

Definitions & Interpretations

For general goods and/or services

These definitions and rules of interpretation apply to each Standing Offer Arrangement (SOA) established under the Legal Services panel SOA QGP 0059-19 and any Contract established under that SOA

A Definitions

Aboriginal business and/or Torres Strait Islander business refers to a commercial entity that is at least 50 percent owned, managed and operated by Aboriginal peoples or Torres Strait Islander peoples.

Australian Legal Practitioner is as defined in the *Legal Profession Act 2007* (Qld).

Best practice principles means the best practice principles in the Queensland Procurement Policy.

Business Day means a day other than a Saturday, Sunday or public holiday at the Customer's address.

Category Relationship Manager means an employee or principal of the Supplier appointed as category relationship manager from time to time. As at the start date of the SOA, the person appointed as Category Relationship Manager is set out in Schedule 1 of the SOA Details.

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.

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 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.

Correctly Rendered Tax Invoice means a tax invoice as defined 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; and
- (c) 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 for an ITO the entity issuing the ITO seeking to enter into a Contract.

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

- (a) provided by or on behalf of the Customer or Principal to the Supplier for use, processing, storing or hosting by the Supplier in providing the Goods or Services and
- (b) created, processed, produced or derived from the use, processing, storing or hosting of that information, material, data, dataset or database in the Supplier's provision or the Customer's use of the Goods or Services,

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 for purchases under an SOA, the SOA Details together with the SOA Order.

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

Eligible Customer means a:

- (a) Queensland Government department
- (b) Queensland Government agencies accepted by the Panel Manager to opt in to the whole of government legal services panel;
- (c) Queensland Government Bodies accepted by the Panel Manager to opt in to the whole of government legal services panel;
- (d) any entity which is directly or indirectly, partially or entirely funded by the State of Queensland,

and/or a community based, non-profit making organisation performing community services, and/or another entity accepted by the Panel Manger to opt in to the whole of government legal services panel

Ethical Supplier Threshold means the Ethical Supplier Threshold described in paragraph 2.3 of the Queensland Procurement Policy.

General Contract Conditions means the document titled '*General Contract Conditions*' (version 2.0, published December 2014) available at [Whole-of-Government legal services panel](#)

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).

Insolvent- 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));
- (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 agreement);
- (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 (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'.

Law Practice has the meaning given in the *Legal Profession Act 2007*.

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, licences, 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 an Offer/or will bring to the local area.

Local Practising Certificate is as defined in the *Legal Profession Act 2007* (Qld).

Local Supplier means a supplier of goods or services that maintains a workforce within a 125km radius of their nominated Local Area/s.

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.

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).

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.

Model Litigant Principles means the Model Litigant Principles issued by the Queensland Government (available at <http://www.justice.qld.gov.au/corporate/modellitigant-principles>) as amended from time to time.

National Pro Bono Target means the voluntary and aspirational target of at least 35 hours of pro bono legal service per lawyer per year as set by the Australian Pro Bono Centre

Offer Validity Period means the period stated in the Invitation to Offer in which the offer is open for acceptance by the Customer or Principal.

Panel Manager means the employee or delegate of the Principal appointed as the Principal's contact in the SOA Details and the person responsible for the centralised management of the panel.

Panel Relationship Manager means an employee or principal of the Supplier appointed as the panel relationship manager from time to time. As at the start date of the SOA, the person appointed as Panel Relationship Manager is set out in Schedule 1 of the SOA Details

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 officers, directors, employees, agents, temporary contractors, and in the case of the Supplier includes any subcontractor and the subcontractor's officers, directors, employees, agents and temporary contractors.

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

Principal is the party described in the SOA Details, responsible for administering the SOA or for an ITO, the entity seeking to establish an SOA.

Pro Bono Target is a voluntary and aspirational target of at least 35 hours of pro bono legal services per lawyer per year set by the Australian Pro Bono Centre that can be signed up to by Law Practices.

PQE means post qualification experience.

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.

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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 (RFQ) means a document issued by a Customer seeking quotes for the supply of Deliverables.

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 SOA Details.

Secure Position means a job that provides:

- (a) permanent employment – full time or part time but does not include casual or precarious employment;
- (b) certainty of hours;
- (c) fair wages and conditions – including appropriate leave entitlements, allowances and penalty payments;
- (d) superannuation and workers compensation insurance;
- (e) workplace, health and safety; and
- (f) respect for the rights of workers to organize through a union and to have a say in their workplace and their working conditions.

Services means the services the Supplier will perform under the Contract, described in the Details.

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 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 the document titled '*SOA Conditions' version 2 published December 2014*', available at Whole-of-Government legal services panel.

SOA Details means a document titled '*Standing Offer Arrangement (SOA) Details*' that contains information about a specific SOA, which may be in a similar format to the '*Standing Offer Arrangement (SOA) Details*' template available at [Whole-of-Government legal services panel](#).

SOA Order means any order or acknowledgment from the Customer for the provision of Deliverables that are the subject of a SOA

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 Details
- (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/supplier-code-conduct and as updated and amended from time to time.

Supplier Relationship Manager means an employee or delegate of an eligible Customer appointed as the supplier relationship manager from time to time

Term means the period of the Contract or SOA.

Wage Price Index (WPI) means the "Private, Professional, Scientific and Technical Services Australia WPI" (or relevant successor index) measuring the changes in the wages paid by Australian businesses to employees, expressed as an index and published by the Australian Bureau of Statistics

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, Contract or SOA is made up of more than one document, the Invitation to Offer, Request for Quote, Contract or SOA must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) Words in the singular include the plural and vice versa;
- (e) 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 or documents making up a Contract or SOA;
- (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
- (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 during a Business Day – on the date of delivery;
 - (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 under a suspension or termination clause in a Contract or SOA, including a notice to remedy, show cause notice or a termination or suspension notice, 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.