

# Standing Offer Arrangement (SOA) Conditions

## For use where the parties anticipate multiple Customers purchasing the same Goods or Services from a Supplier

These SOA Conditions are designed to be used in connection with the SOA Details. Where GITC applies, the translated references in clause 24 (GITC translated references) of these SOA Conditions will apply.

These terms and conditions apply between the Principal and the Supplier.

### 1 Standing Offer Arrangement (SOA)

#### 1.1 When SOA is formed

The SOA will be formed between the Principal and the Supplier on the earlier of the date when:

- (a) the Principal accepts the Supplier's offer in writing; or
- (b) the authorised representatives of both parties have signed the appropriate section of the SOA Details.

This SOA may consist of a number of counterparts and if so, the signed counterparts taken together constitute one document.

#### 1.2 Interpretation

The definitions and rules of interpretation apply to this SOA and are available online under terms and conditions at [www.hpw.qld.gov.au/Procurement](http://www.hpw.qld.gov.au/Procurement)

If there is any inconsistency between the documents which make up the SOA, then the following will prevail in descending order of precedence:

- (a) the contract departures sections of the SOA Details;
- (b) the Schedules to the SOA Details (excluding any document incorporated by reference);
- (c) the SOA Conditions;
- (d) the SOA Details (excluding the contract departures section of the Details);
- (e) any document incorporated by reference.

### 2 Nature of the SOA and Contracts

The SOA is a standing offer made by the Supplier to eligible Customers, to enter into one or more Contracts in accordance with the SOA Conditions.

Eligible Customers may accept the Supplier's offer by issuing an SOA Order to the Supplier, in accordance with clause 3 below.

### 3 Contracts

A Contract will be formed for the supply of Deliverables described in an SOA Order when the Supplier receives an SOA Order and either:

- (a) confirms it will supply the Customer the Deliverables or perform the Services requested in the SOA Order; or
- (b) commences to supply the Deliverables or perform the Services the subject of the SOA Order,

whichever occurs first. By entering a Contract, the Customer appoints the Supplier to provide the Deliverables, and the Supplier accepts the appointment.

Each Contract will be a separate contract.

The Supplier must perform all its obligations under each Contract for the benefit of the relevant Customer.

### 4 Role of Principal

The Principal's only obligation under the SOA is to administer the SOA on behalf of eligible Customers. The Principal will not be a party to any Contracts unless it has issued an SOA Order under clause 2 and a Contract has been formed with the Principal under clause 3. The Principal will not have any obligations under Contracts in its capacity as Principal. The Supplier is responsible for everything else necessary to perform the SOA.

### 5 Eligible Customers

All of the following entities are eligible Customers under the SOA:

- (a) Queensland Government departments and agencies;
- (b) Queensland Government Bodies;

- (c) any entity which is directly or indirectly, partially or entirely funded by the State of Queensland, and/or a community based, non-profit making organisation performing community services, and/or another entity, from time to time approved by the State of Queensland as an eligible Customer under the SOA; and
- (d) the Commonwealth, another State or a Territory Government.

The Supplier acknowledges that provisions of these SOA Conditions are intended for the benefit of eligible Customers and may be enforced by the Principal on behalf of all eligible Customers. The Supplier acknowledges that eligible Customers do not have any obligations to the Supplier under this SOA.

## 6 Term

The SOA starts on the start date in the SOA Details and continues for the period set out in the SOA Details, including any extension options which are exercised, unless earlier terminated in accordance with these SOA Conditions.

The Principal must give notice of its intention to exercise any extension option.

Unless agreed otherwise in a Contract, the term of the Contract (including extensions) may continue after the SOA term ends, for any reason. However new Contracts under the SOA cannot be entered into after the SOA term ends.

## 7 Non exclusivity

Unless expressly stated otherwise in the SOA Details, the Principal and eligible Customers may engage other suppliers to (or themselves) provide goods, services and other deliverables the same as or similar to the Deliverables.

## 8 No minimum volumes

The Supplier acknowledges that the Principal has not made any representations or commitments that any eligible Customers will enter any Contracts under the SOA.

Neither the Principal nor any eligible Customer makes any commitment to purchase any or any minimum volume of Goods or Services, except as agreed in a finalised Contract between a Customer and the Supplier.

## 9 Supplier obligations

The Supplier:

- (a) **(governance)** must perform the governance activities specified in the SOA Details;

- (b) **(time)** must meet all due dates specified in the SOA Order or otherwise agreed, and perform all other obligations promptly;
- (c) **(Contracts)** must perform all its obligations under each Contract;
- (d) **(Contract issues)** must promptly notify the Principal of any significant issues relating to any Contract, including (without limitation) any alleged breach of a Contract, any dispute raised, or any significant relationship issues;
- (e) **(directions)** must comply with all reasonable directions of the Principal in relation to the Supplier's performance of the SOA;
- (f) **(act reasonably)** must act reasonably in exercising all of its rights under the SOA;
- (g) **(cooperation)** must cooperate with the Principal in relation to the SOA and with eligible Customers in relation to potential Contracts;
- (h) **(Laws)** must comply with all Laws;
- (i) **(records)** must create and maintain records of its performance of Contracts in accordance with usual industry practice for provision of goods and services similar to the Deliverables. The Supplier will give the Principal reasonable access to records on reasonable request;
- (j) **(insurance)** must at its cost, take out and maintain the insurances described in the SOA Details with an insurer authorised and licensed to operate in Australia, on reasonable commercial terms. The Supplier must promptly notify the Principal if any policy is cancelled or there is any significant change in any of those policies. The Supplier must maintain run-off insurance for a minimum period of 6 years after the SOA and all Contracts under the SOA end, for all insurance policies which are maintained on a "claims made" basis. The Supplier must provide a certificate of currency for each policy. If the Supplier does not take out or maintain these policies, the Principal or Customer may take out those policies and the Supplier will be responsible for the Principal's or Customer's (as applicable) cost of doing so;
- (k) **(authorisations)** must obtain and maintain the authorisations described in the Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contracts. The Supplier must provide evidence that it has complied with this clause, if the Principal asks;
- (l) **(security requirements)** must, if specified in the Details, provide a bank guarantee, performance guarantee or other specified security to guarantee the proper performance of the Supplier's

obligations under the SOA and any Contracts. The security must be in a format acceptable to the Principal acting reasonably. The security must meet all additional conditions specified in the Details. The Principal and Customers will not have any liability to the Supplier (whether in negligence or otherwise) in connection with the Principal's or a Customer's enforcement of the security;

- (m) (**further assurances**) do anything and execute any document that the Principal reasonably asks, to give effect to this SOA;
- (n) (**reports**) must provide reports as and when reasonably requested by the Principal; and
- (o) (**competitive neutrality**) if the Supplier is a government-owned business, local government, or Commonwealth, State or Territory or authority, price its offer to comply with the competitive neutrality principles of the Supplier's jurisdiction.

## 10 Pricing

### 10.1 No SOA payments

The Prices specified in the Details are the Prices that will be payable by Customers that place SOA Orders for Goods and Services pursuant to the SOA.

No payment is due to the Supplier for the performance of the Supplier's obligations under the SOA.

### 10.2 Price review

The Supplier may review the Prices in accordance with any Price review mechanism in the SOA Details. No other Price change or new Price will be effective unless the Principal agrees in writing. Unless agreed otherwise in the relevant Contract, Price reviews under the SOA will apply automatically to all Contracts under the SOA entered after the date of the Price review.

## 11 GST

- (a) (**construction**) in this clause 11, words and expressions which are not defined in this SOA but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) (**GST exclusive**) unless expressly stated, all moneys or other sums payable or consideration to be provided under this SOA are exclusive of GST.
- (c) (**payment of GST**) if GST is payable on any supply made under this SOA, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time that the consideration for the supply is to be provided under this SOA.
- (d) (**tax invoice**) the supplier must deliver a tax invoice or an adjustment note to the recipient

before the Supplier is entitled to payment of an amount under clause 11(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

- (e) (**adjustment event**) if an adjustment event arises in respect of a taxable supply made by a Supplier under this SOA, the amount payable by the recipient under clause 11(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (f) (**reimbursements**) where a party is required under this SOA to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
  - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
  - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## 12 Acknowledgements and certifications

The Supplier:

- (a) makes the commitments in this SOA in consideration of the Principal making this SOA available to eligible Customers to enter into Contracts with the Supplier and for other good and valuable consideration (which the Supplier acknowledges).
- (b) agrees to provide the Goods, Services and other Deliverables to Customers on the terms described in each Contract and in accordance with the SOA.
- (c) certifies that it has read, understands, and complies with all the requirements of the SOA and Contract.
- (d) acknowledges that only proposed SOA and Contract changes which comply with the contract departures sections of the SOA Details form part of the SOA or Contract (as applicable).
- (e) represents that all the information provided by it and referenced in the SOA is complete, accurate, up-to-date and not misleading in any way.
- (f) acknowledges that the Principal is relying on the information provided by the Supplier and referenced in the SOA in entering into the SOA, and Customers will rely on that information in entering into Contracts.

- (g) acknowledges that the Principal and Customers may suffer damage if any of that information is incomplete, inaccurate, out-of-date or misleading in any way.

## 13 Liability

- (a) (**contribution**) Neither party will be liable to the other, whether in contract, tort (including negligence) or otherwise in connection with the SOA, for loss or damage to the extent that the other party contributed to the loss or damage.
- (b) (**mitigation**) A party who suffers loss or damage must mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- (c) (**binding scheme**) Despite any other condition of the SOA, the Supplier's liability is limited to the extent necessary to comply with a scheme that is in force and applies to the Supplier under the *Professional Standards Act 2004 (Qld)* as specified in the SOA Details.

## 14 Indemnity

The Supplier releases, discharges and indemnifies the Principal and its Personnel from and against any Claim that may be brought against or made upon or incurred by any of them (whether in contract, tort including negligence, or otherwise) in connection with any:

- (a) failure to comply with applicable law by, the Supplier or its Personnel;
- (b) Wilful Default or Wilful Misconduct;
- (c) claim of Intellectual Property Rights or Moral Rights infringement relating to the SOA;
- (d) breach of any warranty given in the SOA Details or this document; or
- (e) any Claim by a third party relating to this SOA,

except to the extent that the Principal or its Personnel caused or contributed to the Claim.

## 15 Information

- (a) The Supplier is responsible for making its own investigation and assessment about all matters relevant to the SOA, including the Requirements, anticipated uptake of Contracts, the accuracy of all information and documents provided by or on behalf of the Principal, and all other matters relevant to the Supplier's decision to enter the SOA, and will not have any Claim against the Principal if any information or documents provided

by the Principal is incomplete, inaccurate out-of-date or misleading in any way.

- (b) The Supplier may only rely on Reliable Information, and only for the nominated purpose and nominated validity period.
- (c) The Principal must inform the Supplier if it becomes aware of any material inaccuracies or omissions in any information provided to the Supplier, including Reliable Information.
- (d) The Supplier must ensure that all representations, warranties, declarations, statements, information and documents ("information") made or provided by the Supplier in connection with the SOA are complete, accurate, up-to-date and not misleading in any way. The Supplier must immediately tell the Principal if any information is or becomes incomplete, inaccurate, out-of-date or misleading in any way.

## 16 Intellectual Property Rights

### 16.1 Existing Intellectual Property Rights

Each party retains all its Intellectual Property Rights which existed at the SOA start date, or which are developed independently of the SOA.

The Supplier grants (and must procure that relevant third parties grant) the Principal an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sublicensable licence to exercise all such Intellectual Property Rights which are incorporated into any materials provided to the Principal in connection with the SOA and into any Goods, Services and Deliverables provided to a Customer under a Contract, for any purpose of the Principal or Customers, as part of those materials, Goods, Services and Deliverables and future development of those materials, Goods, Services and Deliverables.

### 16.2 New Intellectual Property Rights

Subject to clause 17 ("Customer Data"), new Intellectual Property Rights created or developed in performing the SOA will be owned by the Principal. The Principal grants the Supplier an irrevocable, unconditional (subject to this clause), perpetual, royalty-free, non-exclusive, worldwide, transferable and sub licensable licence to exercise all such newly developed Intellectual Property Rights, for any purpose, including commercial purposes, subject to the Supplier complying with its obligations in relation to Confidential Information, Personal Information and Customer Data.

### 16.3 Warranty of authorisation

The Supplier warrants that it is authorised to grant the rights in this clause.

The Supplier warrants that the Deliverables and the use of the Deliverables as permitted by this SOA will not infringe the Intellectual Property Rights or Moral Rights of any person.

## 17 Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, shall vest in the Principal or Customer (as applicable) on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause. The Supplier must not use, access, modify or disclose Customer Data to any person except to its Personnel on a need to know basis to perform the SOA or Contracts and in accordance with all Laws.

The Supplier must comply with clause 19 and all applicable Laws in relation to Customer Data which is Personal Information. The Supplier must provide reasonable assistance to the Principal and Customers on request to enable the Principal and Customer to comply with laws, policies and standards applicable to the Principal and Customer in relation to Customer Data including (without limitation) identification, labelling, searching, reporting, copying, retrieval and modification of Customer Data in relation to Personal Information, public records, right to information and information standards.

## 18 Confidentiality

- (a) Each party will keep confidential all Confidential Information which it obtains from the Discloser, or creates in relation to the SOA, not use it except for the purposes of the SOA, and not disclose it except to its Personnel on a need to know basis for the purpose of performing its obligations under the SOA, or with the Discloser's consent, or to the extent required by Law, or to its professional advisors, or in the case of the Principal:
- (i) to a Minister or Parliament; or
  - (ii) as required under the Right to Information Act; or
  - (iii) to eligible Customers.
- (b) The Principal may publish information about the SOA on the [Queensland Contract Directory](#), where required or recommended by Government procurement policy.
- (c) Where the Recipient discloses the Confidential Information to a third party as permitted under this Contract, the Recipient must inform the third party of the confidential nature of the Confidential Information, and will be responsible for all use and disclosure of the Confidential Information by the Recipient's Personnel and professional advisors.
- (d) If the Principal or a Customer requests, the Supplier must obtain from its Personnel a signed

confidentiality deed in a form acceptable to the Principal or Customer.

- (e) The Supplier must not make any public announcements or advertisement relating to the SOA except where the Principal has approved the proposed announcement or advertisement in writing.
- (f) If requested by the Principal, on termination or expiry of the SOA, the Supplier must promptly return or destroy (at the Principal's option) all Customer Data, Confidential Information and Personal Information of the Principal, and a copy of all documents and records created by the Supplier in the performance of the SOA, and will confirm to the Principal when this has been done.
- (g) The Supplier may retain a copy of any Confidential Information of the Principal to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

## 19 Privacy

- (a) If the Supplier collects or has access to Personal Information in order to perform the SOA, when performing this SOA the Supplier must:
- (i) if the Principal is an 'agency' for the Information Privacy Act, other than for Chapter 3 of the Information Privacy Act - comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to the Principal, as if the Supplier were the Principal; or
  - (ii) otherwise – comply with the Australian Privacy Principles in the Privacy Act.
- (b) The Supplier must:
- (i) not transfer any Personal Information collected or accessed in connection with the SOA, outside of Australia, except with the prior written consent of the Principal; and
  - (ii) take any steps to prevent unauthorised use or disclosure of Personal Information collected or accessed in connection with the SOA that are reasonably notified by the Principal.

## 20 Anti-competitive conduct, conflict of interest and criminal organisations

### 20.1 Anti-competitive conduct

The Supplier warrants that neither it, nor its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the SOA, any associated Invitation Process, or any actual

or potential contract with any entity for goods and services similar to the Goods and Services. In addition to any other remedies available to it under Law or contract, the Principal may, in its absolute discretion, immediately terminate the SOA if it believes the Supplier has engaged in collusive or anti-competitive conduct.

## 20.2 Conflict of Interest

The Supplier warrants that it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations where a Conflict of Interest is created, or might appear to be created, in conflict with its obligations under this SOA, except as disclosed in the SOA Details.

If the Principal requests, the Supplier must obtain from its Personnel a signed conflict of interest declaration in a form acceptable to the Principal.

## 20.3 Criminal organisation

The Supplier warrants that neither it or its Personnel:

- (a) have been convicted of an offence under the Criminal Code where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of section 60A(3) of the *Criminal Code*; or
- (b) are subject to an order under, or have been convicted of an offence under the *Criminal Organisation Act 2009* (Qld).

## 20.4 Warranties are ongoing

The warranties in this clause are provided as at the date of the SOA and on an ongoing basis. The Supplier warrants that it will immediately notify the Principal if it becomes aware that any warranty made in this clause 20 was inaccurate, incomplete, out-of-date or misleading in any way when made, or becomes inaccurate, incomplete, out-of-date or misleading in any way.

In addition to any other remedies available to it under Law or contract, the Principal may, in its absolute discretion, immediately terminate the SOA if it believes the Supplier has breached a warranty in this clause.

## 21 Termination and suspension

### 21.1 For cause – by Principal

The Principal may terminate the SOA immediately on written notice if:

- (a) any Customer is entitled to terminate a Contract under the SOA, for cause;

- (b) the Principal is satisfied that any of the declarations and warranties provided by the Supplier were inaccurate, incomplete, out-of-date or misleading in any way when made, or become inaccurate, incomplete, out-of-date or misleading in any way;
- (c) a Conflict of Interest arises and has not been or in the Principal's view cannot be appropriately managed to the Principal's satisfaction;
- (d) the Supplier ceases business or indicates that it is unable or unwilling to complete the SOA or any Contract or to enter new Contracts;
- (e) the Supplier breaches the SOA and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by the Principal; or
- (f) the Supplier is or becomes Insolvent.

If the Principal terminates under this clause 21.1, the Supplier will pay or reimburse the Principal's reasonable costs associated with the termination.

### 21.2 For convenience

The Principal may terminate the SOA in its absolute discretion by giving at least 30 days written notice. The Principal is not required to pay any amount to the Supplier and will have no other liability to the Supplier relating to termination under this clause.

### 21.3 Suspension

In addition to the Principal's termination rights, the Principal may suspend the SOA immediately on written notice in its absolute discretion, or in any circumstances when it is entitled to terminate under this clause 21. The Principal may end the suspension on written notice. The Supplier will promptly recommence performance after receiving the Principal's notice ending the suspension.

### 21.4 Consequences

Termination or suspension of the SOA will not affect the accrued rights and remedies of the parties prior to termination or suspension, or any Contract.

No new Contracts may be agreed under the SOA after termination or expiry of the SOA, or during any period of suspension.

## 22 Subcontracting

- (a) This clause applies in addition to the limitation on subcontracting in the Contract.
- (b) The Supplier may only subcontract any part of its obligations under this SOA with the Principal's prior written consent, in the Principal's discretion.

- (c) The Supplier's use of subcontractors will not transfer responsibility to the subcontractor nor will it relieve the Supplier from its liabilities and obligations under the SOA.

## 23 Assignment

- (a) The Supplier may not assign, transfer or novate any of its rights or obligations under the SOA without the Principal's prior written consent.
- (b) The Principal may assign, transfer or novate any of its rights or obligations under the SOA on written notice to the Supplier.
- (c) The Principal will act reasonably in considering a request by the Supplier to assign, transfer or novate the SOA.
- (d) The SOA is for the benefit of, and will bind the parties and their successors and permitted assigns.

## 24 GITC translated references

### 24.1 When this clause applies

This clause applies where the terms and conditions for the supply of the Goods and Services to the Customer are the GITC terms.

### 24.2 Interpretation of terms used in GITC

When used in GITC, a reference to:

- (a) Contractor has the same meaning as Supplier;
- (b) Customer Contract has the same meaning as Contract;
- (c) Contract Specifications has the same meaning as Requirements;
- (d) Products has the same meaning as Goods.

### 24.3 Subcontracting

Any Subcontractor nominated in the SOA Details is an Approved Party for the purposes of GITC.

### 24.4 Contracts are GITC Customer Contracts

Each Contract formed under this SOA is a Customer Contract for the purposes of GITC.

## 25 General

The parties agree that:

- (a) **(communication)** they will direct all enquiries relating to the SOA to the other party's nominated contact person, or to another person if the other party directs.

- (b) **(notices)** they will send all notices relating to the SOA to the other party at the address listed in the SOA Details, with a copy to the nominated contact person.

- (c) **(disputes)** they will not bring any court proceedings relating to this SOA (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation.

- (d) **(variation)** the SOA may only be varied by written agreement of authorised representatives of the parties.

- (e) **(entire agreement)** this SOA sets out all the parties rights and obligations relating to the subject matter of the SOA, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this SOA. No other terms apply to the SOA. The terms of each Contract are as agreed by the Customer and Supplier in accordance with these SOA Conditions and the SOA Details.

- (f) **(severability)** if any part of this SOA is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the SOA (and any parts of the SOA which are dependent on those parts) will not apply but the other parts of the SOA will not be affected.

- (g) **(waiver)** clauses and rights in this SOA can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the SOA does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances.

- (h) **(relationship)** their relationship is of principal and contractor. This SOA does not create any partnership, joint venture or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Principal.

- (i) **(exclude implied terms)** that the *Sale of Goods (Vienna Convention) Act 1986 (Qld)* does not apply, to the extent that the parties are permitted by law to exclude it.

- (j) **(survival)** clauses 1.2, 3, 4, 7, 8, 9(j), 10, 10.2, 13, 14, 16, 17, 19, 25(e), (f), (g), (h), (i) and (j) will survive termination or expiry of the SOA for any reason.

- (k) **(costs)** each party will bear its own costs in relation to the preparation, negotiation and execution of the SOA and any variations.