

Basic Purchasing Conditions

1 The Contract

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

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

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

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

2 Interpretation

The definitions and rules of interpretation for the Contract are set out in clause 15.

3 Supplier to provide Deliverables

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

terminate the Contract at no cost to TAFE Queensland.

4 No exclusivity

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

5 Supplier obligations

5.1 General

The Supplier must:

- (a) comply with all policies (including the Queensland Procurement Policy, Ethical Supplier Threshold and the Ethical Supplier Mandate), codes of conduct (including the Supplier Code of Conduct), rules, standards and procedures which apply to the Deliverables and/or the Supplier's obligations under this Contract (**Policies**). If any new Policies are introduced, or amendments made to any existing Policies, the Supplier will comply with the new or amended Policies on and from the date notified by TAFE Queensland;
- (b) comply with all reasonable directions of TAFE Queensland in relation to the Supplier's performance of the Contract;
- (c) comply with all applicable Laws and ensure that the Deliverables and the use of them by TAFE Queensland as contemplated by the Contract will comply with all applicable Laws, including but not limited to the *Disability Discrimination Act 1992* (Cth), the *Modern Slavery Act 2018* (Cth) and the *Human Rights Act 2019* (Qld);
- (d) maintain public liability and products insurance on reasonable commercial terms for a minimum amount of \$5 million per claim, workers' compensation insurance (if required by law) and any other insurance specified in writing by TAFE Queensland;
- (e) keep confidential all Confidential Information, must not use Confidential Information except for the purposes of the Contract and not disclose Confidential Information to any person except to its Personnel on a need to know basis for the

purpose of performing the Contract;

- (f) if the Supplier collects or has access to any Personal Information in order to perform the Contract, comply with those parts of Chapter 2 of the Information Privacy Act which are applicable to TAFE Queensland, as if the Supplier were an 'agency' for the purposes of the Information Privacy Act. Nothing in this clause limits any obligation the Supplier may have under the Privacy Act or any other applicable privacy Law;
- (g) provide all reasonable assistance requested by TAFE Queensland to enable TAFE Queensland to comply with all applicable Laws, policies and standards;
- (h) ensure that its Personnel comply with all the obligations of the Supplier under the Contract, and the Supplier is fully responsible for all acts and omissions of its Personnel, as though they were acts or omissions of the Supplier. The Supplier is not, and the Supplier's Personnel are not, employees of TAFE Queensland;
- (i) comply with all applicable Laws, awards, collective agreements and industrial relations instruments, including those in relation to collective bargaining and the role of trade unions;
- (j) on reasonable prior written notice from TAFE Queensland, give TAFE Queensland or its nominated third party reasonable access to the Supplier's premises where the Deliverables are being performed or produced, and to Supplier documentation, records and Personnel, to enable TAFE Queensland or a third party nominated by TAFE Queensland to verify:
 - (i) the completeness and accuracy of information provided by the Supplier in connection with the Contract; and
 - (ii) the Supplier's compliance with its obligations under the Contract,
 and must, without limiting TAFE Queensland's other rights, promptly address any non-compliances notified by TAFE Queensland to the Supplier to rectify;
- (k) have and maintain a policy of zero tolerance to Domestic and Family Violence and take all reasonable steps to prevent and address Domestic and Family Violence; and
- (l) not subcontract any part of its obligation under the Contract without TAFE Queensland's prior written consent (not to be unreasonably withheld but which may be subject to conditions). For the avoidance of doubt, the Supplier's use of subcontractors will not transfer responsibility to the subcontractor nor will it relieve the Supplier

from its liabilities and obligations under the Contract.

5.2 Services

For Contracts involving the performance of Services, the Supplier must ensure the highest quality of work, and perform the Services to a professional standard and in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services.

5.3 Goods / Deliverables in material form

For Contracts involving the supply of Goods (or other Deliverables in material form):

- (a) the Supplier must ensure that the Goods:
 - (i) satisfy the description in the Contract;
 - (ii) are new, unused and of recent origin;
 - (iii) are of a high quality; and
 - (iv) are fit for their usual purpose and any other purpose disclosed by TAFE Queensland before the Contract is formed;
- (b) the Supplier assigns any manufacturer's warranty to TAFE Queensland. If this is not possible, the Supplier must immediately inform TAFE Queensland;
- (c) the Supplier must deliver the Goods or other relevant Deliverables to the Site in accordance with TAFE Queensland's instructions;
- (d) the Supplier must adequately pack and protect Goods to withstand transit and storage;
- (e) if TAFE Queensland rejects Goods for any reason, and the Supplier does not repossess the rejected Goods within 30 days of notice of rejection, TAFE Queensland may sell or dispose of the Goods. For the avoidance of doubt, TAFE Queensland is under no obligation to pay for rejected Goods;
- (f) risk in Goods and any other Deliverables which are provided in a material form will transfer to TAFE Queensland when delivered to the delivery address (as specified by TAFE Queensland) in accordance with the delivery instructions;
- (g) title in Goods and any other Deliverables which are provided in a material form will transfer on the earlier of delivery or payment of the applicable Price; and
- (h) the Supplier warrants that the Goods and any other Deliverables will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by

operation of a Law that cannot be excluded by contract.

6 Warranties

6.1 Conflict of Interest

- (a) The Supplier warrants that it and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel do not have a Conflict of Interest in the performance of the Contract, except as previously disclosed in writing to TAFE Queensland and which has been and can continue to be appropriately resolved to the satisfaction of TAFE Queensland.
- (b) If a Conflict of Interest or risk of it arises, the Supplier must notify TAFE Queensland immediately. Upon receipt of such a notice, or upon TAFE Queensland otherwise identifying a Conflict of Interest or a risk of it, TAFE Queensland may, without limiting its rights under clause 12, direct the Supplier as to how to resolve the Conflict of Interest and the Supplier must comply with any reasonable direction given.

6.2 Anti-competitive Conduct

The Supplier warrants that neither it nor, to the best of its knowledge and belief having made reasonable enquiries, its Personnel have engaged in, or will engage in, any collusive, anti-competitive or similar conduct (**Anti-competitive Conduct**) in connection with the Contract or any actual or potential contract with any entity for goods and services similar to the Goods and Services.

6.3 Criminal organisation

The Supplier warrants that it and, to the best of its knowledge and belief having made reasonable enquiries, its Personnel have not been convicted of an offence under the Criminal Code in the *Criminal Code Act 1899* (Qld) where one of the elements of the offence is that the person is a participant in a criminal organisation within the meaning of the Criminal Code.

6.4 Supplier Information

The Supplier warrants that all representations, warranties, declarations, statements, information and documents made or provided by the Supplier (including its representatives) in connection with the Contract are complete, accurate, up to date and not misleading in any way.

6.5 Modern Slavery

- (a) The Supplier must not, and must take reasonable steps to ensure that its supply chain does not, undertake acts which could constitute an offence involving Modern Slavery.
- (b) The Supplier warrants that it and, to the best of

its knowledge and belief having made reasonable enquiries, its supply chain have not been convicted of any offence involving Modern Slavery.

- (c) The Supplier must immediately notify TAFE Queensland if it becomes aware of any actual, potential or perceived Modern Slavery in its operation or its supply chain.
- (d) The Supplier warrants that it and its supply chain will conduct their business in a manner so as to reduce the risk of Modern Slavery in their operations and supply chains.

6.6 Warranties are ongoing

The warranties in this clause are provided as at the date of the Contract and on an ongoing basis. The Supplier warrants that it will immediately notify TAFE Queensland if it becomes aware that any warranty made in this clause 5.1(k) was, when made, or becomes inaccurate, incomplete, out of date or misleading in any way.

7 Invoicing, price and payment

- (a) Subject to this clause 7, TAFE Queensland will pay each Correctly Rendered Tax Invoice within 30 days of receipt.
- (b) The Supplier may invoice TAFE Queensland for Goods and/or Services that comply with the Requirements as follows:
- (i) for Goods, after the Goods have been successfully delivered; and
 - (ii) for Services, after the Services have been fully completed.
- (c) TAFE Queensland is not required to pay any invoice that does not comply with this clause 7.
- (d) TAFE Queensland may withhold payment of any amount which it disputes in good faith, until the dispute is resolved and it is determined that the amount is payable.
- (e) The price(s) payable by TAFE Queensland (as specified in the Basic Order) is inclusive of all charges, expenses and overheads, and all taxes and duties, except for GST. If the Contract requires the Supplier to do or provide anything, and there is no separate Price for performing that obligation, the Supplier will comply with the obligation at no additional cost.

8 GST

- (a) Unless expressly stated otherwise, all amounts payable under this Contract are GST exclusive.
- (b) Where GST is imposed on a supply under the Contract, the recipient of the supply shall pay to

the supplier an amount equal to the GST (if any) payable on the taxable supply, at the same time that it is required to make the payment for the taxable supply, provided that it receives a valid tax invoice at or before the time of payment. Terms in this clause have the same meanings as in the GST Law.

9 Liability

- (a) Neither party will be liable to the other, whether in contract, tort (including negligence) or otherwise in connection with the Contract, for loss or damage to the extent that the other party (or the other party's Personnel) caused or contributed to the loss or damage.
- (b) Subject to clause 9(c), the maximum liability of a party to the other party, whether in contract, tort (including negligence) or otherwise in connection with the Contract, is limited to the greater of \$500,000 and 5 times the Total Contract Value.
- (c) The cap on liability in clause 9(b) does not apply to liability in relation to any:
 - (i) personal injury, including sickness, injury or death;
 - (ii) loss of, or damage to, tangible property;
 - (iii) Unacceptable Conduct;
 - (iv) breach of clause 5.1(e), 5.1(f), 6 or 10(b).

10 Intellectual Property Rights

- (a) The Supplier grants (and must procure that relevant third parties grant) TAFE Queensland an irrevocable, unconditional, perpetual, royalty free, non-exclusive, worldwide and transferable (including sub-licensable) licence to exercise all Intellectual Property Rights in the Deliverables for any purpose.
- (b) The Supplier warrants that it is authorised to grant the rights in this clause 10 and that the Deliverables and their use as permitted by the Contract will not infringe the Intellectual Property Rights or Moral Rights of any person.

11 Where Requirements not met

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

right or remedy that it has (whether under this Contract or otherwise).

- (b) If the Supplier fails to comply with its obligations under this clause 11, TAFE Queensland may have the Deliverables re-supplied or re-performed by others, and the Supplier must pay TAFE Queensland on demand any costs incurred by TAFE Queensland in doing so.

12 Termination

12.1 For cause

TAFE Queensland may terminate the Contract immediately on written notice if:

- (a) the Supplier breaches the Contract and the breach cannot be remedied, or the breach can be remedied but the Supplier has not remedied the breach within a reasonable period nominated by TAFE Queensland;
- (b) the Supplier breaches any warranty given in this Contract;
- (c) a Conflict of Interest exists or arises and has not been or, in TAFE Queensland's view, cannot be appropriately resolved to TAFE Queensland's satisfaction;
- (d) the Supplier is or becomes Insolvent except if the stay on enforcing rights under Part 5.1 of the *Corporations Act 2001* (Cth) applies; or
- (e) the Supplier ceases business or indicates that it is unwilling or unable to complete the Contract.

12.2 For convenience

- (a) TAFE Queensland may terminate the Contract in whole or in part at any time, in its absolute discretion and without having to provide reasons, by giving written notice to the Supplier.
- (b) If TAFE Queensland terminates the Contract pursuant to this clause 12.2, TAFE Queensland will reimburse the Supplier's reasonable and documented expenses directly relating to the termination. Subject to clause 12.4(a)(ii), TAFE Queensland will have no other liability to the Supplier relating to the termination under this clause 12.2.
- (c) In no case will the compensation payable by TAFE Queensland as a consequence of termination under this clause 12.2 exceed the Price that would have been payable if the Contract had not been terminated. The Supplier must comply with any directions given by TAFE Queensland in the notice in connection with the termination and take all reasonable steps to minimise its expenses relating to the termination.

12.3 If Contract is under a SOA

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

12.4 Consequences

- (a) Without limiting any other rights or remedies TAFE Queensland may have, if TAFE Queensland terminates the Contract:
 - (i) pursuant to clause 12.1 or 12.3, the Supplier must:
 - (A) refund TAFE Queensland for the Price paid (if any) for Services not yet rendered and/or Goods not yet delivered (in full or in part) as at the date of termination; and
 - (B) pay or reimburse TAFE Queensland's reasonable and documented expenses in connection with the termination; or
 - (ii) pursuant to clause 12.2, as applicable:
 - (A) the Supplier must refund TAFE Queensland for the Price paid (if any) for Services not yet rendered and/or Goods not yet delivered (in full or in part); or
 - (B) TAFE Queensland will pay the Supplier a pro rata amount of the Price equal to the value of the Services rendered in full and/or Goods delivered,
 - as at the date of termination.
- (b) Termination of the Contract will not affect the accrued rights and remedies of the parties prior to termination.

13 Ethical Supplier Mandate

The Supplier acknowledges and agrees that:

- (a) it and its subcontractors are subject to the Ethical Supplier Mandate and that a failure to comply with any contractual, policy or legislative obligations in connection with the Contract can result in the imposition of demerit points and/or sanctions under the Ethical Supplier Mandate, in

addition to any other remedies available to TAFE Queensland under the Contract; and

- (b) TAFE Queensland and/or its nominated representative may publish information about sanctions imposed on the Supplier and/or its subcontractors under the Ethical Supplier Mandate and that to do so will not constitute a breach of this Contract by TAFE Queensland nor give rise to any other right or remedy of the Supplier at law or in equity against TAFE Queensland or its nominated representative.

14 General

The parties agree that:

- (a) (**communication**) they will direct all communications relating to the Contract to the other party's nominated contact person (or such other person as notified from time to time);
- (b) (**variation**) the Contract may only be varied by written agreement of authorised representatives of the parties;
- (c) (**entire agreement**) this Contract sets out all the parties' rights and obligations relating to the subject matter of the Contract, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in this Contract. No other terms apply;
- (d) (**relationship**) their relationship is of principal and contractor. This Contract does not create any partnership, joint venture, agency or employment relationship. The Supplier must not represent itself or allow anyone else to represent that the Supplier is, or its Personnel are, a partner, joint venturer, agent, officer or employee of TAFE Queensland;
- (e) (**acceptance**) acceptance of the Deliverables by TAFE Queensland does not relieve the Supplier of any of its obligations under the Contract or waive any of TAFE Queensland's rights under the Contract;
- (f) (**Data**) the ownership of Data, including any Intellectual Property Rights in Data, vests in TAFE Queensland on creation and the Supplier has no right, title or interest in any Data;
- (g) (**financial viability**) TAFE Queensland, at its absolute discretion, may conduct financial viability assessments on the Supplier. The Supplier must cooperate with any financial viability assessments;
- (h) (**disputes**) they will not bring any court proceedings relating to this Contract (except urgent interlocutory proceedings) without first attempting to resolve the dispute by negotiation;

- (i) (**right to disclose**) TAFE Queensland may disclose information about the Contract on the Government's contract directory, where required or recommended by Government procurement policy or as required by Law, including under the Right to Information Act and/or the Information Privacy Act;
- (j) (**partnerships and JVs**) where the Supplier is a partnership or joint venture, each partner or joint venturer (as applicable) is jointly and severally liable under this Contract;
- (k) (**trusts**) where the Supplier is trustee, the Supplier represents and warrants in its own right and as trustee of the trust that, as at the date of this Contract and until such time as all obligations under this Contract are discharged:
 - (i) it is the sole trustee of the trust;
 - (ii) it has the requisite capacity and authority to enter into this Contract on behalf of, and to bind the beneficiaries of, that trust and to perform all obligations under this Contract pursuant to the documents governing that trust; and
 - (iii) it has the right to be fully indemnified out of the assets of the trust in relation to this Contract and the assets of the trust are sufficient to satisfy all obligations of the trust under this Contract; and
- (l) (**survival**) clauses 1(b)-(c), 2, 4, 5.1(c)-(j), 5.3(g)-(h), 6, 7(c)-(e) and 8-15 and any other clauses which are expressed to survive or by their nature survive, will survive termination or expiry of the Contract for any reason.

15 Definitions and interpretation

15.1 Definitions

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

Basic Purchasing Conditions means the TAFE Queensland 'Basic Purchasing Conditions' as published on the TAFE Queensland website, currently available at <https://tafeqld.edu.au/procurement>.

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

Business Day means a day other than a Saturday, Sunday or public holiday at the address of TAFE

Queensland, but does not include 27, 28, 29, 30 or 31 December in any year.

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

Confidential Information means all information disclosed by or on behalf of the Principal or TAFE Queensland to the Supplier in connection with a Contract or SOA or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information, and (in the case Principal or TAFE Queensland) all Data. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
- (c) the Recipient receives from another person on a non-confidential basis except through a breach of a confidentiality obligation.

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

Consequential Loss means:

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

Contract means an agreement between TAFE Queensland and the Supplier, made up of the documents specified in clause 1.

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

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

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

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

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

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

Domestic and Family Violence means:

- (a) 'domestic violence' as that term is defined in the *Domestic and Family Violence Protection Act 2012* (Qld); and
- (b) 'family violence' as that term is defined in the *Family Law Act 1975* (Cth).

Eligible Customer means an entity which is entitled to enter into a Contract under a Supply Arrangement.

Ethical Supplier Mandate means the Queensland Government policy titled "Ethical Supplier Mandate 2021" as amended or replaced from time to time.

Ethical Supplier Threshold means the Ethical Supplier Threshold referred to in the Queensland Procurement Policy and described in the document

titled "Guidelines: Ethical Supplier Threshold" as amended or replaced from time to time.

Goods means the goods the Supplier will provide as described in the Basic Order.

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

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

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

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

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

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

before or after the date of the Contract or SOA (as applicable), but excludes Moral Rights.

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

Laws means all:

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

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

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth).

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

Personal Information has the meaning given in Information Privacy Act.

Personnel means:

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

Preferred Supplier Panel means a form of Supply Arrangement established by the Principal of suppliers of particular goods and/or services which satisfy the Principal's predetermined criteria, from which Eligible

Customers may invite suppliers to submit offers to provide goods and or services. It may also be referred to as a pre-qualified panel.

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

Principal is the party described in:

- (a) the SOA Details, responsible for administering the SOA; or
- (b) for any other Supply Arrangement, the entity responsible for administering that arrangement.

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

Queensland Government Body means any of:

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

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

Requirements means the standards, specifications and other requirements for the Deliverables and the performance of the Supplier's obligations under the Contract or SOA, which are set out in the Contract or SOA, or otherwise agreed by the parties in writing.

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

Services means the services the Supplier will perform under the Contract as described in the Basic Order.

Site means the site or premises at which the Deliverables are to be provided as specified in the Basic Order or as otherwise notified by TAFE Queensland.

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

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

SOA Details means a document executed by the Principal and the Supplier under which the SOA is established, that contains information about the

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

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

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

Supplier:

- (a) for a Contract, is described in the Basic Order;
- (b) for a SOA, is described in the SOA Details.

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

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

Total Contract Value means the total value of the Price(s) payable by TAFE Queensland to the Supplier under the Contract.

Unacceptable Conduct means any Wilful Default, Wilful Misconduct, fraudulent or unlawful act or omission of, or failure to comply with applicable Law by, the Supplier or its Personnel.

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

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

15.2 Interpretation

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

- (a) a reference to an agreement includes any variation or replacement of the agreement;
- (b) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;

- (c) where the Contract is made up of more than one document, the Contract must be read in a way that minimises inconsistency, ambiguity or discrepancy;
- (d) words in the singular include the plural and vice versa;
- (e) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (f) a reference to a party, clause, section, schedule, annexure or attachment is a reference to a party, clause, section, schedule, annexure or attachment of this Contract, and a reference to this Contract includes all schedules, annexures, attachments and any other documents appended to it;
- (g) all currency amounts are in Australian dollars;
- (h) headings are provided for convenience and do not affect the interpretation of the documents making up a Contract;
- (i) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (j) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (k) the laws of Queensland apply to the Contract. Each party submits to the jurisdiction of the courts of Queensland;
- (l) a reference to law includes common law and statutory laws, regulations, orders, subordinate legislation, ministerial directions, directions of relevant regulators and binding codes of conduct, and includes any consolidation, amendment, re-enactment or replacement of a law;
- (m) a reference to 'party' means TAFE Queensland and/or the Supplier;
- (n) a person includes the person's executors, administrators, novatees and assignees;
- (o) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (p) if any part of the Contract is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of the Contract will not be affected; and
- (q) any reference to TAFE Queensland's consent is a reference to the prior written consent of TAFE Queensland.