

Information and Communication Technology (ICT)

Standing Offer Arrangement – Conditions of Offer

**For the Provision of
Products and/or Services**

Version 001 – dated 11 April 2008



Introduction

In 2007 the Department of Public Works undertook a major review of all the procurement terms and conditions to incorporate any new legal and legislative requirements on specific issues. This review also aimed to ensure that the conditions adequately address specific and emerging procurement practices and trends. Industry is very supportive of a single set of terms and conditions across Government as this reduces the costs of the tendering and contractual processes.

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Chief Procurement Officer
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Further information may be obtained from Queensland Government Chief Procurement Office's website on www.ggm.qld.gov.au

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ICT STANDING OFFER ARRANGEMENT - CONDITIONS OF OFFER

1. Definitions and Interpretation

1.1 Definitions

In these ICT Standing Offer Arrangement – Conditions of Offer, unless the context otherwise requires, the following definitions will apply. Other capitalised words and expressions used in these ICT Standing Offer Arrangement - Conditions of Offer are defined in the Government Information Technology Contracting (GITC) – Part 2 and Part 3 (as applicable). In the event of any conflict between the definitions contained within these ICT Standing Offer Arrangement – Conditions of Offer and GITC - Part 2 and Part 3 (as applicable) then the definitions contained within these ICT Standing Offer Arrangement - Conditions of Offer will prevail.

“Additional Provisions” means the departures from the Specifications and/or ICT Standing Offer Arrangement Conditions which have been agreed between the Principal and Successful Offeror and included in Schedule 3 to the ICT Standing Offer Arrangement Conditions;

“Business Day” means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday at the Eligible Customer's address;

“Closing Date” means the time and date specified in item 2 of Part 1 of the ICT Invitation, by which Offers must be submitted by the Offeror and received by the Principal;

“Confidential Information” means all information obtained by the Offeror in the course of submitting an Offer as specified in item 5 of Part 1 of the ICT Invitation;

“Conflict of Interest” means having an interest (whether personal, financial or otherwise) which conflicts or may reasonably be perceived as conflicting with the ability of the Offeror to submit an Offer fairly and objectively;

“Contact Officer” means the person nominated by the Principal as specified in item 4 of Part 1 of the ICT Invitation, to be the sole point of contact for this ICT Invitation Process, or other person nominated from time to time by the Principal as the Contact Officer;

“Customer Contract” means a legally binding contract as agreed between the Eligible Customer and the Successful Offeror on the terms and conditions of the documentation specified in clause 1.2.7, for the provision of the Products and/or Services;

“Deed of Agreement” or “Deed” means the deed entered into between the Principal and Successful Offeror under which the ICT Arrangement is established, on the terms and conditions of the ICT Standing Offer Arrangement Conditions;

“Deliverable” means the Products and/or Services to be supplied to the Eligible Customer by the Successful Offeror in accordance with the ICT Arrangement and any subsequent Customer Contract;

“Delivery Period” means the period in which the Products and/or Services will be supplied and/or performed as specified in Response Form 6.4 – item 19 of Schedule 1 of the ICT Invitation, by the Successful Offeror to an Eligible Customer;

“Eligible Customer” means the entity specified in item 3 of Part 1 of the ICT Invitation, who may seek to procure the Products and/or Services;

“Eligible Non-Government Body” means a body (including a private school, but excluding an Eligible Customer) which is:

- (a) directly or indirectly, partially or entirely funded by the Commonwealth, State or Territory;
- (b) community based, non-profit making organisation performing community services; and/or
- (c) another entity,

approved by the Principal to procure Products and/or Services through the ICT Arrangement;

“Evaluation Process and Criteria” means Part 4 of the ICT Invitation which specifies the process and criteria by which the Principal will evaluate Offers;

“General Order” means an order substantially in the form of Schedule A, used to authorise and record the purchase of the Products and/or Services by the Eligible Customer to the Successful Offeror which if issued forms part of the Customer Contract;

“GITC” means the Government Information Technology Contracting Framework Version 5.01;

“GST” means a goods and services tax imposed by or through the GST Legislation;

“GST Amount” means the amount of GST payable in respect of any taxable supply under the Customer Contract, calculated at the rate of GST applicable at the time;

“GST Legislation” means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate, recapture or recoup the tax imposed by any of such Acts;

"ICT Arrangement Term" means the term of the ICT Arrangement as specified in Response Form 6.4 – item 9 of Schedule 1;

"ICT Conditions of Customer Contract" means the terms and conditions of the Customer Contract as specified in Section B of the ICT Standing Offer Arrangement Conditions and any additional conditions of customer contract as specified in Part 5 of the ICT Invitation;

"ICT Invitation to Offer" or **"ICT Invitation"** means the documentation issued by the Principal, as specified in clause 1.2.4, inviting Offers for the provision of the Products and/or Services;

"ICT Invitation to Offer Details" means the key requirements relating to submitting an Offer, which is contained within Part 1 of the ICT Invitation;

"ICT Invitation Process" means the process of inviting Offers for the provision of the Products and/or Services, the Offeror's preparation and submission of Offer, communication between the Parties in relation to the ICT Invitation and/or Offer, evaluation of Offers and the subsequent acceptance or rejection of Offers;

"ICT Standing Offer Arrangement" or **"ICT Arrangement"** means an arrangement established between the Principal and the Successful Offeror (including without limitation a standing offer arrangement, a register of pre-qualified suppliers, panel arrangement or preferred supplier arrangement) by which Customer Contracts may be established as and when required by an Eligible Customer;

"ICT Standing Offer Arrangement Conditions" means the terms and conditions of the ICT Standing Offer Arrangement and any additional standing offer arrangement conditions, as specified in Part 5 of the ICT Invitation;

"ICT Standing Offer Arrangement - Conditions of Offer" means these terms and conditions and any additional terms and conditions as specified in Parts 1 and 2 of the ICT Invitation, which regulate the pre-contractual relationship between the Parties;

"Offer" means an offer submitted by an Offeror in response to the ICT Invitation, including subsequent modifications;

"Offeror" means the entity specified in the Response Form 6.1 who submits an Offer and in the case of a joint Offer includes each Offeror;

"Parties" means Principal and Offeror;

"Price" means the itemised price or schedule of rates payable by an Eligible Customer for a Deliverable, as specified in Response Form 6.2, in Australian dollars and unless otherwise specified in Response Form 6.2 is inclusive of packaging, handling, freight, GST and all other duties, taxes and charges;

"Principal" means the entity specified in item 1 of Part 1 of the ICT Invitation, seeking offers for the provision of Products and/or Services, on its own behalf and/or on behalf of any Eligible Customer;

"Products" means the material, plant, item or equipment as specified in the Specifications (if applicable);

"Queensland Government Body" means

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

"Response Forms" means the forms contained within the ICT Invitation which the Offeror must complete and submit as part of its Offer, which sets out certain required information and identifies the Offeror's departures from the ICT Invitation;

"Schedules" means the schedules which are part of the ICT Arrangement and/or Customer Contract;

"Services" means the services as specified in the Specifications (if applicable);

"Specification" means the detailed description of the Principal's requirements which are contained within the ICT Invitation, specifying the nature of the Products and/or Services for which Offers are sought;

"Successful Offeror" means the entity to be specified in Response Form 6.4 – item 5 of Schedule 1 of the ICT Invitation, from whom the Products and/or Services may be procured.

1.2 Interpretation

- 1.2.1 In these ICT Standing Offer Arrangement - Conditions of Offer the index and clause headings have been inserted for ease of reference only and are not intended to affect the meaning or interpretation of these ICT Standing Offer Arrangement – Conditions of Offer.
- 1.2.2 The following rules shall apply in interpreting these ICT Standing Offer Arrangement - Conditions of Offer, except where the context makes it clear that a rule is not intended to apply:
- (a) words importing a gender include the other gender;
 - (b) words in the singular include the plural and vice versa;
 - (c) all dollar amounts refer to 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) “consent” means prior written consent;
 - (h) “in writing” means either by letter, email or facsimile;
 - (i) a reference to a clause, Response Form, Schedule, attachment or annexure is a reference to a clause, Response Form, Schedule, attachment or annexure to these ICT Standing Offer Arrangement - Conditions of Offer;
 - (j) if a day on which an act is to be done is a Saturday, Sunday or public holiday in the place where the act is to be done, the act may be done on the next Business Day in that place, unless the Parties agree otherwise;
 - (k) if any expression is defined, other grammatical forms of that expression will have corresponding meanings, unless the context otherwise requires;
 - (l) a clause is a reference to all of its sub-clauses; and
 - (m) 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.
- 1.2.3 If the Offeror comprises two or more persons then their Offer will bind them jointly and each of them severally.
- 1.2.4 The ICT Invitation comprises the following documents:
- (a) ICT Invitation to Offer Details;
 - (b) ICT Standing Offer Arrangement - Conditions of Offer;
 - (c) Specifications;
 - (d) Evaluation Process and Criteria;
 - (e) ICT Standing Offer Arrangement Conditions; and
 - (f) Response Forms.
- 1.2.5 The following documents will constitute the entire ICT Arrangement between the Principal and the Successful Offeror:
- (a) the Deed of Agreement incorporating the terms and conditions of the ICT Standing Offer Arrangement Conditions including Schedules 1, 2 and 3 as completed by the Principal which are attached to the Deed of Agreement;
 - (b) Specifications;
 - (c) Successful Offeror’s Offer; and;
 - (d) any other documentation forming part of the ICT Arrangement, as agreed in writing between the Principal and Successful Offeror.
- 1.2.6 In the event of any conflict between the documents specified in clause 1.2.5, the order of precedence to resolve the conflict will be in the above order.
- 1.2.7 The following documents will constitute the entire Customer Contract between an Eligible Customer and the Successful Offeror:
- (a) sub-clause 2.7.3 of GITC Part 1 and sub-clause 2.1.3 of GITC Part 2;
 - (b) the Additional Provisions as agreed between the Contract Authority and Contractor as specified in Schedule A2(A) of GITC Part 1;
 - (c) Schedules 1, 2 and 3 of the ICT Arrangement (including the applicable Intellectual Property Ownership Schedule);
 - (d) Schedule A - General Order;
 - (e) Schedule B - Module Order/s, as relevant to the supply of the Deliverable;
 - (f) the Additional Provisions as agreed between the Principal and the Successful Offeror;
 - (g) applicable Customer Contract Schedule(s), as relevant to the supply of the Deliverable;
 - (h) ICT Conditions of Customer Contract;
 - (i) GITC Customer Contract Provisions;
 - (j) applicable Module(s), as relevant to the supply of the Deliverable; and

- (k) any Document, in whole or in part, which Schedule A – General Order expressly incorporates as part of a Customer Contract.

1.2.8 The list of documents specified in clause 1.2.7 replaces the list in clause 2.1.12 of GITC Part 2, and in the event of any conflict between the documents specified in clause 1.2.7, the order of precedence to resolve the conflict will be in the above order.

2. COMPLIANCE WITH THE ICT INVITATION

- 2.1 Each Offeror must ensure that its Offer complies with the terms and conditions contained within this ICT Invitation.
- 2.2 Each Offeror must respond to every requirement/question in the Response Forms and submit these as part of their Offer.
- 2.3 The Offeror must specify in Response Forms 6.3 any proposed Additional Provisions which will form part of its Offer.
- 2.4 Any proposed Additional Provisions which are not specified in Response Form 6.3 will not form part of the Offer and will not be considered by the Principal.

3. OFFER VALIDITY PERIOD

- 3.1 Offers must remain valid and open:
 - (a) for the minimum period as specified in item 6 of Part 1 of the ICT Invitation after the Closing Date, unless otherwise agreed in writing between the Principal and the Offeror; or
 - (b) until the Principal advises the Offeror in writing that it has been unsuccessful, whichever occurs first.

4. FORMAT OF OFFER

- 4.1 Each Offeror must ensure that:
 - (a) it completes the Response Forms;
 - (b) its Offer bears the name of the Offeror on each page; and
 - (c) its Offer is executed in a manner so as to bind the Offeror (or, in the case of joint offers, each Offeror).
- 4.2 Where the Offeror is required to submit its Offer in a 'hard copy' format, the Offeror must ensure that:
 - (a) the original Offer is signed and marked 'Original';
 - (b) all copies of the Offer are each marked 'Copy Only';
 - (c) all copies submitted are true copies of the original Offer in all respects. In the event that there is any discrepancy between an original and a copy Offer, the 'Original' will be deemed to be the operative document; and
 - (d) any alteration in the Offer is initialled by the Offeror.

5. ESSENTIAL INFORMATION

- 5.1 Every Offeror must include in its Offer the following information in Response Form 6.1:
 - (a) in the case of an Offer by:
 - (i) an individual - the Offeror's full name (including given names and surname) and address;
 - (ii) an individual or individuals as trustee/s – the full name of the individual/s (including given names and surname) and the address of each trustee of the trust;
 - (iii) any registered Business Name (BN) (if applicable);
 - (b) in the case of an Offer by a company:
 - (i) the full name of the company;
 - (ii) the address of the registered office of the company;
 - (iii) the Australian Company Number (ACN);
 - (iv) any registered Business Name (BN) (if applicable);
 - (v) the name and company title of the person signing the Offer on behalf of the company; and
 - (vi) whether or not the company is a trustee;
 - (c) in the case of an Offer by a public sector agency -
 - (i) the full name and address of the agency; and
 - (ii) the name and title of the person signing the Offer on behalf of the agency;
 - (d) where an Offeror trades under a business name:
 - (i) the full business name;
 - (ii) address of every proprietor trading under that business name; and
 - (iii) the address of the principal place of business;
 - (e) in the case of joint Offers (including partnerships), the information detailed in paragraphs (a) to (d) for each Offeror;

- (f) if the Offeror proposes to sub-contract the provision of any part of the Products and/or Services – the information detailed in paragraphs (a) to (e) for each sub-contractor together with full details of the sub-contractor's relevant experience or expertise; and
- (g) subject to clause 5.2, the active Australian Business Number (ABN) of the Offeror/s (if applicable).

5.2 It is not a requirement under these ICT Standing Offer Arrangement - Conditions of Offer that Offerors possess an active Australian Business Number (ABN) at the time of submitting an Offer. However, Offerors that do not quote an ABN when submitting an Offer will be required to:

- (a) submit a 'Statement by a supplier – Reason for not quoting an Australian Business Number (ABN) to an enterprise' form to the Principal with their Offer; or
- (b) provide evidence of their ABN before any ICT Arrangement can be entered into with the Principal.

5.3 Offerors should seek advice from the Australian Taxation Office (www.ato.gov.au) as to their eligibility to sign the 'Statement by a supplier – Reason for not quoting an Australian Business Number (ABN) to an enterprise' form.

6. LANGUAGE

6.1 Each Offer must be written in the English language.

7. OFFERORS RESPONSIBILITIES

7.1. It is the responsibility of each Offeror to:

- (a) read and familiarise itself with the contents of the ICT Invitation;
- (b) satisfy itself as to local conditions and facilities that may impact on the Offeror's ability to Offer or to supply the Products and/or Services or comply with other specified requirements;
- (c) carry out its own investigation as to the feasibility of its Offer and to rely on that investigation; and
- (d) pay its own costs of investigating, preparing and lodging an Offer.

7.2 Any party expending money, making commitments or incurring liabilities on the basis of responding to the ICT Invitation or in relation to any matter contained in the ICT Invitation, does so at its own risk and expense.

7.3 If an Offeror requires information or clarification of any part of the ICT Invitation:

- (a) the Offeror must direct its enquiries to the Contact Officer nominated in item 4 of Part 1 of the ICT Invitation;
- (b) the Principal will only be bound by any advice, information or clarification provided in writing to the Offeror in respect of the ICT Invitation; and
- (c) if, after seeking clarification from the Contact Officer, the Offeror still has any doubt as to the meaning of any part of the ICT Invitation, the Offeror must include in its Offer a statement identifying the uncertainty and stipulate the interpretation upon which the Offer is based.

7.4 An Offeror cannot claim from the Principal any losses, damages or expenses or an extension of time to make an Offer on the grounds that insufficient or ambiguous information was given in the ICT Invitation.

7.5 The Principal reserves the right to change the Specifications or any part of the ICT Invitation prior to the Closing Date. If the ICT Invitation has been obtained via the Queensland Government Marketplace e-Tender website, it is the responsibility of each Offeror to regularly check this website for any changes to the ICT Invitation prior to the Closing Date. The Principal accepts no responsibility for Offerors not being aware of any changes to the ICT Invitation.

8. LODGEMENT OF OFFER

8.1 If specified in item 7 of Part 1 of the ICT Invitation that an Offer must be submitted in a 'hard copy' format, every Offer must be:

- (a) sealed in an appropriate package;
- (b) submitted in the format and number of copies specified;
- (c) endorsed on the front of the sealed package; and
- (d) directed to the Principal at the specified address.

8.2 If specified in item 8 of Part 1 of the ICT Invitation that an Offer must be submitted electronically via the Queensland Government Marketplace e-Tender website, the Offeror:

- (a) must ensure that the Offer is lodged using the user identification details and unique password for the ICT Invitation, received to download the original ICT Invitation document;
- (b) must ensure that the Offer is submitted in the format specified in item 8 of Part 1 of the ICT Invitation;
- (c) may submit multiple attachments to the Offer/s to this website;
- (d) must keep the file size of each document below 7MB (7000KB); and

- (e) must ensure prior to submitting an Offer that it is free from viruses and has been checked with an up-to-date virus checking program.

- 8.3 When the Offer document/s is processed a system generated receipt confirmation shall be emailed to the Offeror.
- 8.4 An Offeror may submit one or more Offers in response to the ICT Invitation. Part Offers, being Offers that only address part of the ICT Invitation, may be considered at the entire discretion of the Principal.
- 8.5 The Offeror must ensure that its Offer is received by the Principal by the Closing Date as specified in item 2 of Part 1 of the ICT Invitation.
- 8.6 Lodgement of an Offer in the manner specified in the ICT Invitation will constitute an Offer by the Offeror to supply Products and/or Services on the terms of the ICT Invitation, subject to any proposed Additional Provisions specified in Response Form 6.3.
- 8.7 Unless otherwise specified in item 9 of Part 1 of the ICT Invitation, Offers sent or transmitted to the Principal by email and/or facsimile will **not** be considered.
- 8.8 Unless otherwise specified in item 10 of Part 1 of the ICT Invitation, the Principal will retain all documents and any samples (if applicable) submitted in response to this ICT Invitation.

9. NON-CONFORMING OFFERS

- 9.1 Failure to comply with all or any of the requirements of the ICT Invitation may result in an Offer being considered non-conforming. The Principal may for any reason decline to consider any non-conforming Offers.

10. ALTERNATIVE BRANDS

- 10.1 Where any specific brand or model of Products is stated by the Principal in the Specifications, the Offeror may submit other brands or models which, in the opinion of the Offeror are at least equivalent to the brand or model of Products specified. Pursuant to clause 29 the Principal reserves the right to accept an Offer which the Principal considers the best solution for its requirements.
- 10.2 The Principal is not obliged to provide reasons for non-acceptance of any non-conforming Offer.

11. ALTERNATIVE PRODUCTS AND/OR SERVICES

- 11.1 Offerors may submit an:
 - (a) alternative Offer; and/or
 - (b) alternative technical and innovative solution.
- 11.2 The Offeror must include details of the benefits to the Principal of the alternative Offer and/or solution.
- 11.3 Pursuant to clause 29 the Principal reserves the right to accept an Offer which the Principal considers the best solution for its requirements.

12. CONFIDENTIAL INFORMATION

- 12.1 If the Principal specifies in item 5 of Part 1 of the ICT Invitation that certain parts or information in the ICT Invitation are confidential, then the Offeror or any potential Offeror (including an entity who obtains the information in the ICT Invitation but does not submit an Offer), must ensure that it and its officers, employees, agents and sub-contractors who are in possession of that information keep that information confidential.
- 12.2 If requested by the Principal, the Offeror or potential Offeror must complete a confidentiality undertaking, in a form acceptable to or provided by the Principal, from itself and/or from each of its officers, employees, agents and sub-contractors who receive the information.

13. PREVIOUS DISCUSSIONS/UNDERTAKINGS

- 13.1 On the release of the ICT Invitation, any previous undertakings, representations, promises or conditions in respect of the subject matter of the ICT Invitation, shall not be binding on the Principal.

14. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

- 14.1 All Products and/or Services offered by the Offeror, unless otherwise specified, shall comply with all applicable:
 - (a) legislative requirements; and
 - (b) any Government code, policy or guideline and Australian/New Zealand Standard, and where an Australian/New Zealand Standard does not exist, the relevant and current International Standard (ISO) shall apply.

15. INSURANCES

- 15.1 In submitting its Offer, the Offeror must provide acceptable evidence of the following insurance policies which are to be maintained at the Offeror's expense:
- (a) Workers Compensation insurance in accordance with applicable legislation for the Offeror's employees;
 - (b) Public Liability insurance to the value of at least the amount specified in Response Form 6.4 – item 12 of Schedule 1, in respect of each claim;
 - (c) Professional Indemnity insurance, if specified in Response Form 6.4 – item 13 of Schedule 1, for the amount specified in Response Form 6.4 - item 13 of Schedule 1 in respect of each claim, and which shall be maintained by the Successful Offeror for a continuous period of four years, after the expiry date of the ICT Arrangement or termination of the ICT Arrangement, unless otherwise specified in Response Form 6.4 – item 13 of Schedule 1; and
 - (d) any other insurances, as specified in Response Form 6.4 – item 14 of Schedule 1.
- 15.2 If, at the time of submitting its Offer, the Offeror does not have the requested insurance cover or to the specified amount, the Offeror must indicate in its Offer its willingness to effect such insurances at its own expense and provide acceptable evidence before the Principal can finalise its evaluation of the Offer.
- 15.3 If, at the time of submitting its Offer, the Offeror is a member of a scheme approved under the *Professional Standards Act 2004 (Qld)*, the Offeror must notify the Principal as required under that Act.
- 15.4 Subject to clause 15.5, the Offeror must provide in its Offer a certificate of currency for each insurance policy. If the Offeror is not identified as the insured on the policy, the Offeror must clearly identify the relationship of the insured to the Offeror and how the Offeror is covered by the policy.
- 15.5 A letter certifying currency for the Workers Compensation policy is acceptable.
- 15.6 Renewal notices, invoices or account statements are not acceptable documentation, for the purpose of clauses 15.4 and/or 15.5.

16. PRICES OFFERED

- 16.1 Prices specified in the Offer must:
- (a) be in Australian currency;
 - (b) indicate GST exclusive and GST inclusive pricing and if applicable, any other government taxes or duty (e.g. import duty, etc);
 - (c) include the costs of suitable packaging, delivery and installation, unless otherwise specified in the ICT Invitation; and
 - (d) if subject to fluctuation, include particulars of the price fluctuation formula and all variables, including the timing of the fluctuation.
- 16.2 The Offeror must ensure that the Offer clearly states any trade, settlement and/or early payment discounts from the Prices offered.
- 16.3 The Principal reserves the right not to accept an Offer which requires payment in advance for the Products and/or Services.

17. COMPETITIVE NEUTRALITY

- 17.1 Offers submitted by a government owned business, a local government, or a State or Commonwealth agency or authority, must be priced to comply with the competitive neutrality principles of the Offeror's respective jurisdiction.

18. DELIVERY PERIOD

- 18.1 The Offeror must state in Response Form 6.4 – item 19 of Schedule 1, the Delivery Period for the Products and/or Services.

19. OPENING OF OFFERS

- 19.1 Offers will not be opened publicly, unless otherwise specified in item 11 of Part 1 of the ICT Invitation.

20. ICT INVITATION TO OFFER PROCESS

- 20.1 The conduct of the ICT Invitation Process does not give rise to any legal or equitable relationship.
- 20.2 The Principal may cancel or vary the ICT Invitation Process at any time, whether before, on or after the Closing Date for Offers.
- 20.3 No Offeror shall be entitled to claim compensation or loss from the Principal for any matter arising out of the ICT Invitation Process, including but not limited to any failure by the Principal to comply with the ICT Standing Offer Arrangement - Conditions of Offer.

21. EVALUATION OF OFFERS

- 21.1 The offer evaluation process will involve an assessment of conforming Offers, and any non-conforming Offers the Principal may choose to consider, against the Evaluation Process and Criteria.
- 21.2 The Principal may consider innovative solutions to meet the Specification requirements.
- 21.3 The Principal reserves the right to short list Offerors during the evaluation process using the evaluation criteria as specified in the Evaluation Process and Criteria.
- 21.4 Irrespective of whether it is stipulated in the Evaluation Process and Criteria, the evaluation process may also involve, but is not limited to, discussions with Offerors, reference checks, financial checks, credit checks, company searches, site visits and presentations from some or all Offerors.
- 21.5 If specified in the Specifications, an Offeror must submit for trial or inspection, within a specified time period nominated by the Principal, a sample of the same make and model of Products specified in its Offer.

22. POST-OFFER NEGOTIATIONS OR OTHER FORM OF COMMUNICATION

- 22.1 The Principal reserves the right to enter into post Offer negotiations with one or more Offerors.
- 22.2 The Principal may interview an Offeror in relation to its Offer. The Offeror should be represented at the interview by personnel who are authorised to make decisions on behalf of the Offeror and who are conversant with all technical, financial and contractual details of the Offer, as applicable.
- 22.3 The Principal may seek further information from the Offeror in writing (e.g. letter, email or facsimile). Any information provided by or on behalf of the Offeror verbally must promptly be confirmed in writing if so required by the Principal.
- 22.4 Any amendment to the Offer occurring as a result of post-offer negotiations or as a result of a request for further information or clarification between the Parties, which is documented in writing, will form part of the Offer.

23. COMMISSIONS, INCENTIVES, COLLUSION AND CONFLICTS OF INTEREST

- 23.1 An Offeror and/or its representatives must not give or offer to the Principal or any officer or employee of the Principal, or to a parent, spouse, child or associate of an officer or employee, any inducement, gift or reward, which could in any way tend to influence the Principal's actions in relation to an Offer.
- 23.2 If the Principal discovers at any time that an Offeror breached clause 23.1, the Principal may not consider that Offer.
- 23.3 The Offeror warrants that the Offer is in all respects an independent Offer and that no collusion has taken place between the Offeror and any other offeror, potential offeror or interested party in the preparation of the whole or any part of the Offer.
- 23.4 The Offeror warrants that to the best of its knowledge, as at the date of the Offer neither the Offeror nor any of its officers or employees have, or are likely to have, any Conflict of Interest in any matters connected with the ICT Invitation Process.
- 23.5 If a Conflict of Interest or risk of Conflict of Interest arises during the ICT Invitation Process, the Offeror must immediately give written notice of the Conflict of Interest, or the risk of it to the Contact Officer.

24. ICT STANDING OFFER ARRANGEMENT

- 24.1 The Successful Offeror agrees that:
 - (a) an Eligible Customer may enter into a Customer Contract with the Successful Offeror under the ICT Standing Offer Arrangement Conditions by placing a General Order at any time until the expiry date of the ICT Arrangement, and the Successful Offeror will be bound by any such General Order, unless the ICT Arrangement:
 - (i) is suspended; or
 - (ii) has been terminated,
 at the time the General Order is placed;
 - (b) the Eligible Customer may at its discretion engage other contractors to provide the Products and/or Services;
 - (c) an Eligible Customer is not obliged to request any or a minimum number of Products and/or Services from the Successful Offeror under the ICT Arrangement;
 - (d) the Principal may cancel the ICT Arrangement at any time by written notice to the Successful Offeror, and:
 - (i) the Successful Offeror will not enter into any new Customer Contracts; and
 - (ii) any existing Customer Contracts will not, unless the Customer Contract requires it, be affected in any way whatsoever; and
 - (e) any Eligible Non-Government Body or Queensland Government Body may purchase the Products and/or Services under the ICT Arrangement.
- 24.2 The Principal will monitor the performance of the Successful Offeror on a periodic basis as specified by the Principal until the expiry date of the ICT Arrangement, unless terminated sooner.

- 24.3 The Principal does not guarantee that any General Order/s will be placed with the Successful Offeror under the ICT Arrangement.
- 25. UTILISATION OF ICT STANDING OFFER ARRANGEMENT BY OTHER QUEENSLAND GOVERNMENT ENTITIES, STATES AND/OR TERRITORIES**
- 25.1 The Principal reserves the right to allow Queensland Government entities, Australian States and/or Territories, local Government agencies, Eligible Non-Government Bodies and Queensland Government Bodies to purchase the subject Products and/or Services against any ICT Arrangement which is established as a result of the ICT Invitation.
- 26. GOVERNMENT INFORMATION TECHNOLOGY CONTRACTING (GITC)**
- 26.1 In accordance with Information Standard 13 (ICT Procurement), which was established in accordance with the Financial Management Standard (Qld) 1997, an Eligible Customer's acquisition of ICT Products and/or Services are to be made subject to the contractual terms and conditions of the Cabinet endorsed the GITC Agreement.
- 26.2 The Successful Offeror to the ICT Invitation must be a current signatory to the Queensland Government GITC Agreement under the applicable Modules as defined within the item 12 of Part 1 of the ICT Invitation, prior to entering into an ICT Arrangement. The Successful Offeror must hold and maintain their GITC Agreement during the ICT Arrangement period.
- 26.3 Any ICT Arrangement and subsequent Customer Contract/s established as a result of the ICT Invitation shall be governed by GITC, provided that where the terms and conditions of GITC and the ICT Arrangement conflict, the ICT Arrangement shall prevail, to the extent of any inconsistency, subject to clause 2.7.3 of Part 1 of GITC and clause 2.1.3 of Part 2 of GITC.
- 26.4 Offerors are advised that the Principal reserves the right not to consider any contract conditions proposed by an Offeror where those conditions vary from provisions of the Offeror's GITC Agreement. Any proposed Additional Provisions, which are outside of the Offeror's GITC Agreement, must be clearly articulated in Response Form 6.3 of Part 6 of the ICT Invitation.
- 26.5 If an Offeror lodges an Offer with terms and conditions which vary from GITC, then the Principal reserves the right to reject that Offer and accept an offer which fully complies with the GITC provisions. The consideration of these terms and conditions which are in conflict with or are outside of the GITC terms and conditions as proposed by an Offeror will form part of the evaluation process.
- 26.6 Further information regarding GITC can be obtained from the GITC website: www.qgm.qld.gov.au/gitc.
- 27. INDUSTRY DEVELOPMENT QUESTIONNAIRE**
- 27.1 The Offeror must complete the Industry Development Questionnaire as contained within Response Form 6.6 as a precondition to a conforming Offer. The information collected in this questionnaire is treated as commercial-in-confidence and will be used to assist the Department of State Development and Innovation (Information Industries Bureau) in the development and delivery of programs related to industry development and partnering. This Response Form will not be evaluated as part of the ICT Invitation Process.
- 28. EXISTING ARRANGEMENTS WITH THE QUEENSLAND GOVERNMENT**
- 28.1 The Offeror must specify in Response Form 6.7 whether they have any existing supply arrangements with the Queensland Government, Government Owned Corporations, Non-Government Organisations, Statutory Authorities and/or Local Government. The information collected in the above Response Form may be shared across the Queensland Government to potentially avoid duplication of arrangements.
- 29. ACCEPTANCE AND/OR REJECTION**
- 29.1 The Principal reserves the right, at its entire discretion to:
- (a) accept one Offer, or more than one Offer, for the whole of its requirements;
 - (b) accept separate Offers for any portion of its requirements;
 - (c) accept one Offer, or more than one Offer, for any portion of its requirements;
 - (d) accept an Offer that the Principal considers the best solution;
 - (e) not accept the lowest Offer; or
 - (f) not accept any Offer.
- 30. SUCCESSFUL OFFEROR**
- 30.1 If the Principal elects to accept an Offer, the Principal will issue a Deed of Agreement to the Successful Offeror and upon its execution by the Principal and Successful Offeror an ICT Arrangement will come into existence.
- 31. ADVICE TO UNSUCCESSFUL OFFERORS**
- 31.1 Unsuccessful Offerors will be notified in writing that they have been unsuccessful.

32. DECISION AND DEBRIEFING

- 32.1 All Offerors, whether successful or unsuccessful may seek feedback from the Contact Officer at the completion of the ICT Invitation Process.
- 32.2 A feedback or debriefing session shall be an opportunity to provide the successful or unsuccessful Offeror with information that may assist the Offeror to improve any future offers submitted to the Principal. The feedback or debriefing session is not an opportunity to discuss the outcome of the evaluation of Offers to the ICT Invitation nor the relative merits of any other Offer submitted.
- 32.3 The Principal will not enter into any correspondence, oral or written, about its selection decision(s).

33. NO ADVERTISEMENT

- 33.1 The Successful Offeror will not make any public announcement or advertisement in any medium in relation to the ICT Invitation Process without the prior written approval of the Principal.

34. GOVERNING LAW

- 34.1 Subject to clause 20.1, any Offer submitted in response to the ICT Invitation shall be governed by and construed in accordance with the laws of Queensland and the Parties submit to the non-exclusive jurisdiction of the courts of Queensland.

35. FREEDOM OF INFORMATION

- 35.1 The *Freedom of Information Act 1992* (FOI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 35.2 The FOI Act requires that documents be disclosed upon request, unless there are valid grounds under the FOI Act for exempting the documents from disclosure.
- 35.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 35.4 If disclosure of its Offer or part thereof, would be of substantial concern to an Offeror, the relevant documents in the Offer should be stamped "Commercial-in-Confidence". In such case, the Principal will formally consult with and obtain the view of the Offeror before disclosure.
- 35.5 For more information regarding the FOI Act, please contact the FOI Officer as specified in item 13 of Part 1 of the ICT Invitation.