

# Standing Offer Arrangement (SOA) Conditions

For use where the parties anticipate multiple Customers purchasing the same General Goods and/or Services from a Supplier.

These SOA Conditions (version 3.0 – published December 2020) apply between the Principal and Supplier and are designed to be used in connection with the SOA Details executed as a deed.

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## 1. Standing Offer Arrangement

### 1.1. When a SOA is formed

The SOA will be formed between the Principal and the Supplier when the authorised representatives of both parties have signed, sealed and delivered the SOA Details. The parties must execute a paper version of the SOA Details as a deed.

The SOA may consist of a number of counterparts and if so, the executed counterparts taken together constitute one deed.

The parties consent to the use of electronic communications as a method for the signing of the SOA Deed of Agreement, noting that, unless a Law specifies otherwise, this would require printing, execution and witnessing on this printed document and this executed document then being electronically transmitted.

By the execution and transmission, the parties intend to be bound by the SOA as a deed.

### 1.2. Interpretation

The definitions and rules of interpretation which apply to these SOA Conditions are those specified in the Definitions and Interpretations document (*version 3.0 – published December 2020*) available at [www.forgov.qld.gov.au/general-goods-and-services-templates](http://www.forgov.qld.gov.au/general-goods-and-services-templates), as at the date the SOA is formed.

### 1.3. Documents making up the SOA and hierarchy

The SOA is made up of:

- (a) SOA Details;
- (b) SOA Conditions; and
- (c) any other document expressly incorporated by reference in the SOA Details.

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 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 those parts of the SOA Details listed in (a) and (b) above);
- (e) any other document expressly incorporated by reference in the SOA Details.

## 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.

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

## 3. Contracts

### 3.1. Documents making up a contract

A Contract established under the SOA will be made up of the following documents, in descending order of precedence if there is an inconsistency between the documents:

- (a) the documents which make up the SOA as set out in clause 1.3 of these SOA Conditions; and
- (b) the documents listed as making up the Contract as set out in the conditions which the SOA Details specify will apply.

A Contract established under the SOA may include additional provisions to the extent they are additional to, and do not detract from the documents in (a) and (b) above.

### 3.2. Contract formation

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

- (a) confirms it will supply the Customer the Deliverables; or
  - (b) commences to supply the Deliverables,
- the subject of the SOA Order, whichever occurs first.

By entering into 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 a SOA Order under clause 2 and a Contract has been formed with the Principal under clause 3.

## 5. Eligible Customers

The Supplier acknowledges that the SOA is 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 the SOA.

## 6. SOA Term

The SOA Term 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 Contract Term (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

The Supplier acknowledges that:

- (a) unless stated otherwise in the SOA Details, the Principal and Eligible Customers may engage other suppliers (or themselves) to provide goods, services and other deliverables the same or similar to the Deliverables; and
- (b) the Principal may, during the SOA Term, appoint other suppliers to the Panel for any reason, including if the Principal considers that inclusion of one or more additional suppliers is necessary or desirable to comply with government policy regarding diversity in supply chains or the achievement of social objectives.

## 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 Details or otherwise agreed, and perform all other obligations promptly;
- (c) (**performance**) must undertake everything necessary to perform the SOA;
- (d) (**Contracts**) must perform all its obligations under each Contract entered into under the SOA;
- (e) (**contract issues**) must promptly notify the Principal and the relevant Customer of any significant issues relating to any Contract, including (without limitation) any alleged or actual breach of a Contract, any dispute raised, or any significant relationship issues;
- (f) (**directions**) must comply with all reasonable directions of the Principal in relation to the Supplier's performance of the SOA;
- (g) (**act reasonably**) must act reasonably in exercising all of its rights under the SOA;

- (h) **(cooperation)** must cooperate with the Principal in relation to the SOA and with Eligible Customers in relation to potential or actual Contracts;
- (i) **(Laws)** must comply with all Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), the *Modern Slavery Act 2018* (Cth) (where applicable to the Supplier) and the *Human Rights Act 2019* (Qld) (where applicable to the Supplier);
- (j) **(records)** must create and maintain records in relation to the SOA and any Contracts established under the SOA 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;
- (k) **(insurance)** must at its cost, take out and maintain, during the SOA Term and any Contract Terms, the insurances described in the SOA Details on reasonable commercial terms with an insurer which, unless otherwise agreed by the Principal, is authorised and licensed to operate in Australia. The Supplier must immediately notify the Principal if any policy is cancelled or there is any significant change in any of those policies. Unless otherwise specified in the Details, the Supplier must maintain run-off insurance for a minimum period of 4 years after the SOA and any Contract entered into under the SOA ends or such other period as specified in the Details, for all insurance policies which are maintained on a “claims made” basis. The Supplier must on request, promptly provide to the Principal a certificate of currency for each policy or such other satisfactory evidence the Principal may reasonably require to demonstrate that the Supplier has in place the insurance policies required. 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;
- (l) **(authorisations)** must obtain and maintain the authorisations described in the SOA Details and any other licences, permits, permissions and authorities necessary for the Supplier to perform the Contracts established under the SOA. The Supplier must provide evidence that it has complied with this clause, if the Principal or an Eligible Customer asks;
- (m) **(further assurances)** must do anything and execute any document that the Principal reasonably asks, to give effect to the SOA;
- (n) **(reports)** must provide reports in the timeframe and format specified in the SOA Details and such other reports as and when reasonably requested by the Principal;
- (o) **(modern slavery)** must not, and must take reasonable steps to ensure that its supply chain does not undertake acts which could constitute an offence involving Modern Slavery;
- (p) **(modern slavery due diligence)** must implement due diligence procedures for its supply chain to ensure compliance with the *Modern Slavery Act 2018* (Cth) where that Act applies to the Supplier and must ensure its own due diligence obligations under the *Modern Slavery Act 2018* (Cth) are met;
- (q) **(competitive neutrality)** must, if the Supplier is a government-owned business, local government, or Commonwealth, State or Territory authority, price its offer to comply with the competitive neutrality principles of the Supplier’s jurisdiction;
- (r) **(access and inspection)** must, on reasonable prior written notice from the Principal, give the Principal or its nominated agent reasonable access to the Supplier’s premises

where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable the Principal or a third party engaged by the Principal to verify:

- (i) the completeness and accuracy of information provided by the Supplier in connection with the SOA or associated Invitation Process, and
- (ii) the Supplier's compliance with its obligations under the SOA and any Contracts established under the SOA,

and, without limiting the Principal's other rights, must promptly address any non-compliances notified by the Principal to the Supplier to rectify;

- (s) (**work health and safety**) without limiting the above, must at all times, comply and ensure that the Supplier's Personnel comply with all applicable work health and safety Laws and, if requested by the Principal, Customer or an Eligible Customer, provide copies of documents recording any work health and safety management system that it implements to comply with such work health and safety Laws. The Supplier must ensure that it and its Personnel do not, at any time, cause the Principal or a Customer to be in contravention of a work health and safety Law;
- (t) (**policies**) must comply with all policies, codes of conduct (including the Supplier Code of Conduct and the Ethical Supplier Threshold), rules, standards and procedures ('policies') which apply to the Supplier's obligations under the SOA. If any new policies are introduced, or amendments made to any existing policies, which apply to the Supplier's obligations under the SOA, the Supplier must comply with the new or amended policies. Access to the relevant policies will be provided on request;
- (u) (**financial viability**) must provide to the Principal or its nominated agent, upon request, all information as the Principal reasonably requires to satisfy itself that the Supplier has the financial capability to meet its obligations under the SOA and any Contracts established under the SOA. The Principal reserves the right to engage an independent financial assessor as a nominated agent to conduct financial viability assessments of the Supplier at reasonable times during the Term. The Supplier is required to co-operate with the independent financial assessor during the conduct of the financial viability assessment.

## 10. Pricing

### 10.1. No SOA payments

The Prices specified in the SOA 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 and any other Price changes agreed by the Principal will apply automatically to all Contracts under the SOA entered after the date the Price review or change takes effect.

## 11. GST

- (a) (**construction**) In this clause 11, words and expressions which are not defined in the 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 the SOA are exclusive of GST.
- (c) (**payment of GST**) If GST is payable on any supply made under the 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 the SOA.
- (d) (**tax invoice**) The supplier must deliver a Correctly Rendered 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 Correctly Rendered 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 the 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 the 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) agrees to provide the Goods, Services and other Deliverables to Customers on the terms described in each Contract and in accordance with the SOA;
- (b) certifies that it has read, understands, and complies with all the requirements of the SOA; and
- (c) acknowledges that only SOA and Contract changes set out in the departures sections of the SOA Details form part of the SOA or any Contract (as applicable). However, a Contract may include additional provisions to the extent they are additional to, and do not detract from the documents in clause 3.1(a) and (b).

## 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) **(consequential loss)** Subject to clause 13(d), to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, tort (including negligence) or otherwise in connection with the SOA.
- (d) **(no limitation)** The exclusion of liability for Consequential Loss in this clause does not apply to liability in relation to:
  - (i) personal injury, including sickness, injury or death;
  - (ii) loss of or damage to tangible property;
  - (iii) Intellectual Property Rights or Moral Rights infringement;
  - (iv) any breach by the Supplier or its Personnel of any obligation under clause 18 (confidentiality) or clause 19 (privacy) under the SOA; or
  - (v) an indemnity specified in the SOA,and any payments in relation to those forms of liability will not deplete the cap on liability.
- (e) **(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.
- (f) **(liability cap in contracts)**
  - (i) Subject to clause 13(f)(ii) below, if the SOA Details specifies a cap on liability for Contracts established under the SOA, that cap will apply to each Contract established under the SOA in relation to liabilities which can be capped under the Contract.
  - (ii) Notwithstanding clause 13(f)(i) above, a Customer may require a higher liability cap to apply to the Supplier in an individual Contract.
  - (iii) If no cap on liability is specified in the SOA Details and/or the SOA Order, a party's liability is not limited for a Contract established under the SOA.

## 14. Supplier indemnity to Principal

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 Laws by, the Supplier or its Personnel;
- (b) Wilful Default or Wilful Misconduct by the Supplier or its Personnel;
- (c) Claim of Intellectual Property Rights or Moral Rights infringement relating to the SOA;
- (d) breach by the Supplier or its Personnel of any obligation under clause 18 (confidentiality) or 19 (privacy);
- (e) breach of any warranty given in the SOA; or

- (f) Claim by a third party arising out of any negligent act or omission of the Supplier or its Personnel in the performance of the Supplier's obligations under the SOA, except to the extent that the Principal or its Personnel caused or contributed to the Claim.

## 15. Reliable 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 that is not Reliable Information are 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.

## 16. Intellectual Property Rights

### 16.1. Existing Intellectual Property Rights in SOA material

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 ensure 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 for any purpose of the Principal.

### 16.2. New Intellectual Property Rights in SOA material

Subject to clause 17 (Customer Data), new Intellectual Property Rights created or developed for the Principal or incorporated into any materials provided to the Principal in connection with the SOA will be owned by Principal.

The Principal grants the Supplier:

- (i) If specified in the SOA Details, 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. This licence is subject to the Supplier removing any of the Principal's or Customer's Confidential Information, Customer Data and Personal Information incorporated or otherwise contained in the material incorporating the new Intellectual Property Rights prior to exercising its rights under this clause and the Supplier must confirm to the Principal when this has been done; or
- (ii) Such other licence as specified in the SOA Details.



### 16.3. Warranty of authorisation

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

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

### 16.4. New Intellectual Property Rights in Contract

As between the Customer and a Supplier, the new Intellectual Property Rights created or developed in performing a Contract established under the SOA will be as specified in the SOA Details or, if not, as set out in the Contract conditions which the SOA Details specify will apply.

## 17. Customer Data

The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, will 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 or to others as specified in the SOA on a need to know basis to perform the SOA or Contracts and in accordance with all Laws.

The Supplier must comply with clauses 18 and 19 and all applicable Laws in relation to Customer Data which is Confidential Information or Personal Information. The Supplier must provide reasonable assistance to the Principal and Customer 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 Confidential Information, 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, 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 the Information Privacy 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 the SOA (other than a disclosure by the Principal as set out in (i) to (iii) above), 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) If requested by the Principal, on termination or expiry of the SOA, the Supplier must promptly:
  - (i) return or
  - (ii) 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 must confirm to the Principal when this has been done. Unless otherwise directed by the Principal, these obligations do not apply to any computer records or files which have been created pursuant to automatic archiving or back-up procedures on secured central storage servers and which cannot be reasonably deleted.
- (f) Notwithstanding (e) 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 the 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) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
  - (ii) not use Personal Information collected or accessed in connection with the SOA other than for the purpose of performing its obligations under the SOA;
  - (iii) not disclose Personal Information without the prior written consent of the Principal, unless required or authorised by Law;
  - (iv) not transfer any Personal Information collected or accessed in connection with the SOA, outside of Australia, except:
    - A. with the prior written consent of the Principal; or
    - B. where the Personal Information is about the Principal's ordering officer or other personnel which is provided in connection with account management purposes or service delivery management under the SOA;
  - (v) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under the SOA;
  - (vi) ensure that its Personnel are aware of the Supplier's obligations under this clause and comply with the same obligations imposed on the Supplier under this clause;
  - (vii) immediately notify the Principal if:
    - A. it will need to take any action under Part IIIC of the Privacy Act;

- B. it becomes aware that a disclosure of Personal Information is, or may be, required by Law; or
  - C. any Law prevents, or may prevent, the Supplier from complying with any of its obligations under this clause;
- (viii) if the Principal requests, obtain from its Personnel a signed privacy deed in a form acceptable to the Principal;
- (ix) fully cooperate with the Principal to enable the Principal to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (x) comply with such other privacy measures as the Principal reasonably advises the Supplier in writing from time to time; and
- (xi) immediately notify the Principal upon becoming aware of:
- A. any breach of this clause; or
  - B. any unauthorised access, use, modification, disclosure or other misuse of any Personal Information collected or accessed in connection with the SOA.
- (c) Nothing in this clause is intended to limit any obligation of the Supplier under the Information Privacy Act or Privacy Act (as applicable).

## 20. Warranties

### 20.1. Anti-competitive conduct

The Supplier warrants that neither it, nor, to the best of its knowledge and belief, having made reasonable enquiries, 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, to the best of its knowledge and belief, having made reasonable enquiries, its Personnel, do not have a Conflict of Interest in the performance of the SOA, except as disclosed in the SOA Details and which has been and continues to be appropriately resolved to the satisfaction of the Principal.

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

If a Conflict of Interest or risk of it arises during the Term of the SOA or any Contract established under the SOA, the Supplier must notify the Principal immediately. Upon receipt of such a notice, or upon the Principal otherwise identifying a Conflict of Interest or risk of it, the Principal may, without limiting its rights under clause 21, direct the Supplier as to how to resolve the Conflict of Interest, and the Supplier must comply with any reasonable direction given.

### 20.3. Criminal organisation

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel, have not been convicted of an offence under the

Criminal Code in the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

## 20.4. Supplier Information

The Supplier warrants that all representations, warranties, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the SOA or the associated Invitation Process (“Supplier Information”) are complete, accurate, up to date and not misleading in any way.

The Supplier acknowledges that the Principal is relying on the information provided by the Supplier and referenced in the SOA and any information provided by the Supplier in connection with the associated Invitation Process (if any) in entering into the SOA, and Customers will rely on that information in entering into Contracts;

The Supplier acknowledges that the Principal and Customers may suffer damage if any of that information referred to in this clause is incomplete, inaccurate, out of date or misleading in any way.

The Supplier must immediately tell the Principal if any Supplier Information is or becomes incomplete, inaccurate, out of date or misleading in any way.

## 20.5. Modern Slavery

The Supplier warrants that the Supplier and, to the best of its knowledge and belief having made reasonable enquiries, its supply chain, have not been convicted of any offence involving Modern Slavery.

The Supplier must immediately notify the Principal if it becomes aware of any actual, potential or perceived Modern Slavery in its operations or its supply chain-

The Supplier warrants that it and its supply chain will conduct their business in a manner so as to reduce the risk of Modern Slavery in their operations and supply chains.

## 20.6. 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.

# 21. Termination and suspension

## 21.1. For cause – by Principal

The Principal may terminate the SOA with the Supplier which is on the Panel in whole or in part immediately on written notice if:

- (a) any Customer terminates a Contract under the SOA, for cause;
- (b) the Principal is satisfied that the Supplier has breached any warranty in the SOA;
- (c) the Supplier fails to notify the Principal under clause 20.2 if a Conflict of Interest or risk of it arises during the Term of the SOA or any Contract established under the SOA or a

- Conflict of Interest exists or arises and has not been or in the Principal's view cannot be appropriately resolved 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 into any 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 in its written notice to remedy; or
  - (f) the Supplier is or becomes Insolvent except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies.

Without limiting any other rights or remedies the Principal may have, if the Principal terminates under this clause 21.1, the Supplier must pay or reimburse the Principal's reasonable costs associated with the termination.

## 21.2. For convenience

The Principal may terminate the SOA with the Supplier which is on the Panel in its absolute discretion by giving at least 30 days written notice. Without limiting this right, the Principal may use this right to remove the Supplier from the Panel to manage the Panel composition and/or size. 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. Show Cause - Supplier Code of Conduct and Ethical Supplier Threshold compliance

Where the Principal reasonably suspects that the Supplier is not complying with the Supplier Code of Conduct or the Ethical Supplier Threshold, the Principal may by notice require the Supplier to show cause, by the date specified in the notice (which must not be less than 10 Business Days), why the Principal should not terminate the SOA and remove the Supplier from the Panel.

If the Supplier fails to show reasonable cause by the date specified by the Principal, then the Principal may, by notice in writing to the Supplier, terminate the SOA and remove the Supplier from the Panel.

## 21.4. Suspension

In addition to the Principal's termination rights, the Principal may suspend the SOA, in whole or in part, immediately on written notice to the Supplier for the period specified in the 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 re-commence performance after receiving the Principal's notice ending the suspension.

## 21.5. 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, unless the SOA or Contract specifies otherwise.

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 only applies if it is specified in the SOA Details that it applies. If it applies, it is in addition to any limitations on subcontracting in each Contract established under the SOA.
- (b) Subject to clause 22(a), the Supplier may only subcontract any part of its obligations under the SOA to the subcontractors identified in the Details, or with the Principal's prior written consent. The Principal will not unreasonably withhold consent but may give consent subject to reasonable conditions.
- (c) If the Principal agrees that the Supplier may subcontract its obligations under the SOA, the Supplier must implement an appropriate system of due diligence, designed to ensure the subcontractor takes reasonable steps to reduce the risk of Modern Slavery in the subcontractor's supply chains and in any part of the subcontractor's business. The Supplier must also take reasonable steps to ensure that the subcontractor complies with the Ethical Supplier Threshold.
- (d) 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 and novation

The Supplier may not assign, transfer or novate any of its rights or obligations under the SOA without the Principal's prior written consent. The Supplier acknowledges that the Principal may conduct financial or other inquiries or checks on the entity proposing to take over the SOA before determining whether or not to give consent to the assignment or novation.

The Principal may assign, transfer or novate any of its rights or obligations under the SOA on written notice to the Supplier.

The SOA is for the benefit of and will bind the parties and their successors and permitted assigns.

## 24. Personnel

- (a) **(responsibility)** The Supplier must ensure that its Personnel comply with all the obligations of the Supplier under the SOA and any Contract under the SOA, and the Supplier is fully responsible for all acts and omissions of its Personnel, as though they were acts or omissions of the Supplier.
- (b) **(not employees of the Principal or Customer)** The Supplier is not, and Supplier Personnel are not, employees of the Principal or a Customer.
- (c) **(industrial relations)** The Supplier must comply with all Laws, applicable awards, collective agreements and industrial relations instruments, including those in relation to collective bargaining and the role of trade unions.
- (d) **(Key Personnel)** In providing the Services the Supplier must:
  - (i) ensure that the Key Personnel perform the roles allocated to them in the SOA Details and devote sufficient time to the role they are retained to perform so that

their role is performed efficiently, skilfully and in accordance with the SOA and a Contract; and

- (ii) promptly provide information reasonably requested about any Key Personnel.

## 25. Disputes

- (a) Neither party may commence court proceedings or action against the other party under or in connection with the SOA (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute under this clause 25.
- (b) Either party may give the other a notice in writing (**dispute notice**) setting out the details of the dispute. Within 5 Business Days after the date on which a party gives the other party a dispute notice (**dispute notice date**), representatives of the parties must meet and use reasonable endeavours to resolve the dispute.
- (c) If the dispute is not resolved under clause 25(b), senior management representatives of the parties must, within 10 Business Days after the dispute notice date, meet and use reasonable endeavours to resolve the dispute.
- (d) If the dispute is not resolved under clause 25(c), the dispute must be referred to each party's chief executive or equivalent position (or their nominee) for resolution.
- (e) If the dispute is not resolved under clause 25(d) within 30 Business Days after the dispute notice date (or such other time as agreed between the parties), the dispute must be referred to mediation according to clause 25(f).
- (f) Where the dispute is referred to mediation, the parties:
  - (i) will conduct the mediation in Brisbane;
  - (ii) will jointly appoint the mediator, or if the parties cannot agree on the mediator within 5 Business Days of referral to mediation, the Chairperson of the Queensland Chapter of the Resolution Institute will determine the mediator;
  - (iii) may be legally represented at the mediation;
  - (iv) will each bear their own costs concerning the mediation and will bear the costs of the mediation venue and the mediator equally; and
  - (v) will continue to perform their obligations under the SOA notwithstanding the existence of a dispute to the extent practicable having regard to the nature of the dispute, unless the parties agree otherwise in writing.
- (g) If the mediation does not resolve the dispute, either party may commence any other form of action to resolve the dispute, including court proceedings.
- (h) This clause does not apply in relation to the exercising by the Principal of any rights under clause 21.

## 26. Variation

- (a) Save for clause 26(b) below, the SOA may only be varied by written agreement of authorised representatives of the parties.
- (b) The Principal may vary the SOA by notice to the Supplier when reasonably required as a result of changes in Government policy.

## 27. General

The parties agree that:

- (a) (**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 in the SOA Details (or as updated under clause 26).

Notices will be deemed to be given in accordance with Part C of the Definitions and Interpretations (*version 3.0 – published December 2020*) which is available via:

[www.forgov.qld.gov.au/general-goods-and-services-templates](http://www.forgov.qld.gov.au/general-goods-and-services-templates).

- (b) (**communication**) they will direct all other communications relating to the SOA to the other party's nominated contact person, or to another person if the other party directs.
- (c) (**entire agreement**) the 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 the SOA. No other terms apply to the SOA. The terms of each Contract are as agreed by the Customer and Supplier in accordance with the SOA.
- (d) (**severability**) if any part of the 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.
- (e) (**waiver**) clauses and rights in the 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.
- (f) (**no advertising**) the Supplier will not and must ensure that its Personnel do not, make any public announcement or advertisement in any medium in relation to the SOA without the consent of the Principal.
- (g) (**relationship**) their relationship is of principal and contractor. The SOA does not create any partnership, joint venture, agency or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint ventures, agent, officer or employee of the Principal.
- (h) (**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.
- (i) (**survival**) clauses 1.2, 1.3, 3, 4, 7, 8, 9(k), 10, 11, 13, 14, 16, 17, 18, 19, 21.5, 25 and 27 and any other clause in the SOA Conditions which is expressed to survive or by its nature survives, will survive termination or expiry of the SOA for any reason.
- (j) (**costs**) each party will bear its own costs in relation to the preparation, negotiation and execution of the SOA and any variations.