

Information and Communication Technology (ICT) STANDING OFFER ARRANGEMENT CONDITIONS OF OFFER

For the provision of Products and/or Services

Version 003 –dated 1 July 2011

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Introduction

The Department of Public Works has undertaken a major review of all the Queensland Government terms and conditions to incorporate any new legal and legislative requirements on specific issues. This review ensured 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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Further information may be obtained from Queensland Government Chief Procurement Office's website on www.qgcpo.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) Framework Version 5 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:

- (a) GITC Agreement: any terms and conditions, that are agreed between the Contract Authority and the Offeror and where included in schedule A2(A) of GITC Part 1, these terms and conditions reflect variations to the standard provisions of the GITC Agreement and shall be incorporated into a Customer Contract. These terms and conditions must not be further amended by the Eligible Customer and the Successful Offeror prior to being incorporated into a Customer Contract; and
- (b) ICT Agreement: the departures from and additions to the Specifications or ICT Conditions of Customer Contract and/or any additional terms and conditions that are:
 - (i) specified in Section 5 of the ICT Invitation; and/or
 - (ii) agreed between the Principal and the Contractor as specified in Schedule 3 of the Deed of Agreement. These terms and conditions must not be further amended by the Eligible Customer and Successful Offeror prior to being incorporated into a Customer Contract, without the consent of the Principal;

“Business Day” means between 9.00am and 5.00pm on a day other than a Saturday, Sunday or public holiday, in relation to the:

- (a) ICT Arrangement – at the Principal's address; or
- (b) Customer Contract – at the Eligible Customer's address;

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

“Confidential Information” means information of, or supplied by, the Principal or Eligible Customer that:

- (a) is by its nature confidential;
- (b) is designated as confidential, including the information specified in item 5 of Section 1 of the ICT Invitation; or
- (c) the Offeror or a potential Offeror (including any entity that obtains the information in the ICT Invitation but does not submit an Offer) knows or ought to know is confidential;

and includes information:

- (d) comprised in or relating to any Intellectual Property Rights of the Principal or Eligible Customer;
- (e) concerning the internal management and structure, personnel, processes and policies, commercial operations, financial arrangements or affairs of the Principal or Eligible Customer;
- (f) that is of actual or potential commercial value to the Principal or Eligible Customer; and
- (g) relating to the clients or suppliers of the Principal or Eligible Customer;

but does not include information that:

- (h) was already in the possession of the Offeror or potential Offeror and not subject to an obligation of confidentiality, is lawfully received from a third party or independently developed by the Offeror or potential Offeror; or
- (i) is public knowledge other than through a breach of an obligation of confidentiality;

“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 Section 1 of the ICT Invitation, to be the sole point of contact for the 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 in accordance with ICT Arrangement, the terms of which are set out in the Documents specified in clause 1.2.7;

“Deed of Agreement” or **“Deed”** means the deed entered into between the Principal and Successful Offeror including the Schedules 1, 2 and 3 as completed by the Principal, and other attached schedules under which the ICT Arrangement is established;

“Deliverables” 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 Customer Contract;

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

"Document" includes:

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

"Eligible Customer" means the State of Queensland and the entities referred to in clause 25, unless otherwise specified in item 3 of Section 1 of the ICT Invitation, who may seek to procure the Products and/or Services;

"Eligible non-Government Body" or **"Non-Government Organisation"** means a body (including a private school) other than a Queensland Government department, agency or Queensland Government Body, which is:

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

from time to time approved by the State of Queensland acting through the Department of Public Works - Queensland Government Chief Procurement Office to procure Products and/or Services pursuant to a Contract in accordance with the Arrangement;

"Evaluation Process and Criteria" means the evaluation process and criteria for Offers as specified in Section 4 of the ICT Invitation;

"General Order" means an order:

- (a) substantially in the form of Schedule A; or
- (b) in another form of Document which is acceptable to the Eligible Customer;

by which the Eligible Customer accepts the Successful Offeror's Offer to supply the Products and/or perform the Services as specified in the ICT Arrangement.

"GITC" means the Government Information Technology Contracting Framework Version 5.02 which can be located from the Queensland Government Chief Procurement Office website: <http://www.qgcpcpo.qld.gov.au/gitc/index.htm> under 'GITC V5 Framework' or by emailing the Contact Officer;

"GITC Agreement" means the Agreement between the Contract Authority and the Contractor as defined in GITC – Part 2;

"ICT Arrangement" refer to definition of "ICT Standing Offer Arrangement";

"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 a Customer Contract as specified in Division B of the ICT Standing Offer Arrangement Conditions Version 003 – dated 1 July 2011 which can be located from the Queensland Government Chief Procurement Office website: www.qgcpcpo.qld.gov.au – under '*Government terms and conditions*', and any Additional Provisions – ICT Arrangement;

"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 details contained within Section 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 an 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 (including without limitation a standing offer arrangement, a register of pre-qualified suppliers, panel arrangement or preferred supplier arrangement) entered into by the Principal and the Successful Offeror by executing a Deed of Agreement which comprise the documents specified in clause 1.2.5;

"ICT Standing Offer Arrangement Conditions" means the terms and conditions of the ICT Standing Offer Arrangement as specified in Divisions A and B of the ICT Standing Offer Arrangement Conditions Version 003 – dated 1 July 2011 which can be located from the Queensland Government Chief Procurement Office website: www.qgcpcpo.qld.gov.au – under '*Government terms and conditions*' and any Additional Provisions – ICT Arrangement;

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

"Intellectual Property Rights" includes all copyright, trade mark, design, patents or other proprietary rights, or any rights to registration of such rights existing in Australia, or elsewhere or as protected by legislation from time to time, whether created before, or after the ICT Arrangement commencement date, but excludes Moral Rights;

"Module Order" means an order substantially in the form of Schedule MO1 to MO14 of GITC Part 3 and such other Module Orders as incorporated into the Agreement by the Contract Authority from time to time, which contains the agreed terms and conditions for the supply of a Deliverable by the Contractor to the Customer and which is set out in Schedule B;

"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, on or after the ICT Arrangement commencement date;

"Non-Government Organisation" refer to definition of "Eligible non-Government Body";

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

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

"Parties" means Principal and Offeror;

"Personal Information" is information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

"Price" and "Pricing" means the itemised price and/or price calculated by reference to a schedule of rates payable by an Eligible Customer for a Deliverable, to be specified by the Offeror in Response Form 6.2 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 State of Queensland or other entity specified in item 1 of Section 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 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 company over which the State of Queensland exercises control;

"Response Form" 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 proposed departures from the ICT Invitation;

"Schedule" 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);

"Specifications" means the detailed description of the Principal's requirements as specified in Section 3 of the ICT Invitation, specifying the nature of the Products and/or Services for which Offers are sought;

"Standing Offer" means the Successful Offeror's standing offer to supply the Products and/or Services in accordance with the ICT Arrangement for the ICT Arrangement Term;

"Successful Offeror" means the entity to be specified in item 5 of Schedule 1 to the ICT Standing Offer Arrangement Conditions, 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 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, attachment or annexure is a reference to a clause, Response Form, 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 reference to a clause is a reference to all of its sub-clauses;
- 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; and
- n) a Schedule forms part of the document to which it is attached.

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) Deed of Agreement including Additional Provisions – ICT Arrangement;
- (b) the ICT Standing Offer Arrangement Conditions;
- (c) Contractor's GITC Agreement with the Contract Authority including Additional Provisions – GITC Agreement;
- (d) Specifications;
- (e) Successful Offeror's Offer (to the extent accepted under the Deed of Agreement); and
- (f) any other Document, in whole or in part, forming part of the ICT Arrangement, as agreed in writing and executed by 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, which may be established as a result of the ICT Arrangement, between an Eligible Customer and the Successful Offeror:

- (a) the Deed of Agreement including Additional Provisions – ICT Arrangement;
- (b) these ICT Standing Offer Arrangement Conditions;
- (c) Contractor's GITC Agreement with the Contract Authority including Additional Provisions – GITC Agreement;
- (d) Customer Contract Provisions in GITC Part 2, except for those clauses which are excluded, in accordance with clause 35 of the ICT Standing Offer Arrangement Conditions;
- (e) General Order
- (f) Module Order/s;
- (g) applicable Schedules, as relevant to the supply of the Deliverables;
- (h) applicable Modules in GITC Part 3, as relevant to the supply of the Deliverables;
- (i) Specifications;
- (j) Offer (to the extent accepted under the Deed of Agreement); and
- (k) any other Document, in whole or in part, forming part of the Customer Contract, as agreed in writing and executed by the Customer and Contractor.

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 the ICT Invitation.
- 2.2 Each Offeror must respond to every requirement and 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 – ICT Arrangement 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.
- 2.5 Despite clauses 2.3 and 2.4, any proposed Additional Provisions - ICT Arrangement which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under clause 34 will not be considered by the Principal.
- 2.6 Each Offeror must ensure that Response Form font, questions, numbering and headings are not altered in any way unless consent has been granted by the Principal.
- 2.7 Any Offers that exceed the page limit as specified by the Principal in Section 4 of the ICT Invitation may be deemed non-conforming.

3. OFFER VALIDITY PERIOD

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

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 group of individuals who are acting as trustee – each trustee's full name (including names and surname) and address and, if applicable, full details of the place of practice or business of the trustee and, where the trustee carries on a practice or business in partnership, the full name of the persons with whom the trustees carry on a practice or business in partnership, the full name of the partnership; and
 - (iii) a partnership, the full name and address of the individual who is authorised to make the Offer on behalf of the partnership;
 - (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) the name and company title of the person authorised to make the Offer on behalf of the company; and
 - (v) if the company is acting as trustee, the full name of the trust;
 - (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 authorised to make the Offer on behalf of the agency;

- (d) where an Offeror trades under a business name:
 - (i) the registered Business Name (BN);
 - (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 or Offers by partnerships the information detailed in paragraphs (a) to (d) for each Offeror or partner;
 - (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 (d) 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 (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 perform the 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 and/or ICT Invitation Process:
- (a) the Offeror must direct its enquiries to the Contact Officer;
 - (b) the Offeror may only rely on the information or clarification provided in writing, after release of the ICT Invitation, by the Principal;
 - (c) if, after seeking information or 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; and
 - (d) the Principal will not respond to any request for information or clarification from the date specified in item 14 of Section 1 of the ICT Invitation. If no date is specified in item 14 of Section 1 of the ICT Invitation, then this date will default to the Closing Date.
- 7.4 An Offeror will not be entitled to claim compensation or loss from the Principal for 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 e-Tendering 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 Section 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 Section 1 of the ICT Invitation that an Offer must be submitted electronically via the Queensland Government e-Tendering 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 Section 1 of the ICT Invitation;
 - (c) may submit multiple attachments to the Offer to this website;
 - (d) must keep the file size of each document below 10MB (10,240KB); 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 is processed a system generated receipt confirmation will 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.
- 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 perform the 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 Section 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 Section 1 of the ICT Invitation, the Principal will retain all Documents and any samples (if applicable) submitted in response to the 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 and at any stage during the ICT Invitation Process, decline to consider any non-conforming Offers.
- 9.2 The Principal is not obliged to provide reasons for non-acceptance of any non-conforming Offer.

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, in Response Form 6.3, other brands or models which, in the opinion of the Offeror are at least equivalent to the brand or model of Products specified.

11. ALTERNATIVE PRODUCTS AND/OR SERVICES

- 11.1 Offerors may submit, in Response Form 6.3, an:
- (a) alternative Offer; and/or
 - (b) innovative solution.
- 11.2 The Offeror must include details of the benefits to the Principal of the alternative Offer and/or innovative solution.

12. CONFIDENTIAL INFORMATION, PRIVACY AND PERSONAL INFORMATION

Confidential Information

- 12.1 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/or sub-contractors who are in possession of Confidential Information, keep that information confidential except where disclosure of the Confidential Information is required by law or under the terms of these ICT Standing Offer Arrangement - Conditions of Offer.

- 12.2 If requested by the Principal, the Offeror or potential Offeror must execute a deed of confidentiality, in a form acceptable to or provided by the Principal, from itself and from each of its officers, employees, agents and/or sub-contractors who receive the information.
- 12.3 Upon receipt of a written request by the Principal, the Offeror or any potential Offeror (including an entity who obtains the information in the Invitation but does not submit an Offer), must deliver to the Principal any Document in the Offeror's or potential Offeror's power, possession or control which contains Confidential Information.

Privacy and Personal Information

- 12.4 If the Offeror collects or has access to Personal Information as a result of the ICT Invitation, the Offeror must:
- (a) if the Principal is an "agency" other than the health department within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the ICT Invitation, as if the Offeror was the Principal;
 - (b) if the Principal is the "health department" within the meaning of the *Information Privacy Act 2009* (Qld), comply with Parts 2 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under the ICT Invitation, as if the Offeror was the Principal;
 - (c) ensure that the Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
 - (d) not use Personal Information other than for the purposes of submitting an Offer, unless required or authorised by law;
 - (e) not disclose Personal Information without the consent of the Principal, unless required or authorised by law;
 - (f) not transfer Personal Information outside of Australia without the consent of the Principal;
 - (g) ensure that access to Personal Information is restricted to those of its employees and officers who require access in order to submit an Offer in accordance with the ICT Invitation;
 - (h) ensure that its officers and employees do not access, use or disclose Personal Information other than in submitting an Offer in accordance with the ICT Invitation;
 - (i) ensure that its sub-contractors and agents who have access to Personal Information comply with obligations the same as those imposed on the Offeror under this clause 12.4 and clause 12.5;
 - (j) fully co-operate with the Principal to enable the Principal to respond to applications for access to, or amendment of, a Document containing an individual's Personal Information and to privacy complaints; and
 - (k) comply with such other privacy and security measures as the Principal reasonably advises the Offeror in writing from time to time.
- 12.5 The Offeror must immediately notify the Principal on becoming aware of any breach of clause 12.4.

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 will not be binding on the Principal.

14. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

- 14.1 All Products and/or Services offered by the Offeror must comply in all aspects with:
- (a) the terms of the ICT Invitation;
 - (b) applicable legislative requirements;
 - (c) any applicable Government code, policy or guideline; and
 - (d) any current Australian/New Zealand Standard, and where an Australian/New Zealand Standard does not exist, the relevant and current International Standard (ISO).

15. INSURANCES

- 15.1 In submitting its Offer, the Offeror must provide acceptable evidence of the following insurances to cover its obligations under the ICT Arrangement and/or Customer Contract, 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 that Response Form in respect of each claim, and which must be maintained by the Successful Offeror for a continuous period of four years after the latter of the last Customer Contract Completion Date or termination of the last Customer Contract, 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 specify in Response Form 6.4 – item 13 of Schedule 1, the name of that Scheme and attach a copy of that Scheme to the Offer.
- 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); and
 - (c) include the costs of suitable packaging, delivery and installation, unless otherwise specified in the ICT Invitation.
- 16.2 The Offeror must specify in Response Form 6.2:
- (a) any trade, settlement and/or early payment discounts from the Prices offered; and
 - (b) preferred payment methods.
- 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, and/or Commonwealth, State or Territory 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 Section 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 An Offeror will not 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 these 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 an alternative Offer or an innovative solution offered in response to this ICT Invitation Process, which meets 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 ICT Invitation, 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. 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, CONFLICT OF INTEREST AND COLLUSION

Commissions and Incentives

- 23.1 The Offeror must not, and must ensure that its officers, employees, agents and/or sub-contractors do not give or offer anything to the Principal or any officer or employee of the Principal, or to a parent, spouse, child or associate of an officer or employee of the Principal, including any commission, inducement, gift or reward, which could in any way tend or be perceived as attempting 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 elect, in addition to any other action, not to consider that Offer.

Conflict of Interest

- 23.3 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, employees, agents and/or subcontractors have, or are likely to have, any Conflict of Interest in any matters connected with the ICT Invitation Process.
- 23.4 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.

Collusion

- 23.5 In submitting its Offer, the Offeror warrants to the Principal that, except as expressly disclosed in its Offer:
- (a) the Offer was not prepared with any consultation, communication, contract, arrangement or understanding with any competitor (including any other offeror) regarding:
 - (i) prices;
 - (ii) methods, factors or formulas used to calculate prices;
 - (iii) the intention or decision to submit or not to submit an offer;
 - (iv) the submission of an offer that is non conforming;
 - (v) the quality, quantity, specifications or delivery particulars of products and/or services (including the Products and/or Services) to which the ICT Invitation or Offer relates; or
 - (vi) the terms of its Offer or a competitor's offer;
 - (b) it has not (and will not during the ICT Invitation Process):
 - (i) provided any benefit (including money) directly or indirectly to, or entered into any contract, arrangement or understanding to provide any benefit (including money) directly or indirectly to any competitor (including any other offeror) relating in any way to the ICT Invitation or Offer;
 - (ii) received any such benefit directly or indirectly, or entered into any contract, arrangement or understanding to receive any such benefit directly or indirectly from any competitor (including any other offeror) relating in any way to the ICT Invitation or Offer;
 - (iii) consulted, communicated or entered into any contract, arrangement or understanding to provide any benefit (including money), whether directly or indirectly, to a trade, industry or other association (above the published standard fee) relating in any way to the ICT Invitation or Offer; and
 - (c) save as is fully disclosed in its Offer in accordance with clause 23.6, the Offeror and all corporations and persons associated with the Offer, including directors and senior management, are not and have never been subject to proceedings relating to anti-competitive conduct in Australia or overseas.

- 23.6 Full disclosure in the Offer of proceedings relating to anti-competitive conduct in Australia or overseas to which the Offeror and/or any corporation or person associated with the Offer, including directors and senior management, have been subject requires disclosure of at least:
- (a) the names of the parties to the proceedings;
 - (b) the case number;
 - (c) the general nature of the proceedings; and
 - (d) the outcome or current status of the proceedings.
- 23.7 The Principal reserves the right, at its entire discretion, to exclude the Offeror from the ICT Invitation Process if the Offeror, or any corporation or person, including directors or senior managers associated with the Offer, have ever contravened any anti-competitive laws in Australia (including the *Competition and Consumer Act 2010* (Cth)) or overseas.
- 23.8 Furthermore, the Principal reserves the right, at its entire discretion, to exclude the Offeror from the ICT Invitation Process if full disclosure of any or all contraventions of the anti-competitive provisions of the *Competition and Consumer Act 2010* (Cth) or equivalent laws in Australia or overseas, has not been made as is required in clauses 23.5(c) and 23.6.
- 23.9 In submitting its Offer, the Offeror acknowledges that if the Principal accepts the Offer and enters into an ICT Arrangement, the Principal will do so in reliance of the warranties in clause 23.5 above.

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 entire 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, Queensland Government Body or Commonwealth, State or Territory 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 Orders will be placed with the Successful Offeror under the ICT Arrangement.

25. UTILISATION OF ICT STANDING OFFER ARRANGEMENT BY OTHER ENTITIES

- 25.1 The Principal reserves the right to allow Queensland Government departments or agencies, Queensland Government Bodies Non-Government Organisations and/or Commonwealth, States or Territories to purchase the 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 The Successful Offeror to the ICT Invitation must be a current signatory to a GITC Agreement under the applicable Modules as specified in item 12 of Section 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 Term.
- 26.2 The Principal reserves the right not to consider any terms and conditions proposed by an Offeror where those conditions vary from provisions of the Offeror's GITC Agreement. Any proposed Additional Provisions – ICT Arrangement, which are outside of the Offeror's GITC Agreement, must be clearly articulated in Response Form 6.3 of the ICT Invitation.
- 26.3 Offerors are advised that the Principal reserves the right not to consider any Customer Contract conditions proposed by an Offeror where those conditions vary from provisions of the Offeror's GITC Agreement. Any proposed Additional Provisions – ICT Arrangement, which are outside of the Offeror's GITC Agreement, must be clearly articulated in Response Form 6.3.

26.4 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.

26.5 Further information regarding GITC can be obtained from the GITC website: www.ggcpo.qld.gov.au/gitc/index.htm.

27 EXISTING ICT ARRANGEMENTS WITH QUEENSLAND GOVERNMENT OR OTHER ENTITIES

27.1 The Offeror must specify in Response Form 6.6 whether it has any existing supply arrangements with Queensland Government departments or agencies, Queensland Government Bodies and/or Non-Government Organisations. The information collected in the above Response Form may be shared across the Queensland Government to potentially avoid duplication of arrangements.

28. ACCEPTANCE AND/OR REJECTION

28.1 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 any part of an Offer;
- (e) accept an Offer that the Principal considers the best solution, including:
 - (i) a non-conforming Offer;
 - (ii) an alternative Offer; and/or
 - (iii) an innovative solution;in accordance with clauses 9, 10 and 11;
- (f) not accept the lowest Offer; or
- (g) not accept any Offer.

29. SUCCESSFUL OFFEROR

29.1 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.

30. ADVICE TO UNSUCCESSFUL OFFERORS

30.1 Unsuccessful Offerors will be notified in writing that they have been unsuccessful.

31. DECISION AND DEBRIEFING

31.1 All Offerors, whether successful or unsuccessful may seek feedback from the Contact Officer at the completion of the ICT Invitation Process.

31.2 A feedback or debriefing session is 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.

31.3 The Principal will not enter into any correspondence, oral or written, about its selection decisions.

32. NO ADVERTISEMENT

32.1 The Successful Offeror must not, and must ensure that its officers, employees, agents and/or sub-contractors do not make any public announcement or advertisement in any medium in relation to the ICT Invitation Process without the consent of the Principal.

33. GOVERNING LAW

33.1 Subject to clause 20.1, any Offer submitted in response to the ICT Invitation will 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.

34. RIGHT TO INFORMATION AND DISCLOSURE

- 34.1 The *Right to Information Act 2009* (Old) (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies.
- 34.2 The RTI Act requires that Documents be disclosed upon request, unless the Documents are exempt or on balance, disclosure is contrary to public interest.
- 34.3 Information contained in an Offer is potentially subject to disclosure to third parties.
- 34.4 If disclosure under the RTI Act, and/or general disclosure of its Offer, in whole or in part, would be of concern to an Offeror, because it would disclose trade secrets, information of commercial value, the purposes or results of research or other information of a confidential nature, this should be indicated in Response Form 6.1. The Principal cannot guarantee that any information provided by the Offeror, including information that is identified by the Offeror in Response Form 6.1, will be protected from disclosure under the RTI Act.
- 34.5 Despite any other provision of the ICT Invitation and/or ICT Invitation Process, the Principal is entitled to publish on the Queensland Government Chief Procurement Office website: www.qgcpo.qld.gov.au under "*eTendering website for Government Suppliers*", or by any other means, the following details:
- (a) the name and address of the Principal and/or Eligible Customer;
 - (b) a description of the Products and/or Services;
 - (c) ICT Arrangement commencement date or award date;
 - (d) value of the ICT Arrangement;
 - (e) name and address of the Successful Offeror;
 - (f) procurement method used; and
 - (g) where the total value of the Products and/or Services is \$10 million or more, the Customer is entitled to publish the following additional information:
 - (i) ICT Invitation details;
 - (ii) Customer Contract overview; and/or
 - (iii) reasons for non-disclosure of procurement results (if applicable).
- 34.6 Any proposed variation by the Offeror to clause 34.5 which purport to take away or reduce the entitlements that would otherwise be provided to the Principal under that clause will be null and void.
- 34.7 For more information regarding the RTI Act please contact the RTI Officer as specified in item 13 of Section 1 of the ICT Invitation.