



Standing Offer Arrangement (SOA) – Conditions

SOA Name:

.....

SOA Number:

.....

For the provision of:

.....

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STANDING OFFER ARRANGEMENT (SOA) CONDITIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 The following definitions apply in these SOA Conditions and the Response Schedules, except where the context otherwise requires:

business day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place where the Services are undertaken; or
- (c) a day in the period from 22 December in a particular year to 10 January in the following year, both days inclusive;

Conflict of Interest includes any actual, reasonably anticipated, or perceived conflict of interest, whether personal, financial, professional, or otherwise;

Customer means person identified as the Customer in the SOA Particulars;

Customer's Representative means the representative of the Customer, nominated in the SOA Particulars or other person nominated from time to time by the Customer to be the Customer's Representative;

Document includes:

- (a) any paper or other medium, including electronic, on which there is writing;
- (b) any paper or other medium, including electronic, on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) any article or medium, including electronic, from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device, and includes electronic documents;

Ethical Supplier Mandate means the Queensland Government policy titled "Buy Queensland: Ethical Supplier Mandate" or any policy that replaces that policy;

Ethical Supplier Threshold means the Ethical Supplier Threshold described in the Queensland Procurement Policy, or any policy that replaces that policy;

Government Department or Instrumentality means:

- (a) any government department responsible for compliance with government policy, including without limitation:
 - (i) the Queensland Government Procurement Compliance Branch within the Procurement Division of the Department of Energy and Climate;
 - (ii) the Queensland Apprenticeship and Traineeship Office within the Department of Employment, Small Business and Training; and
 - (iii) Local Content within the Department of State Development and Infrastructure; and
- (b) any government regulator, including, without limitation:
 - (i) the Queensland Building and Construction Commission;
 - (ii) the Office of Industrial Relations;
 - (iii) the Fair Work Commission;
 - (iv) the Australian Taxation Office; and

(v) the Office of the Federal Safety Commissioner;

Invitation to Offer means the invitation to offer, including the Conditions of Offer, issued to SOA Offerors to enter into a Standing Offer Arrangement;

Order means an Order issued by the Customer to the Supplier, under the SOA, for the provision of Services under a Purchase Contract, using the Schedule of Prices, in accordance with clause 3.1;

Parties refers to the Customer and the Supplier, under the SOA;

Privacy Act means the *Privacy Act 1988* (Cth);

Purchase Contract means a contract to be formed under this SOA, for Services to be performed by the Supplier on request of the Customer, following the acceptance of an Order or Supplier's Offer under these SOA conditions;

Purchase Contract Conditions means the terms and conditions to apply to any Purchase Contract formed under this SOA, as set out in Annexure D, including the annexure (if any) to the Purchase Contract Conditions;

Purchase Contract Letter of Acceptance means a letter issued by the Customer to the Supplier, in response to the Supplier's Offer, for the purpose of entering into a Purchase Contract under the SOA;

QGP Compliance Branch means the State of Queensland's Queensland Government Procurement Compliance Branch within the Department of Energy and Climate and any successor administrative unit;

Queensland Procurement Policy means the Queensland Government policy titled "Queensland Procurement Policy" or any policy which replaces that policy;

Request for Offer means a request for an offer to perform a scope of work, issued by the Customer to the Supplier under clause 3.1 of these SOA Conditions;

Response Schedules means the response schedules to be completed by the SOA Offeror in response to the SOA Invitation to Offer to enter into the SOA;

RTI Act means the Right to Information Act 2009 (Qld);

Schedule of Prices means the schedule of prices included in the SOA Offer as clarified and accepted by the Customer;

Services means the type of work and/or services, including the supply of goods, materials, and/or equipment, the subject of this SOA that are set out in Annexure B, to be performed under a Purchase Contract;

SOA means the Standing Offer Arrangement between the Customer and the Supplier, made up of the documents described in clause 2.2 of these SOA Conditions;

SOA Acceptance Letter means a letter issued by the Customer to the SOA Offeror, accepting its SOA Offer, for the purpose of forming the SOA;

SOA Commencement Date means the date stated in the SOA Acceptance Letter, or if none stated, the date of the SOA Acceptance Letter;

SOA Conditions means this document entitled Standing Offer Arrangement (SOA) Conditions;

SOA Documents means the documents set out in clause 2.2 of these SOA Conditions;

SOA Offer means an offer contained in the Response Schedules, as clarified by the SOA Offeror and accepted by the Customer through the SOA Acceptance Letter;

SOA Offeror means the person or entity delivering an SOA Offer in response to an Invitation to Offer to enter into a SOA;

SOA Term means the term of this SOA identified in the SOA Particulars;

Subcontractor means a person engaged by a contractor to perform any part of the work under a Purchase Contract (if applicable), and includes a subconsultant, engaged by a consultant, to perform any part of the services under a Purchase Contract (if applicable);

Supplier means the person or company whose SOA Offer has been accepted by the Customer by an SOA Acceptance Letter;

Supplier Code of Conduct means the Queensland Government Code titled "Queensland Government Supplier Code of Conduct" or any code replacing that code;

Supplier's Offer means an offer made by the Supplier under this SOA, in response to a Request for Offer;

Supplier's Representative means the person/s nominated in the Response Schedules or any other person/s nominated from time to time by the Supplier as the Supplier's Representative under this SOA.

1.2 The following rules of interpretation apply, except where the context otherwise requires:

- (a) words indicating a gender include any other gender;
- (b) words in the singular include the plural and vice versa;
- (c) prices are in Australian currency;
- (d) a reference to any legislation includes any subordinate legislation made under it and any legislation amending, consolidating or replacing it;
- (e) a reference to an entity or person includes an individual, corporation, partnership or other legal entity;
- (f) a party includes its executors, administrators, liquidators, successors and permitted assigns;
- (g) "in writing" means any written communication, whether hand written, typed, printed or electronically made resulting in a permanent records, and includes electronically transmitted and stored information, excluding any oral communication;
- (h) a reference to a clause, schedule, attachment or annexure is a reference to a clause, all its subclauses, schedule, attachment or annexure to the SOA Conditions;
- (i) if any expression is defined, other grammatical forms of that expression will have corresponding meanings;
- (j) a document or agreement or a provision of a document or agreement, is a reference to that document, agreement or provision as amended, supplemented, replaced or novated; and
- (k) where a provision require any party to perform any action on a day that is not a business day, it shall be required to perform the action on the next business day.

2. NATURE OF SOA

2.1. General

2.1.1 By entry into this SOA, the Customer may, but is not bound to, engage the Supplier to supply Services during the SOA Term.

2.1.2 Services will only be supplied pursuant to a Purchase Contract, and not under this SOA.

2.1.3 Neither the Customer nor the Supplier is bound to enter into a Purchase Contract for the supply of any, or any volume, of Services during the SOA Term.

2.1.4 The Supplier does not have the exclusive right to supply Services. The Customer, in its absolute discretion, may contract with others to provide the same or similar services, the subject of the SOA or of any Purchase Contract to be formed under this SOA.

2.1.5 The Supplier will do all things reasonably required by the Customer to give effect to the SOA, and must obtain and maintain any insurances, licences, permits, permissions, and authorities required by legislation for the Supplier to perform the Services under a Purchase Contract, for the SOA Term.

- 2.1.6 No amount is payable to the Supplier for the performance of the Supplier's obligations under the SOA.
- 2.1.7 The relationship of the parties under the SOA is one of Customer and Supplier. The Supplier is not, under the SOA, in partnership or joint venture with the Customer and must not represent itself or allow itself to be represented as a partner or joint venture, officer or employee of the Customer.

2.2. SOA Documents

- 2.2.1 The following documents constitute the entire SOA between the Customer and the Supplier:
- (a) these SOA Conditions;
 - (b) the SOA Offer;
 - (c) SOA Acceptance Letter; and
 - (d) any other Documents forming part of this SOA, as agreed in writing between the Customer and the Supplier.
- 2.2.2 The SOA Documents are mutually explanatory and anything contained in one but not in another, including a definition, is applicable to all.
- 2.2.3 The SOA supersedes all prior representations, agreements, statements and understandings between the Customer and Supplier, whether oral or in writing relating to the subject matter of the SOA.

2.3. SOA Formation

The SOA will be formed between the Customer and the SOA Offeror when the Customer delivers a SOA Acceptance Letter accepting the SOA Offer.

2.4. SOA Term

- 2.4.1 The SOA Term commences on the SOA Commencement Date and expires on the last day of the SOA Term.
- 2.4.2 The expiry of the SOA Term shall have no effect on any Purchase Contracts entered into before the end of the SOA Term, and the Supplier and the Customer shall continue to fulfill their obligations under such Purchase Contracts for the duration of such Purchase Contracts.

2.5. Use of the SOA

- 2.5.1 Subject to the Customer's right to delegate the authority to issue a Request for Offer under the SOA to another Queensland Government department, the SOA is for the sole use of the Customer.
- 2.5.2 Despite anything in the SOA to the contrary:
- (a) the Customer is not obliged to exercise any executive or statutory right or duty, or to influence, override, interfere with or direct any other Government agency in the proper exercise and performance of any of its executive or statutory rights or duties;
 - (b) nothing in the SOA has the effect of constraining the Customer or placing any fetter on the Customer's discretion to exercise or not to exercise any of its executive or statutory rights or duties; and
 - (c) the Supplier will not be entitled to make any claim against the Customer relating to any exercise or failure of the Customer to exercise its executive or statutory rights or duties.

3. PURCHASE CONTRACT

3.1. Request for SOA Offer and Order

Alternative 1

- 3.1.1 When the Customer wishes to enter into a Purchase Contract for the supply of work, services, materials, and/or equipment of the type described in Annexure B, SOA Scope of Services, it may issue a Request for Offer to the Supplier.

3.1.2 An issued Request for Offer:

- (a) must contain the details and scope of the work to be completed under the Purchase Contract;
- (b) must contain a copy of the Purchase Contract Conditions, in the form attached to these SOA Conditions, including the completed annexure (if any) forming part of the Purchase Contract Conditions;
- (c) must contain the details required to be completed by the Supplier; and
- (d) must contain a Request for Offer Form in the form attached to these SOA Conditions as Annexure C.

3.1.3 The Customer shall not be bound by and the Supplier may not rely upon, any oral advice or information given or furnished in respect of any Request for Offer, but shall be bound only by written or electronically transferred advice or information furnished by or on behalf of the Customer.

Alternative 2

3.1.4 Whenever the Customer wishes to enter into a Purchase Contract, for the supply of work, services, materials, and/or equipment of the type described in Annexure B, SOA Scope of Services, under this SOA, it may issue an Order to the Supplier which must contain:

- (a) the work, services, materials and/or equipment required;
- (b) the quantity required;
- (c) the place where the work, services, material and/or equipment is required; and
- (d) the period, date or times applicable to the supply.

3.1.5 The terms and conditions that apply to an Order issued under clause 3.1.4 are the Purchase Contract Conditions and the prices or rates that apply are the prices or rates stated in the Schedule of Prices for the work, services, materials, and/or equipment the subject of the Order.

3.1.6 The Customer shall not be bound by and the Supplier may not rely upon, any oral advice or information given or furnished in respect of any Order, but shall be bound only by written or electronically transferred advice or information furnished by or on behalf of the Customer.

3.2. Response to request for SOA Offer or Order**Alternative 1**

3.2.1 Upon receipt of a Request for Offer, the Supplier must:

- (a) if it doesn't intend to submit a Supplier's Offer, inform the Customer in writing within the time specified in the Request for Offer, or if no time is specified, within 3 business days of receiving the Request for Offer, that it won't be submitting a Supplier's Offer, and include the reason for not submitting a Supplier's Offer; or
- (b) prepare and submit a signed Request for Offer Form, together with the Supplier's Offer, to the Customer within the time specified for a response in the Request for Offer, or if no time is specified, within 14 days of receiving the Request for Offer.

3.2.2 The Supplier's Offer must include the Request for Offer Form, and must state the proposed contract price, and details of how that price is calculated.

3.2.3 The Supplier is required to satisfy itself as to the completeness and correctness of the Supplier's Offer. The Supplier's Offer shall be deemed to be on the basis that the Supplier has a full knowledge of all matters relating to the Purchase Contract under the Request for Offer and has undertaken an inspection of the particular site and any existing structures or features thereon, if required by the Request for Offer.

3.2.4 The Customer may, without being under any obligation to do so, and in its absolute discretion:

- (a) accept the Supplier's Offer by issuing a Purchase Contract Letter of Acceptance; or

- (b) reject the Supplier's Offer.

3.2.5 The Customer may seek clarification or additional information in respect of any aspect of the Supplier's Offer and the Supplier must provide such clarification or additional information as may be requested by the Customer, including relating to compliance with the Ethical Supplier Threshold and Ethical Supplier Mandate.

Alternative 2

3.2.6 Upon receipt of an Order, the Supplier must:

- (a) accept the Order, in writing; or
- (b) reject the Order if it does not have capacity to deliver the Services under the Order.

3.3. Supplier Warranties

3.3.1 When submitting a Supplier's Offer or accepting an Order under clause 3.2 above, the Supplier warrants that:

- (a) it shall only utilise the prices or rates stated in the Schedule of Prices;
- (b) it is and will remain for the duration of the Purchase Contract, compliant with the Queensland Procurement Policy, Ethical Supplier Threshold and the Ethical Supplier Mandate;
- (c) it is and will remain compliant with the Queensland Government Supplier Code of Conduct;
- (d) it is and will remain compliant with any applicable Queensland Government Prequalification (PQC) System requirements, if applicable; and
- (e) it holds the insurance required by the Purchase Contract.

3.3.2 The warranties set out in clause 3.3.1 shall form part of any Purchase Contract formed under this SOA.

3.3.3 Failure of the Supplier to provide a Supplier's Offer that conforms with the warranties set out in clause 3.3.1 shall result in a rejection of the Supplier's Offer.

3.4. Purchase Contract formation

Alternative 1

3.4.1 A Purchase Contract will be formed if the Customer accepts a Supplier's Offer by issuing a Purchase Contract Letter of Acceptance in accordance with clause 3.2.4.

Alternative 2

3.4.2 A Purchase Contract will be formed between the Customer and the Supplier on the Supplier's acceptance of the Order in accordance with clause 3.2.6. above.

3.5. Purchase Contract conditions

3.5.1 Any Purchase Contract formed under this SOA in accordance with clause 3.4 above, shall be subject to the Purchase Contract Conditions set out in Annexure D.

3.5.2 The Customer and Supplier must perform their respective obligations under each Purchase Contract from the date on which the Purchase Contract is formed.

3.5.3 Each Purchase Contract formed under this SOA, during the SOA Term, is a separate contract.

4. SOA MANAGEMENT

4.1 The Customer's Representative will administer the SOA on the Customer's behalf.

4.2 All communication under the SOA must be through the Customer's Representative.

- 4.3 The Customer's Representative:
- (a) may give directions to the Supplier under the SOA; and
 - (b) will monitor the performance of the Supplier under the SOA.
- 4.4 The Supplier's Representative will be the primary point of contact for the Supplier relating to the SOA, unless otherwise advised in writing by the Supplier's Representative.
- 4.5 The Supplier's Representative must:
- (a) liaise with and, if requested, report to the Customer's Representative about the Supplier's performance of the Services and/or its compliance with these SOA Conditions;
 - (b) attend meetings with, or provide briefings to the Customer's Representative, as required from time to time; and
 - (c) promptly comply with any request or direction given by the Customer's Representative, in accordance with the SOA Conditions.
- 4.6 The Customer's Representative and Supplier's Representative under a Purchase Contract shall be the person/s nominated in that Purchase Contract and may differ from the representatives under this SOA.

5. INSURANCE

- 5.1 Before the commencement of any Purchase Contract, the Supplier must hold and maintain the following policies of insurance:
- (a) Public Liability insurance policy;
 - (b) where required in the SOA Particulars, Professional Indemnity Insurance;
 - (c) where required in the SOA Particulars, Product Liability Insurance; and
 - (d) Workers Compensation insurance in accordance with applicable legislation for the Supplier's employees;
- to ensure the Supplier's compliance with the insurance requirements under any Purchase Contract formed under this SOA.
- 5.2 If requested by the Customer, the Supplier must provide a certificate of currency or any such other evidence of compliance with its insurance obligations under a Purchase Contract to the satisfaction of the Customer.
- 5.3 The Supplier:
- (a) warrants that any exclusions and deductibles that may be applicable to the insurance policies that it holds, in accordance with this clause, will not impact on the Supplier's ability to meet any claim or otherwise prejudice the Customer's rights under the SOA or under any ensuing Purchase Contract (if any); and
 - (b) must immediately advise the Customer if any insurance policy required by a Purchase Contract is cancelled or materially modified.

6. WARRANTIES

6.1. Anti-competitive conduct

- 6.1.1 The Supplier warrants that neither it, nor its employees have engaged in, or will engage in, any collusive, anti-competitive or similar conduct in connection with the SOA, any associated offers or tenders or any actual or potential contracts with any entity for services similar to the Services under any Purchase Contract.
- 6.1.2 In addition to any other remedies available to it under law or contract, the Customer may, in its absolute discretion, immediately terminate the SOA if the Supplier is in breach of clause 6.1.1 above.

6.2. Conflict of interest

6.2.1 The Supplier warrants that it and its employees 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 the SOA, except as disclosed. If the Customer requests, the Supplier must obtain from its employees a signed Conflict of Interest declaration in a form acceptable to the Customer.

6.2.2 If a Conflict of Interest or risk of it arises during the Term of the SOA or any Purchase Contract established under the SOA, the Supplier must notify the Customer immediately. Upon receipt of such notice, or upon the Customer otherwise identifying a Conflict of Interest or risk to it, the Customer may, without limiting its rights under clause 9 direct the Supplier as to how to resolve the Conflict of Interest, and the Supplier must comply with any reasonable direction given.

6.3. Supplier information

6.3.1 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 Offer, SOA, Supplier's Offer or Purchase Contract, are complete, accurate, up to date and not misleading in any way.

6.3.2 The Supplier acknowledges that the Customer is relying on the information referred to in clause 6.3.1 in entering into the SOA, and the Customer will rely on that information when entering into Purchase Contracts.

6.3.3 The Supplier acknowledges that the Customer may suffer damage if any of the information referred to in clause 6.3.1 is incomplete, inaccurate, out of date or misleading in any way.

6.3.4 The Supplier must immediately notify the Customer if any of the information referred to in clause 6.3.1 is or becomes incomplete, inaccurate, out of date, or misleading in any way.

6.4. Supplier capabilities

6.4.1 The Supplier shall maintain the skill and expertise necessary to complete the work of the nature described in Annexure B, for the duration of the SOA Term.

6.5. Modern slavery

6.5.1 For the purposes of this clause: 6.5:

Modern Slavery has the meaning given to it in the *Modern Slavery Act 2018* (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons;

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth) and any other applicable legislation addressing similar subject matter.

6.5.2 The Supplier warrants that:

- (a) it complies with and will continue to comply with all applicable Modern Slavery Laws;
- (b) it has thoroughly investigated its labour practices, and those of its subcontractors (if any) in respect of any Modern Slavery used anywhere in its operations or supply chain or in the operations or supply chain of any of its subcontractors (to the extent reasonably possible);
- (c) it has put in place all necessary processes, procedures, investigations, and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
- (d) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties provided under this clause.

6.5.3 Should the Supplier become aware of any:

- (a) Modern Slavery risks in its supply chain or operations, it must notify the Customer of those risks and advise the Customer of the steps it is taking to eliminate or minimise those risks; or

- (b) Modern Slavery practices being carried out within its operations or supply chain, it must:
 - (i) in writing, immediately notify the Customer of those practices and of the remediation action it proposes to take; and
 - (ii) at its cost, take any such additional remediation action required by the Customer (acting reasonably and after due consultation with the Supplier).

6.5.4 If the Supplier is a 'reporting entity' for the purposes of any state or federal Modern Slavery Laws, including the *Modern Slavery Act 2018* (Cth), it must provide the Customer with a copy of any report it is required to prepare under that legislation at the Customer's request.

6.6. Dumped goods

6.6.1 For the purposes of this clause 6.6:

dumped goods means goods resulting from a practice where a supplier exports goods to another country at a price below the price charged in the country of manufacturer or below the cost of manufacturing the goods.

6.6.2 The Supplier warrants that:

- (a) it will not supply dumped goods or goods suspected of being dumped for the term of any Purchase Contract;
- (b) it will do business with ethically, environmentally and socially responsible suppliers, and will seek to influence the supply chain in this regard;
- (c) it has put into place the necessary processes, procedures, investigations and compliance systems to ensure that it can provide the warranties under this clause at all relevant times; and
- (d) should the Supplier become aware of any risk of breaching this warranty, it shall immediately notify the Customer of such risk and the remediation action it proposes to take.

6.7. Queensland Government policies

6.7.1 The Supplier warrants that:

- (a) it will comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct;
- (b) it will cooperate with the Customer, the QCS Compliance Branch and any Government Department or Instrumentality for Ethical Supplier Threshold compliance and investigative purposes including, without limitation, providing any requested documents related to the Supplier's compliance with the Ethical Supplier Threshold; and
- (c) it will fulfill all obligations required in respect of Queensland Government policies.

6.8. Warranties are ongoing

6.8.1 The warranties in this clause 6 are provided as at the date of the SOA Commencement Date and on an ongoing basis. The Supplier warrants that it will immediately notify the Customer if it becomes aware that any warranty made in clause 6 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.

6.8.2 In addition to any other remedies available to it under law or contract, the Customer may, in its absolute discretion, immediately terminate the SOA if the Supplier has breached any warranty in this clause 6.

7. QUEENSLAND PROCUREMENT POLICY

7.1 The Supplier must:

- (a) in carrying out the Services under a Purchase Contract, comply with the principles of the Queensland Procurement Policy and any requirements under the Purchase Contract in this regard; and

- (b) for the term of a Purchase Contract, comply with the Ethical Supplier Threshold, the Ethical Supplier Mandate and the Supplier Code of Conduct.
- 7.2 The Supplier acknowledges that a failure to comply with government policies and legislation that apply to the Services under a Purchase Contract or the Supplier's obligations under a Purchase Contract may result in the imposition of a demerit or sanction under the Ethical Supplier Mandate, in addition to any other remedies available to the Customer under the SOA or a Purchase Contract.
- 7.3 The Supplier:
- (a) consents to a relevant Government Department and Instrumentality providing information to the Customer and the QGP Compliance Branch; and
 - (b) authorises the Customer and the QGP Compliance Branch to obtain information;
about the Supplier's compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold, the Ethical Supplier Mandate, the Supplier Code of Conduct, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld).
- 7.4 The Supplier acknowledges and agrees that the Customer may refer matters of non-compliance with the Ethical Supplier Mandate to the Queensland Government Procurement Compliance Branch within the Department of Energy and Climate, who may publish information about sanctions imposed on the Supplier under the Ethical Supplier Mandate.
- 7.5 Upon request by the Customer or a party nominated by the Customer (which may include the Customer's employees or third parties), the Supplier must provide all necessary information, including information of any of its subcontractors (if any), for the purposes of investigation or an audit to assess the Supplier's or its subcontractors' compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate. This information may be shared with relevant Government Departments or Instrumentalities and when necessary the Queensland Government Procurement Compliance Branch within the Department of Energy and Climate and the Tripartite Procurement Advisory Panel for the purposes of the making of a recommendation about compliance with the Queensland Procurement Policy, the Ethical Supplier Threshold and the Ethical Supplier Mandate.

8. CONFIDENTIALITY

- 8.1 For the purposes of this clause:

Confidential Information means all information disclosed by or on behalf of the Customer or the Supplier to the other party in connection with the SOA Conditions of Offer, the SOA, a Request for Offer, an Order, or a Purchase Contract or created using that information, which is confidential in nature and designated as confidential or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, but does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
 - (b) the recipient can demonstrate was already in its possession or was independently developed by the recipient; or
 - (c) the recipient receives from another person on a non-confidential basis.
- 8.2 Each party must keep confidential all Confidential Information which it receives from the other party and:
- (a) not use it except for the purposes of the Invitation to Offer, SOA or Purchase Contract, Request for Offer or Order, as applicable; and
 - (b) not disclose it except:
 - (i) to its employees and agents or subcontractors (if any) on a need to know basis for the purpose of performing its obligations under the Invitation to Offer, SOA, Request for Offer, Order or Purchase Contract, as applicable;

- (ii) with the Customer's consent;
 - (iii) to the extent required by Law;
 - (iv) to its professional advisors; or
 - (v) in the case of the Customer;
 - (A) to a Minister or Parliament; or
 - (B) as required under the RTI Act or the Information Privacy Act.
- 8.3 The Customer may publish information about the SOA on the Queensland Contract Directory, where required or recommended by Government Procurement Policy.
- 8.4 If the Supplier intends disclosing to a third-party Confidential Information obtained from the Customer as permitted under the Invitation to Offer, SOA, Request for Offer, Order or Purchase Contract, the Supplier must first 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 that party.
- 8.5 If requested by the Customer, the Supplier must obtain from its employees or subcontractors (if any) a signed confidentiality deed in a form acceptable to the Customer.
- 8.6 Subject to clause 8.7, if requested by the Customer upon termination or expiry of the SOA, the Supplier must promptly:
- (a) return or
 - (b) destroy (at the Customer's option);
- all Confidential Information of the Customer and a copy of all documents and records created by the Supplier in the performance of the SOA, and must confirm to the Customer, in writing, when this has been done. Unless otherwise directed by the Customer, 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 services and which cannot reasonably be deleted.
- 8.7 Notwithstanding clause 8.6 above, the Supplier may retain a copy of any Confidential Information of the Customer to the extent required by Law, or for the Supplier's reasonable internal credit, risk, insurance, legal and professional responsibilities.

9. DEFAULT AND TERMINATION

- 9.1 Without prejudice to any other right or remedy it may have, the Customer may terminate this SOA as provided in clause 6 above.
- 9.2 If this SOA is terminated or otherwise discharged (including through expiry of the Term), any Purchase Contracts already formed in accordance with clause 3 of this SOA will not be affected and must be fulfilled in accordance with their terms.

10. DISPUTES

- 10.1 Notwithstanding the existence of a dispute in relation to any matter under the SOA, the Supplier must continue to perform its obligations under any Purchase Contracts already formed.
- 10.2 Disputes relating to a Purchase Contract must be dealt with under the dispute resolution provisions of such Purchase Contract.

11. RIGHT TO INFORMATION AND DISCLOSURE

- 11.1 The Supplier acknowledges that the Customer and its employees may use and disclose any of the information provided by the Supplier about the Supplier, the SOA Conditions of Offer, the SOA or any Purchase Contract to Queensland Government departments or agencies for any purpose in connection with the administration of the SOA.

- 11.2 The RTI Act provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 11.3 The RTI Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to the public interest.
- 11.4 Information provided by the Supplier is potentially subject to disclosure to third parties.
- 11.5 If disclosure under the RTI Act, and/or general disclosure of information provided by the Supplier in connection with the SOA, would be of concern to the Supplier because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, this must be expressly noted by the Supplier at the time of disclosing the information to the Customer. The Customer cannot guarantee that any information provided by the Supplier will be protected from disclosure under the RTI Act.
- 11.6 Despite any other provision of the SOA, the Customer is entitled to publish on the Department of Energy and Climate's website or by any other means, the following details:
- (a) the name and address of the Customer;
 - (b) a description of the Services;
 - (c) SOA Commencement Date or award date;
 - (d) value of the SOA;
 - (e) name and address of the Supplier;
 - (f) the procurement method used; and
 - (g) where the total value of the Services is \$10 million or more, the Customer is entitled to publish the following additional information:
 - (i) SOA Particulars;
 - (ii) SOA overview; and
 - (iii) reasons for non-disclosure of procurement results (if applicable).

12. NO ADVERTISING

No public announcement or advertisement in any medium may be made by the Supplier or any of its employees or subcontractors in relation to the SOA, without the Customer's prior written consent.

13. SUPPLIER ENTITY

If the Supplier comprises two or more persons:

- (a) an obligation of those persons under the SOA is joint and several, and each of those persons agrees that it is responsible for the acts or omissions of the other as if they were its own;
- (b) a right of those persons benefits them jointly; and
- (c) any right those persons exercise under the SOA will be deemed to have been exercised concurrently by all persons constituting the Supplier.

14. GOVERNING LAW

The SOA is governed by and construed in accordance with the laws of Queensland and the Customer and Supplier submit to the non-exclusive jurisdiction of the courts of Queensland.

ANNEXURE A – SOA PARTICULARS

Item

- 1 SOA Title
- 2 SOA Reference Number
- 3 Customer (clause 1) State of Queensland through
- 4 Customer’s Representative (clause 1)
[GUIDE NOTE: Specify the name and position of the Customer’s authorised representative]
- 5 Phone number of Customer’s Representative
- 6 Address of Customer’s Representative
- 7 Email of Customer’s Representative
- 8 SOA Term (clause 1) years from the SOA Commencement Date
- 9 Purchase Contract (clause 3) Alternative 1* / Alternative 2* *(*Delete one)*
- 10 Public liability and product liability insurance (clause 5) Public and Products liability insurance to the minimum value specified in each Purchase Contract to be formed, if any, is required to be held before the commencement of any Purchase Contract.
- 11 Professional indemnity insurance (clause 5) Professional indemnity insurance to the minimum value specified in each Purchase Contract to be formed, if any, is to be held before the commencement of any Purchase Contract and maintained for the period stated in the relevant Purchase Contract. * / Not applicable* *(*Delete one)*
- 12 Other insurances (clause 5)
[GUIDE NOTE: Insert all other insurances required, and the minimum amount for which the Supplier must be insured.]
- 13 Evidence of insurance (clause 5) Copies of Certificates of Currency issued by the Supplier’s insurer are to be forwarded to the Customer upon request from the Customer; or upon receipt of a new Certificate of Currency when renewing or changing an insurance policy.

ANNEXURE B – SOA SCOPE OF SERVICES

GUIDENOTE: [DELETE BEFORE PUBLISHING]

- *Details should be included here about the scope of services or work that will be required under a Purchase Contract.*
- *Sufficient information should be provided to enable Suppliers to tender rates and prices for the Schedule of Prices under the SOA, to be used under the Purchase Contract.*

ANNEXURE C – REQUEST FOR OFFER FORM

GUIDENOTE: [DELETE BEFORE PUBLISHING]

- ***Attach the actual standard building construction and maintenance offer or tender form for the relevant Purchase Contract.***
- ***Do not link to the website where the current published version is published.***

ANNEXURE D – PURCHASE CONTRACT CONDITIONS

GUIDENOTE: [DELETE BEFORE PUBLISHING]

- ***Attach the actual standard building construction and maintenance contracts, together with its Annexure (if any).***
- ***Must be one of the following standard building construction and maintenance contracts:***
 - ***Minor works with option for design;***
 - ***Medium works with option for design;***
 - ***Short form consultancy services;***
 - ***Responsive maintenance;***
 - ***Supply of building materials.***
- ***Do not link to the website where the current published version is published.***