

Basic Purchasing Conditions

1 The Contract

(a) A Contract will be formed between TAFE Queensland (as the Customer) and the Supplier on the terms of these Basic Purchasing Conditions:

- (i) when the Supplier accepts a Basic Order; or
- (ii) following receipt of a Basic Order, provides the Goods and/or Services set out in that Basic Order.

The Contract continues until the Goods are delivered or the Services are performed or the expiry date specified in the Basic Order (if applicable), unless terminated earlier in accordance with this Contract.

- (b) Except where a Contract is established under a SOA, the Contract is made up of these Basic Purchasing Conditions, the Basic Order and any other document expressly incorporated by reference in the Basic Order, in descending order of precedence if there is an inconsistency between the documents.
- (c) Where the Contract is established under a SOA, the Contract is made up of the documents specified in clause 1.3 of the SOA Conditions and the documents in clause 1(b) above, in descending order of precedence

2 Interpretation

The definitions and rules of interpretation that apply to this Contract are as attached to these Basic Purchasing Conditions as Attachment 1.

3 Supplier to provide Deliverables

- (a) TAFE Queensland appoints the Supplier to supply the Deliverables. The Supplier accepts the appointment. The Supplier must provide the Deliverables in accordance with this Contract and TAFE Queensland's delivery instructions including within the timeframes specified in the Basic Order or as otherwise agreed
- (b) The Supplier will promptly notify TAFE Queensland if it believes it will not be able to meet any delivery date or other timeframes specified in the Basic Order. If the Supplier cannot meet the timeframes specified in the

Basic Order, then TAFE Queensland may terminate the Contract at no cost to TAFE Queensland.

4 No exclusivity

Notwithstanding anything else in the Contract, TAFE Queensland may engage other suppliers to (or may itself) provide goods, services and other deliverables which are the same as or similar to the Deliverables.

5 Requirements

- (a) The Supplier must ensure that the Goods satisfy the description in the Contract, are new, unused and of recent origin, are of a high quality and are fit for their usual purpose and any other purpose disclosed by TAFE Queensland before the Contract is formed.
- (b) The Supplier must ensure the highest quality of work, and provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services.
- (c) The Supplier 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 Deliverables and/or the Supplier's obligations under this Contract. If any new Policies are introduced, or amendments made to any existing Policies, which apply to the Deliverables and/or the Supplier's obligations under this Contract, the Supplier will comply with the new or amended Policies. Access to the relevant Policies will be provided on request.
- (d) The Supplier must comply with all reasonable directions of TAFE Queensland in relation to the Supplier's performance of the Contract.
- (e) The Supplier must comply with all Laws including but not limited to the *Disability Discrimination Act 1992* (Cth), the *Modern Slavery Act 2018* (Cth) and the *Human Rights Act 2019* (Qld).
- (f) The Supplier must maintain public liability and products insurance for a minimum amount of \$5 million per claim or such other amount as

specified by TAFE Queensland in the Basic Order and workers' compensation insurance (if required by law), and any other insurance specified in writing by TAFE Queensland.

- (g) The Supplier must not use or disclose or otherwise make available any Confidential Information to any person except to its Personnel on a need to know basis to perform the Contract.
- (h) If the Supplier collects or has access to any Personal Information in order to perform the Contract, the Supplier must, when performing this Contract:
 - (i) comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to TAFE Queensland, as if the Supplier were TAFE Queensland; or
 - (ii) immediately notify TAFE Queensland on becoming aware of a breach of this clause or any unauthorised access, use, modification, disclosure or other misuse of any Personal Information.
- (i) The Supplier is fully responsible for its Personnel, including for ensuring Personnel comply with the Requirements. The Supplier is not, and Supplier Personnel are not, employees of TAFE Queensland.

6 Warranties

6.1 Conflict of Interest

- (a) 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 Contract, except as previously disclosed in writing to TAFE Queensland and which has been and can continue to be appropriately resolved to the satisfaction of TAFE Queensland.
- (b) If a Conflict of Interest or risk of it arises during the Contract Term, the Supplier must notify TAFE Queensland immediately. Upon receipt of such a notice, or upon TAFE Queensland otherwise identifying a Conflict of Interest or a risk of it, TAFE Queensland may, without limiting its rights under clause 13, direct the Supplier as to how to resolve the Conflict of Interest and the Supplier must comply with any reasonable direction given.

6.2 Anti-competitive Conduct

- (a) 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 (**Anti-competitive**

Conduct) in connection with the Contract, any associated Invitation Process or any actual or potential contract with any entity for goods and services similar to the Goods and Services.

- (b) In addition to any other remedies available to it under Law or contract, TAFE Queensland may, in its absolute discretion, immediately terminate the Contract if it believes the Supplier has engaged in Anti-competitive Conduct.

6.3 Criminal organisation

The Supplier warrants that it 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.

6.4 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 Contract or the associated Invitation Process are complete, accurate, up to date and not misleading in any way.

6.5 Modern Slavery

- (a) 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.
- (b) The Supplier must immediately notify TAFE Queensland if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chain.
- (c) 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.

6.6 Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify TAFE Queensland if it becomes aware that any warranty made in this clause 6 was, when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

7 Invoicing, price and payment

- (a) The Supplier may invoice TAFE Queensland after delivery of Goods and/or Services that comply with the Requirements.

- (b) The Supplier must include adequate information for TAFE Queensland to verify that the invoice is accurate and must provide all supporting documentation reasonably requested by TAFE Queensland. TAFE Queensland is not required to pay any invoice that does not comply with this clause.
- (c) TAFE Queensland will pay each Correctly Rendered Tax Invoice within 30 days of receipt.
- (d) TAFE Queensland may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.
- (e) The Price is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST.

8 GST

- (a) Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.
- (b) Where GST is imposed on a supply under the Contract, the recipient of the supply shall pay to the supplier an amount equal to the GST (if any) payable on the taxable supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment. Terms in this clause have the same meanings as in the GST Law.

9 Liability

The maximum liability of a party to the other, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is an amount equal to the total of all Prices (including additional expenses and charges) payable under the Contract, multiplied by 1.5. The cap on liability does not apply to liability in relation to:

- (a) personal injury, including sickness, injury or death;
- (b) loss of, or damage to, tangible property;
- (c) Wilful Default, Wilful Misconduct, unlawful act or omission of, or failure to comply with applicable Law by the Supplier or its Personnel;
- (d) a breach by the Supplier or its Personnel of any obligation under clause 5(g) or 5(h); or
- (e) any Claim by a third party:
 - (i) arising out of any negligent act or omission of the Supplier or its Personnel; or
 - (ii) relating to breach of a third party's Intellectual Property Rights or Moral Rights.

10 Intellectual Property Rights

- (a) The Supplier grants (and must procure that relevant third parties grant) TAFE Queensland an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide and transferable (including sub-licensable) licence to exercise all Intellectual Property Rights in the Deliverables, for any purpose of TAFE Queensland, the State of Queensland or any other Queensland Government Body.
- (b) The Supplier warrants that it is authorised to grant the rights in this clause and that the Deliverables and their use as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

11 Customer Data

- (a) The ownership of Customer Data, including any Intellectual Property Rights in Customer Data, shall vest in TAFE Queensland on creation. The Supplier has no right, title or interest in Customer Data except as specified in this clause.
- (b) 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 Contract on a need to know basis to perform the Contract.
- (c) The Supplier must comply with clauses 5(g) and 5(h) and all applicable Laws in relation to Customer Data which is Personal Information or Confidential Information, and must provide reasonable assistance to TAFE Queensland on request to enable TAFE Queensland to comply with Laws, policies and standards applicable to TAFE Queensland in relation to Customer Data including (without limitation) identifying, labelling, searching, reporting, copying, retrieving and modifying Customer Data in relation to Personal Information, Confidential Information, public records, right to information and information standards.

12 Where Requirements not met

- (a) If any Requirements for the Deliverables are not met, the Supplier must promptly (at TAFE Queensland's option):
 - (i) refund to TAFE Queensland any monies paid for the Deliverables; or
 - (ii) resupply the relevant Goods or re-perform the relevant Services so that the Deliverables comply with the Requirements, and TAFE Queensland may exercise any other right or remedy that it has under this Contract or otherwise.

- (b) If the Supplier fails to comply with its obligations under this clause, TAFE Queensland may have the Deliverables re-supplied or re-performed by others, and the Supplier must pay TAFE Queensland on demand any costs incurred by TAFE Queensland in doing so.
- (c) Acceptance of the Deliverables by TAFE Queensland does not relieve the Supplier of any of its obligations under the Contract.

13 Termination

13.1 For cause

- (a) TAFE Queensland may terminate the Contract immediately on written notice if:
 - (i) TAFE Queensland is satisfied that the Supplier has breached any warranty in this Contract;
 - (ii) a Conflict of Interest exists or arises and has not been, or in TAFE Queensland's view cannot be, appropriately resolved to TAFE Queensland's satisfaction;
 - (iii) the Supplier ceases business or indicates that it is unwilling or unable to complete the Contract;
 - (iv) the Supplier breaches the Contract 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 TAFE Queensland; or
 - (v) the Supplier is or becomes Insolvent except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies.
- (b) Without limiting any other rights or remedies TAFE Queensland may have, if TAFE Queensland terminates under this clause 13.1, the Supplier must pay or reimburse TAFE Queensland's reasonable costs of obtaining replacement Deliverables or arranging for another supplier to complete the Contract.

13.2 Show cause – Supplier Code of Conduct and Ethical Supplier Threshold

- (a) Where TAFE Queensland reasonably suspects that the Supplier is not complying with the Supplier Code of Conduct or Ethical Supplier Threshold, TAFE Queensland may by written notice require the Supplier to show cause, by the date specified in the notice (which must not be less than 5 Business Days), why TAFE Queensland should not terminate the Contract.
- (b) If the Supplier fails to show reasonable cause by the date specified by TAFE Queensland, then TAFE Queensland may, by notice in writing to

the Supplier, terminate the Contract.

13.3 For convenience

- (a) TAFE Queensland may terminate this Contract at any time in its absolute discretion without giving reasons by written notice to the Supplier. TAFE Queensland will pay the Supplier for work performed and Deliverables supplied but not yet invoiced on a pro rata basis and the Supplier's reasonable and documented expenses directly relating to the termination. TAFE Queensland will have no other liability to the Supplier relating to the termination under this clause 13.3.
- (b) In no case will the compensation payable as a consequence of termination exceed the Price that would have been payable if the Contract had not been terminated. The Supplier must comply with any directions given by TAFE Queensland in the notice in connection with the termination and take all reasonable steps to minimise its expenses relating to the termination.

13.4 If Contract is under a SOA

- (a) If this Contract is entered pursuant to a SOA, TAFE Queensland may terminate the Contract for cause immediately on written notice to the Supplier:
 - (i) if the Principal is entitled to terminate the SOA; or
 - (ii) if any customer (including TAFE Queensland) is entitled to terminate for cause any other contract entered under the SOA.
- (b) Unless otherwise specified in the Basic Order, this Contract (including this clause) will survive termination or expiry of the SOA, for any reason.

14 General

The parties agree that:

- (a) **(notices)** they will send all notices relating to the Contract to the other party at the address listed in the Basic Order, with a copy to the nominated contact person in the Basic Order (or as updated by the parties). Notices will be deemed to be given in accordance with Part C of the The definitions and rules of interpretation that apply to this Contract are as attached to these Basic Purchasing Conditions as Attachment 1;
- (b) **(communication)** they will direct all other communications relating to the Contract to the other party's nominated contact person, or to another person if the other party directs;
- (c) **(variation)** the Contract may only be varied by written agreement of authorised representatives

of the parties;

- (d) (**entire agreement**) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply;
- (e) (**relationship**) their relationship is of principal and contractor. This Contract 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 venturer, agent, officer or employee of TAFE Queensland;
- (f) (**manufacturer warranties**) the Supplier assigns any manufacturer's warranty to TAFE Queensland, where possible to do so, and must inform TAFE Queensland where it is not possible to do so;
- (g) (**delivery**) the Supplier must deliver the Goods or other relevant Deliverables to the Site in accordance with TAFE Queensland's instructions. If the Supplier asks, TAFE Queensland will confirm in writing that the Deliverables have been received;
- (h) (**packaging**) the Supplier must adequately pack and protect Goods to withstand transit and storage;
- (i) (**rejected Goods**) if TAFE Queensland rejects Goods, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, TAFE Queensland may sell or dispose of the Goods, at TAFE Queensland's cost;
- (j) (**risk**) risk will transfer to TAFE Queensland when the Goods are delivered to the delivery address specified in writing by TAFE Queensland, in accordance with the delivery instructions;
- (k) (**title**) title in the Goods and Deliverables will transfer on the earlier of the delivery or payment of the applicable Price;
- (l) (**no encumbrance**) the Supplier warrants that the Goods are not (and when title passes, will not be) subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract;
- (m) (**financial viability**) TAFE Queensland, at its absolute discretion, may conduct financial viability assessments on the Supplier. The Supplier must cooperate with any financial viability assessments;
- (n) (**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;
- (o) (**access and inspection**) the Supplier must, on reasonable prior written notice from TAFE Queensland, give TAFE Queensland 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 TAFE Queensland or a third party engaged by TAFE Queensland to verify:
- (i) the completeness and accuracy of information provided by the Supplier in connection with the Contract or the associated Invitation Process, and
 - (ii) the Supplier's compliance with its obligations under the Contract,
- and must, without limiting TAFE Queensland's other rights, promptly address any non-compliances notified by TAFE Queensland to the Supplier to rectify;
- (p) (**subcontract**) the Supplier may only subcontract any part of its obligation under this Contract to subcontractors with TAFE Queensland's prior written consent. TAFE Queensland will not unreasonably withhold consent but may give consent subject to reasonable conditions. 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 Contract;
- (q) (**disputes**) they will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation;
- (r) (**right to disclose**) TAFE Queensland may disclose information about the Contract:
- (i) on the Government's contract directory, where required or recommended by Government procurement policy, or
 - (ii) as required by Law, including under the Right to Information Act and/or the Information Privacy Act;
- (s) (**partnerships, JVs and trusts**) where the Supplier is a:
- (i) partnership or joint venture, each partner or joint venturer (as applicable) is jointly and severally liable under this Contract; or
 - (ii) trustee, the Supplier represents and warrants in its own right and as trustee of the

trust that, as at the date of this Contract and until such time as all obligations under this Contract are discharged:

- (A) it is the sole trustee of the trust;
- (B) it has the requisite capacity and authority to enter into this Contract on behalf of, and to bind the beneficiaries of, that trust and to perform all obligations under this Contract pursuant to the documents governing that trust; and

- (C) it has the right to be fully indemnified out of the assets of the trust in relation to this Contract and the assets of the trust are sufficient to satisfy all obligations of the trust under this Contract; and
- (t) **(survival)** clauses 2, 4, 5(a), 5(f), 5(g), 5(h), 5(i), 7(b), 7(e), 8, 9, 10, 11, 13 and 14 and any other clauses which are expressed to survive or by their nature survive, will survive termination or expiry of the Contract for any reason.

Definitions and Interpretation

A Definitions

Basic Order means any form of order from the Customer for the provision of the Deliverables which incorporates or refers to the Basic Purchasing Conditions.

Basic Purchasing Conditions means the TAFE Queensland 'Basic Purchasing Conditions' as published on the TAFE Queensland website, currently available at <https://tafeqld.edu.au/about-us/policy-and-governance/policies-and-procedures/supplier-information.html>.

Best Practice Principles means the best practice principles with respect to quality, safe workplaces in the Queensland Procurement Policy and any associated guidance mentioned in the Queensland Procurement Policy to support the application of the Best Practice Principles.

Business Day means a day other than a Saturday, Sunday or public holiday at the address of the Customer or Principal as applicable, but does not include 27, 28, 29, 30 or 31 December in any year.

Claim includes any claim, action, proceeding, demand, liability, obligation, costs (including legal costs), losses, damages or expenses, including those from third parties, those arising out of the terms of any settlement, and any kind of investigation and includes the allegation of a claim.

Closing Date and Time means the date and time stated in the Invitation to Offer or Request for Quote, or such later time as may be notified by the Customer or Principal.

Comprehensive Contract Conditions means a document titled 'Comprehensive Contract Conditions' which may be in a similar format to the document available at www.forgov.qld.gov.au.

Confidential Information means all information disclosed by or on behalf of the Customer, Principal or the Supplier (**Discloser**) to the other party (**Recipient**) in connection with an Invitation to Offer, Request for Quote, Contract or SOA 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, and (in the case of the Principal or Customer) all Customer Data. Confidential Information 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 except through a breach of a confidentiality obligation.

Conflict of Interest means having an interest, affiliation or relationship, or owing an obligation (whether personal, financial, professional or otherwise) which conflicts, may reasonably have the potential to conflict, or may reasonably be perceived as conflicting, with the ability of the Supplier or its Personnel to perform its obligations under the Contract or SOA fairly and objectively.

Conforming Offer means an offer by the Supplier to enter into a SOA or Contract, which includes all the information requested, is received by the Closing Date and Time, and meets all other requirements for offers/quotes set out in the Invitation to Offer or Request for Quote.

Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party; and
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of goodwill, damage to reputation, loss of anticipated profit or damages for lost opportunity; and
- (c) loss of data, other than loss of data arising out of any obligation of the Supplier under a Contract with respect to the hosting, storage, migration, conversion, cleansing or backup of data for the Customer in providing the Goods or Services.

Contract means an agreement between the Customer and the Supplier, made up of the documents listed in the applicable contract conditions as forming part of the Contract.

Contract Details means a document titled '*Contract Details*' that contains information about a specific contract between the Customer and Supplier, which may be in a similar format to the document available at www.forgov.qld.gov.au.

Contract Term means the period of the Contract (including any extensions).

Correctly Rendered Tax Invoice means a tax invoice as intended by the GST Law:

- (a) in which the amount claimed is due for payment and correctly calculated either in Australian dollars or in the currency specified in the Details;
- (b) which is set out as an itemised account, identifying the GST exclusive amount, the GST component and the GST inclusive amount and enables the Customer to ascertain what the invoice covers and the amount payable;
- (c) which includes an ABN or ACN number; and
- (d) which includes adequate information for the Customer to verify that the invoice is accurate, and which is accompanied by supporting documentation reasonably requested by the Customer.

Customer means the State of Queensland or the entity listed in the Details or Basic Order (as applicable) or for an ITO/RFQ, the entity issuing the ITO/RFQ seeking to enter into a Contract.

Customer Data means any information, material, data, dataset or database:

- (a) provided by or on behalf of the Principal or Customer to the Supplier for use, processing, storing or hosting by the Supplier in performing the SOA and/or the Contract; and
- (b) created, processed, produced or derived from using, processing, storing or hosting that information, material, data, dataset or database in the Supplier's performance of the SOA or Contract or the use by the Principal or Customer of the Goods or Services or Deliverables the subject of the SOA or Contract,

and includes Metadata but does not include any pre-existing material or new material owned by the Supplier.

Customer Inputs means the Customer's Personnel, equipment, premises, documents, access and any other resources that the Customer will provide or

make available to the Supplier, which the Supplier will use to provide the Deliverables, set out in the Details.

Deliverables means the Goods, Services and documentation to be provided to the Customer including as described in the Requirements, and all incidental and ancillary goods, services and documentation.

Details means:

- (a) for purchases under an SOA, the SOA Details and the SOA Order; or
- (b) otherwise, the Contract Details.

Discloser has the meaning given in the definition of Confidential Information.

Eligible Customer means an entity which is entitled to enter into a Contract under a SOA or other Supply Arrangement, being:

- (a) a Queensland Government department or agency;
- (b) a Queensland Government Body;
- (c) an 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 acting through the Department of Energy and Public Works - Office of the Chief Advisor – Procurement (or successor entity), as an Eligible Customer; and
- (d) the Commonwealth, another State or a Territory Government.

Ethical Supplier Threshold means the Ethical Supplier Threshold as described in the Queensland Procurement Policy.

Expression of Interest or **EOI** means a request issued to the marketplace to gather information, usually of a high level and broad in nature, as to what is available in relation to the requirements of a Customer or a Principal. These are forms of early market engagements and are non-binding requests to gather information.

General Contract Conditions means a document titled '*General Contract Conditions*' which may be in a similar format to the document available at www.forgov.qld.gov.au.

Goods means the goods the Supplier will provide, described in the Details or Basic Order.

Government Department or Instrumentality means any governmental regulator, including Work Health Safety Queensland, the Queensland Building and Construction Commission, the Fair Work Commission

and the Australian Building and Construction Commission.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the *GST and Related Matters Act 2000* (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Information Privacy Act means the *Information Privacy Act 2009* (Qld).

A person or entity is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth)); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Contract); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person or entity under the Laws of any jurisdiction.

Intellectual Property Rights includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights, plant breeders rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Invitation to Offer,

Request for Quote, Contract or SOA (as applicable), but excludes Moral Rights.

Invitation Process means the process commenced by the issuing of a Request for Quote, Invitation to Offer or any other communication between the Customer/Principal and Supplier in relation to the potential supply of goods, services and deliverables, including the preparation and submission of any offer, the evaluation of offers, any negotiations and the acceptance or rejection of offers, and concluding upon entering into the SOA or Contract with the Supplier or upon the termination of the process.

Invitation to Offer or **ITO** means an invitation to offer issued by a Customer or Principal seeking offers for the provision of goods, services and/or deliverables.

Key Personnel means the people identified in Requirements, Details or otherwise in a Contract as 'key personnel'.

Laws means all:

- (a) Acts, ordinances, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
- (b) certificates, licenses, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables;
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable; and
- (d) fees and charges payable in connection with the foregoing.

Local Benefits Test refers to weighted evaluation criterion used to determine the benefit a Supplier will bring to the local area as referred to in the Queensland Procurement Policy.

Local Supplier is as defined in the Queensland Procurement Policy.

Machinery of Government Change means a transfer of responsibility, function or operations, in whole or in part, from a Queensland Government department or agency or Queensland Government Body to another Queensland Government department or agency or Queensland Government Body.

Metadata means any system-generated data that is created or generated in connection with the Customer's use of the Goods or Services, including in the use, processing, storing or hosting of any information, material, data, dataset or database in the provision of the Goods or Services and includes any descriptive, structural and administrative metadata.

Modern Slavery is as defined under the *Modern Slavery Act 2018* (Cth).

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world, whether existing before or after the date of the Invitation to Offer, Request for Quote, Contract or SOA (as applicable).

Offer Validity Period means the period stated in the Invitation to Offer or Request for Quote (as applicable) in which the offer is open for acceptance by the Customer or Principal.

Panel means one or more suppliers each of which have entered into a SOA or other Supply Arrangement with the Principal to provide the same or similar goods and/or services to Eligible Customers.

Personal Information has the meaning given:

- (a) for the purpose of the Information Privacy Act, in that Act; or
- (b) for the purposes of the Privacy Act, in that Act.

Personnel means:

- (a) officers, directors, employees, agents, temporary contractors; and
- (b) in the case of the Supplier, includes:
 - (i) any subcontractor and the subcontractor's officers, directors, employees, agents and temporary contractors; and
 - (ii) any other person employed or engaged in the performance of the Contract or SOA (as applicable).

Preferred Supplier Panel or **PSP** means a form of Supply Arrangement established by the Principal of suppliers of particular goods and/or services which satisfy the Principal's predetermined criteria, from which Eligible Customers may invite suppliers to submit offers to provide goods and or services. It may also be referred to as a pre-qualified panel.

Price means the price or prices described in a Contract or SOA, or calculated using a calculation method in the Details (for a Contract), or SOA Details (for a SOA).

Principal is the party described in:

- (a) the SOA Details, responsible for administering the SOA;
- (b) for any other Supply Arrangement, the entity responsible for administering that arrangement; or
- (c) for an ITO, the entity seeking to establish a Supply Arrangement.

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

Queensland Government Body means any of:

- (a) a body corporate or an unincorporated body established or constituted for a public purpose by the State of Queensland legislation, or an instrument made under that legislation (including a local authority);
- (b) a body established by the State of Queensland through the Governor or a Minister; or
- (c) an incorporated or unincorporated body over which the State of Queensland exercises control.

Queensland Procurement Policy means the Queensland Procurement Policy as published from time to time.

Recipient has the meaning given in the definition of Confidential Information.

Reliable Information means information and documents provided by or on behalf of the Customer or the Principal, to the extent that the Customer or Principal (as applicable) has expressly agreed in writing that the Supplier may rely on such information or documents, but only in respect of the purpose and validity period nominated by the Customer or the Principal.

Request for Quote or **RFQ** means a document issued by a Customer seeking quotes or offers for the supply of Deliverables.

Request for Information or **RFI** has the same meaning as Expression of Interest.

Requirements means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's obligations under the Contract or SOA, which are set out in the Contract, SOA, the Invitation to Offer or Request for Quote (if any), or otherwise agreed by the parties in writing.

Right to Information Act means the *Right to Information Act 2009* (Qld).

Schedule means the schedules set out in the Contract Details or the SOA Details (whichever is applicable).

Services means the services the Supplier will perform under the Contract, described in the Details or Basic Order (as applicable).

Site means the site or premises at which the Deliverables are to be provided as specified in the Details or Basic Order (as applicable).

Small Business means a legal entity where the total number of employees and contractors which are employed/engaged by:

- (a) that entity; and

(b) all of its related bodies corporate and associated entities, as those terms are defined in the *Corporations Act 2001* (Cth),

is less than 20.

SOA or Standing Offer Arrangement means a standing offer arrangement entered into between the Principal and the Supplier, made up of the documents described in the SOA Conditions.

SOA Conditions means a document titled '*Standing Offer Arrangement Conditions*' (or similar) which may be in a similar format to the document available at www.forgov.qld.gov.au.

SOA Details means a document executed by the Principal and the Supplier under which the SOA is established, that contains information about the specific SOA document titled '*Standing Offer Arrangement Details*' (or similar), which may be in a similar format to the document available at www.forgov.qld.gov.au.

SOA Order means any order or acknowledgment from the Customer for the provision of Deliverables that are the subject of a SOA (and may also be regarded as a Basic Order if the Basic Purchasing Conditions apply to the Contract established under the SOA).

SOA Term means the period of the SOA (including any extensions).

Social Enterprise means a trading organisation led by an economic, social, cultural or environmental purpose consistent with a public or community benefit, which reinvests the majority of its profits/surplus in the fulfilment of that purpose.

Social Procurement refers to using the government's purchasing power to generate social benefits, adding value to procurement outcomes and supporting supplier and workforce diversity.

Supplier:

- (a) for a Contract, is described in the Basic Order or Details (as applicable);
- (b) for a SOA, is described in the SOA Details; and
- (c) for an Invitation Process, is a potential supplier invited to participate in the Invitation Process.

Supplier Code of Conduct means the supplier code of conduct available at www.forgov.qld.gov.au (as updated and amended from time to time).

Supply Arrangement means any form of supply arrangement established by the Principal under which Eligible Customers can engage suppliers including but not limited to Standing Offer Arrangements, pre-qualified supplier arrangements, pre-qualified panels,

Preferred Supplier Panels or preferred supplier arrangements.

Wilful Default means fraud, fraudulent concealment, dishonesty, or any illegal or malicious act or omission in relation to the Contract or SOA by the Supplier or its Personnel.

Wilful Misconduct means an intentional breach of either a material provision of the Contract, SOA or of a Law in respect of the Supplier's obligations under the Contract or SOA, committed with reckless disregard for the consequences and in circumstances where the Supplier or its Personnel know or ought to know that those consequences would likely result from the breach, and which is not due to an honest mistake, oversight, error of judgement, accident or negligence.

B Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (a) **(agreement)** a reference to an agreement includes any variation or replacement of the agreement;
- (b) **(Business Day)** if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (c) **(consistency)** where an Invitation to Offer, Request for Quote, EO/RFI, Contract or SOA is made up of more than one document, the Invitation to Offer, Request for Quote, EO/RFI, Contract or SOA must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) **(plural)** words in the singular include the plural and vice versa;
- (e) **(grammatical forms)** if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
- (f) **(contract departures)** the contract departures section of the Details will take precedence over all other documents;
- (g) **(currency)** all currency amounts are in Australian dollars unless otherwise expressly stated;
- (h) **(headings)** headings are provided for convenience and do not affect the interpretation of the Invitation to Offer, Request for Quote, Expression of Interest / Request for Information or documents making up a Contract or Standing Offer Arrangement;
- (i) **(includes)** "include", "includes" and "including" must be read as if followed by the words "without limitation";

- (j) **(joint and several)** agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (k) **(governing law)** the laws of Queensland apply to a Contract, SOA and any Invitation Process. Each party submits to the jurisdiction of the courts of Queensland;
- (l) **(law)** a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;
- (m) **(party)** a reference to 'party' means:
- (i) in a SOA, the Principal and/or the Supplier
 - (ii) in a Contract, the Customer and/or the Supplier;
- (n) **(person)** a person includes the person's executors, administrators, novatees and assignees;
- (o) **(construction)** no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (p) **(severability)** if any part of a Contract or SOA is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract or SOA will not apply but the other parts of the Contract or SOA will not be affected; and
- (q) **(consent)** any reference to the Customer's or Principal's consent is a reference to the prior written consent of the Customer or Principal.

C Notices

- (a) A notice will be deemed to be given:
- (i) if posted within Australia to an Australian postal address, 5 Business Days after the date of posting;
 - (ii) if posted outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;
 - (iii) if delivered by hand on a Business Day, on the date of delivery; or
 - (iv) if emailed, subject to clause (b) below, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,
- except that a delivery by hand or email received after 5:00pm (local time of the receiving party) will be deemed to be given on the next Business Day.
- (b) A notice of suspension or termination of a Contract or SOA which is sent via email must also be sent by post or hand delivery and will not be deemed to be given until the notice is deemed to be delivered by post or hand delivery.