

SOA Schedule 6 –

Financial Security

<Contract title and reference number>

<Customer name>

<Supplier name>

<Security Provider name>

Contract established under SOA <SOA title and reference number>

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| INSTRUCTIONS FOR USING THIS DOCUMENT (TO BE DELETED IN FINAL EXECUTION VERSION OF SOA SCHEDULE): This is a template Financial Security for use with the SOA Comprehensive Contract Conditions - ICT Products and/or Services. This Financial Security is to be executed by the approved security provider (Security Provider) providing the security.The yellow highlighted sections need to be completed. **Important information about compliance requirements for obtaining a Financial Security:*** The Financial Security must comply with the *Financial and Performance Management Standard* *2009* (Part 2 Division 6) (**Standard**), made under the *Financial Accountability Act 2009* (Qld).
* In deciding whether to require the Financial Security, you must comply with the Department’s/Statutory Authority’s contract performance guarantee system (required under the Standard).
* You must be satisfied that the Financial Security provides sufficient and suitable security for the performance of the Supplier’s obligations under the Contract.
* The Financial Security is intended for use where the Security Provider is an approved security provider for the purposes of the Standard.  An approved security provider is a financial institution, insurance company, Queensland Treasury Corporation, or a corporation that is a registered entity under the *Financial Sector (Collection of Data) Act* *2001* (Cth) that is either:
	+ **if not an insurance company**: rated by Fitch Ratings or Standard & Poor’s with a long term credit rating not less than A-, or rated by Moody’s Investors Services with a long term credit rating not less than A3;
	+ **if an insurance company**, is rated by:
		- Fitch Ratings with an insurance claims-paying ability rating not less than A-;
		- Moody’s Investors Service with an insurance financial strength rating not less than A3; or
		- Standard & Poor’s with an insurer financial strength rating not less than A-; or
	+ **a security provider approved by the Treasurer** under section 41 of the Standard.

The Standard also contemplates a financial security that is provided by the Supplier (referred to in the Standard as the contractor).  This type of performance guarantee must be in the form of a monetary security deposit.  Seek legal advice if you are seeking this type of performance guarantee. |

## General information

| No. | Topic | Details |
| --- | --- | --- |
|  | **Contract** | Contract name: <<insert name of contract>>Contract number: <<insert contract reference number>>Date of Contract: <<insert date>> |
|  | **Customer** | Name: <<insert>> ABN or ACN: <<insert>> |
|  | **Supplier** | Name: <<insert>> ABN or ACN: <<insert>> |
|  | **Security Provider** | Name: <<insert>> ABN or ACN (if applicable): <<insert>>Street address: <<insert>>Postal address: <<insert>>Email: <<insert>> |
|  | **Agreed Sum** | <<insert maximum total financial security in AUD>> |

# Financial security

* 1. In consideration of the Customer accepting this Financial Security concerning the Contract, the Security Provider unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Customer to a maximum total of the Agreed Sum.
	2. This Financial Security is to continue until:
		1. the Customer notifies the Security Provider that the Customer no longer requires the Financial Security;
		2. this Financial Security is returned to the Security Provider; or
		3. the Security Provider pays the Customer the whole of the Agreed Sum.
	3. The Security Provider must pay the Agreed Sum or any parts of it to the Customer without reference to the Supplier. This is the case even if:
		1. the Supplier gives notice to the Security Provider not to pay to the Customer any moneys payable under this Financial Security; or
		2. the Supplier or the Customer do not comply with the Contract.
	4. The Security Provider may terminate this Financial Security at any time on payment to the Customer of the Agreed Sum or the balance of it after any part payments, or any lesser amount which the Customer requires.
	5. The Security Provider warrants that it is an approved security provider for the purposes of the *Financial and Performance Management Standard 2009* (Qld) (**Standard**).
	6. The Security Provider must give written notice to the Customer immediately if it stops being an approved security provider under the Standard.

# Definitions and interpretation

* 1. **Definitions**

**Agreed Sum** means the sum specified in the ‘General information’ details above.

**Contract** means the agreement between the Customer and the Supplier described in the ‘General information’ details above.

**Customer** is specified in the ‘General information’ details above.

**Financial Security** means this document titled *‘SOA Schedule 6 – Financial Security’*.

**Security Provider** is specified in the ‘General information’ details above.

**SOA Comprehensive Contract Conditions - ICT Products and/or Services** means the document titled *‘SOA Comprehensive Contract Conditions – ICT Products and/or Services’*.

**Supplier** is specified in the ‘General information’ details above.

* 1. **Interpretation**

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

* + 1. (**agreement**) a reference to an agreement includes any variation or replacement of the agreement;
		2. (**currency**) all currency amounts are in Australian dollars;
		3. (**headings**) headings are provided for convenience and do not affect the interpretation of this Financial Security;
		4. (**includes**) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
		5. (**corresponding meaning**) if a word or phrase is defined its other grammatical forms have corresponding meanings;
		6. (**joint and several**) agreements, representations and warranties made by two or more people will bind them jointly and severally;
		7. (**law**) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
		8. (**person**) a person includes the person’s executors, administrators, novatees and assignees;
		9. (**construction**) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it; and
		10. (**severability**) if any part of this Financial Security is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Contract will not apply but the other parts of this Financial Security will not be affected.

# General

The Security Provider’s liability will not be affected in any way by any variations made to the Contract or by any extension of time or other forbearance by the Customer or the Supplier to the other.

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| Date ……………………………………..**SIGNED for and on behalf of**: Name of Security Providerby its attorney: Full name of attorneyby virtue of Power of Attorney No: who warrants that they have not received notification of revocation of their appointment, in the presence of: Signature of witness Full name of witness | )))))))))))))))))))))) |  Signature and seal of attorney |

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