expression of Interest
- b. CSIRO varies the Expression of Interest
- c. for reasons of public interest, CSIRO decides to terminate this Expression of Interest or not to contract for all or any of the requirements or
- d. CSIRO exercises or fails to exercise any of its other rights under or in relation to this Expression of Interest.

1.10 Conditions for Participation

1.10.1 Subject to clause 1.12, Unintentional Errors of Form, CSIRO will exclude a Respondent from further consideration and evaluation if CSIRO considers in its absolute discretion that the conditions for participation set out in this clause have not been met by the Respondent. Notwithstanding anything else contained in this Expression of Interest, requirements listed in this clause will be deemed conditions for participation.

- a. the Respondent exists as a legal entity at the Expression of Interest Closing Time and Date
- b. at the time of lodgement of their Response, Respondents must not have been:
 - i. precluded from tendering for Australian Government funded work or
 - ii. subject to a judicial decision against them relating to employee entitlements (not including decisions under appeal, and have not paid the claim).

1.11 Minimum Content and Format Requirements

1.11.1 Subject to clause 1.12, Unintentional Errors of Form, CSIRO will exclude a Respondent from further consideration if CSIRO considers in its absolute discretion that the Respondent's response does not meet the minimum content and format requirements listed in this clause. Notwithstanding anything else contained in this Expression of Interest, requirements listed in this clause will be deemed minimum content and format requirements for the purposes of this Expression of Interest.

- a. The response to this Expression of Interest must be lodged electronically via Email in accordance with the cover letter
- b. Respondents must complete the Expression of Interest Response Form and
- c. The Response, including all attachments and supporting material, must be written in English.

1.12 Unintentional Errors of Form

1.12.1 If an unintentional error of form in a Respondent's response is identified prior to short-listing Respondents (if any), CSIRO may in its absolute discretion allow correction of that error by the Respondent by the submission of a correction, variation or additional information.

1.12.2 An unintentional error of form is an error that CSIRO is satisfied in its absolute discretion:

- a. represents incomplete information not consistent with the Respondent's intentions and, if relevant, capabilities at the time the submission was lodged
- b. does not materially affect the competitiveness of the Respondent's Response.

1.13 Discussions and Negotiations with Respondents

1.13.1 CSIRO may, as appropriate, engage in discussion or negotiations with any Respondent for the purpose of clarifying or improving its response. CSIRO may, in its absolute discretion, conduct simultaneous discussions to clarify or improve proposals with more than one Respondent. Where information of a material nature is provided by CSIRO to one Respondent, it will also be provided to all other Respondents (on a non-attributable basis) who are currently participating in that part of the evaluation process.

1.14 Use of Information in the Evaluation

1.14.1 The Respondent's written response to the requirements set out in this Expression of Interest will be used by the evaluation team to evaluate Respondents against the selection criteria and CSIRO expectations set out in the prospectus.

1.14.2 The evaluation team may also use any relevant information obtained in relation to the Expression of Interest (whether from the Respondent as part of clarification, reference checks, negotiations, presentations or by any other independent inquiry) in the evaluation of Expression of Interest responses.

1.15 Confidentiality of Information

1.12.1 CSIRO's Confidential Information

Respondents are required to ensure that any of their employees, agents or sub-contractors involved in meeting CSIRO's requirements do not either directly or indirectly record, divulge or communicate to any person any confidential information concerning the Technology, the affairs of the CSIRO or a third party acquired or obtained in the course of preparing an Expression of Interest response, or in discussions or negotiations with CSIRO. This confidential information includes any documents, data or information

provided by CSIRO and which CSIRO indicates to Respondents is confidential or which Respondents know or ought reasonably to know is confidential.

1.12.1 Respondents' Confidential Information

CSIRO will treat as confidential any information provided by a Respondent which is nominated by the Respondent as confidential information. CSIRO's obligations in relation to Respondent provided confidential information will not be taken to have been breached to the extent that the information:

- a) is disclosed by CSIRO to its advisers, officers, employees, subcontractors or advisors in order to conduct the Expression of Interest process, including the preparation of any resultant contract;**
- b) is disclosed to CSIRO's internal management personnel or advisors, solely to enable effective management or auditing of the Expression of Interest process;**
- c) is disclosed by CSIRO to its Department or to the responsible Minister;**
- d) is disclosed by CSIRO in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;**
- e) is authorised or required by law to be disclosed; or**
- f) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.**

1.16 Conflict of Interest

1.16.1 During the Expression of Interest process, the Respondent must immediately advise CSIRO in writing of any circumstances or relationships constituting a Conflict of Interest or potential Conflict of Interest which might impact on CSIRO's determination as to the most appropriate party for the Transaction.

1.16.2 Conflict of Interest means any matter, circumstance, interest, or activity affecting the Respondent (including the officers, employees, agents and subcontractors of the Respondent) which may or may appear to impair the ability of the Respondent to engage with CSIRO in a way that is beneficial to CSIRO's commercial interests as well as the Respondent's commercial interests

1.17 Ethical Dealing

1.17.1 CSIRO's policy is to engage in the highest standards of ethical behaviour and fair dealing throughout the Expression of Interest process. CSIRO requires the same standards from those with whom it deals. Responses to this Expression of Interest should be compiled without improper assistance of employees or former employees of CSIRO and without the use of information improperly obtained or in breach of an obligation of confidentiality.

1.18 Respondent Acceptance

1.18.1 By submitting a response to this Expression of Interest, the Respondent accepts the terms and conditions as set out in this Expression of Interest