

# General conditions for the supply of Goods and/or provision of Services

## 1. Term of Agreement

- (a) The Agreement begins on the Commencement Date and continues until the Completion Date, unless extended in accordance with clause 1(b) or terminated earlier in accordance with these terms. If no Completion Date is specified, the Agreement will come to an end when the Supply has been completed and accepted and all payments required to be made under the Agreement have been made.
- (b) A party may, by written notice, request the Agreement be extended beyond the Completion Date. The Agreement may only be extended for the period or periods as agreed to by the parties in writing.

## 2. Services

### This clause 2 applies if the Supply includes the performance of Services.

- (a) The Supplier must provide the Services to the Organisation in accordance with this Agreement and any reasonable directions given by the Organisation from time to time.
- (b) The Supplier must:
  - i. complete the Services by the Completion Date and any other date(s) for delivery of the Services specified in the Purchase Order;
  - ii. promptly notify the Organisation as soon as it becomes aware of any delay or possible delay in the supply of the Services in accordance with this Agreement;
  - iii. provide fit for purpose Services in a 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; and
  - iv. use appropriately skilled and qualified Personnel to provide the Services.
- (c) After performance of the Services or delivery of any deliverable provided as part of the Services, the Organisation will undertake such reviews as it considers necessary to determine whether the Services or deliverable(s) are fit for purpose and comply with this Agreement. After reviewing the Services or deliverable(s), the Organisation may notify the Supplier in writing:
  - i. of its acceptance of the Services or deliverable(s) if it is satisfied that the Services or deliverable(s) are fit for purpose and comply with this Agreement; or
  - ii. if the Services or deliverable(s) are not fit for purpose or do not comply with this Agreement, in which case clause 2(d) will apply.
- (d) If the Organisation notifies the Supplier that the Services or deliverable(s) are not fit for purpose or do not comply with this Agreement, the Supplier must promptly rectify the non-compliance following which the Organisation will undertake further review of the Services or deliverable(s) under clause 2(c). This process will continue until, at the Organisation's discretion, the Organisation:
  - i. waives, in writing, the requirement for the Services or deliverable(s) to comply with this Agreement;
  - ii. is satisfied that the Services or deliverable(s) comply with this Agreement and accepts the Services or deliverable(s) in accordance with clause 2(c)(i);
  - iii. conditionally accepts the Services or deliverable(s), subject to the Supplier agreeing to rectify the non-compliance within a reasonable timeframe and on such terms as the Organisation specifies; or
  - iv. subject to the Organisation having provided the Supplier with at least two opportunities to rectify the non-compliance under clause 2(c)(ii), immediately terminate this Agreement by written notice to the Supplier.
- (e) If the Organisation terminates this Agreement under this clause 2(d)(iv), the Organisation will be entitled to a full refund of all moneys paid to the Supplier in respect of the Services or deliverable(s) which the Organisation is unable to use following termination.

## 3. Goods

### Clauses 3, 4 and 5 apply if the Supply includes the delivery of Goods.

- (a) The Supplier must supply the Goods to the Organisation in accordance with this Agreement and any reasonable directions given by the Organisation, from time to time.
- (b) The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery as set out in the Purchase Order. Acceptance of the Goods by the Organisation will not be taken to have occurred until either:
  - i. acceptance is acknowledged in writing by the Organisation; or
  - ii. acceptance is deemed to have occurred in accordance with clause 4(a).

## 4. Acceptance or rejection of Goods

- (a) If the Goods conform with this Agreement, the Organisation will promptly issue written notification to the Supplier of acceptance of the Goods. If the Organisation does not give written notification of acceptance or rejection of the Goods within 30 days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
- (b) If the Goods:
  - i. do not conform with this Agreement; or
  - ii. on delivery are damaged, unfit for purpose or not of merchantable quality,the Organisation may reject the Goods by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. The Organisation is not obliged to pay for any rejected Goods.
- (c) The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time, the Organisation may return the Goods to

the Supplier at the Supplier's expense, or, following further notification, destroy the Goods or otherwise dispose of the Goods in its discretion.

## 5. Title and risk

- (a) Title in the Goods will pass to the Organisation upon acceptance of the Goods in accordance with clause 4(a).
- (b) Risk in the Goods will pass to the Organisation when the Goods are delivered to the Delivery Point.

## 6. Pricing for the Supply

- (a) The Purchase Price, Rates and Fees payable for the Supply are fixed, and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- (b) The Supplier may not charge the Organisation for any additional fees or charges, or recover any expenses from the Organisation, including amount for packaging, transport, insurance, loading, unloading, storage or any other costs incurred by the Supplier in supplying or delivering the Supply.

## 7. Invoicing and payment

- (a) On or following acceptance or completion of the Supply, or as otherwise specified in the Purchase Order, the Supplier must submit a tax invoice (containing all information required in a tax invoice for the purposes of the GST Act together with such other information as the Organisation may reasonably require) to the Organisation at the address specified in the Purchase Order. Each invoice submitted by the Supplier must contain all information required in a tax invoice for the purposes of the GST Act, together with such other information as the Organisation may reasonably require.
- (b) On or following acceptance of the Supply, the Organisation will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice. If the Organisation disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 21.
- (c) Payment of an invoice is not to be taken as evidence that the Supply has been supplied in accordance with the Agreement but must be taken only as payment on account.
- (d) Subject to clause 8, simple interest, as at the penalty interest rate fixed for the time being under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, accrues on a daily basis on any Overdue Amount and is payable by the Organisation to the Supplier on demand.

## 8. Fair Payments Policy

- (a) This clause 8 applies only if the total aggregate Purchase Price or Fees payable under this Agreement is less than \$3 million.
- (b) If this clause 8 applies, the reference in clause 7(b) is taken to be a reference to 10 Business Days.
- (c) Simple interest payable under clause 7(d) in respect of an Overdue Amount does not become payable after 10 Business Days, but only after 30 days from the date of receipt of a correct invoice, in respect of any Overdue Amount payable before 1 April 2021.

## 9. Failure to perform

- (a) If the Supplier fails to perform the Supply in accordance with this Agreement the Organisation:
  - i. will not be required to pay for the Supply until the Supply is provided in accordance with the Agreement; and
  - ii. may issue a notice to the Supplier requiring the Supplier to remedy any default or re-perform the Supply within the time specified by the Organisation (which time must be reasonable having regard to the nature of the relevant Supply).
- (b) If:
  - i. the default referred to in clause 9(a) above is incapable of being remedied or re-performed; or
  - ii. the Supplier fails to remedy the default or re-perform the non-compliant Supply within the time specified in the notice issued under clause 9(a)(ii),

the Organisation may either have the Supply remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the Organisation in doing so.

- (c) Nothing in this clause 9 derogates or otherwise limits any other remedy available to the Organisation at Law.

## 10. Intellectual Property Rights

- (a) Ownership of any Contract Materials will vest in the Supplier from the time of its creation. The Supplier irrevocably and unconditionally grants to the Organisation a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow the Organisation the full use and enjoyment of the Supply.
- (b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Supply or the creation of Contract Materials remains the property of the relevant party or its licensors.
- (c) The Supplier hereby irrevocably and unconditionally grants to the Organisation a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to allow the Organisation the full use and enjoyment of the Contract Materials or the Supply.

# General conditions for the supply of Goods and/or provision of Services

- (d) The licence granted to the Organisation under clause 10(c) is limited to use of the relevant Pre-Existing Intellectual Property by the Organisation for the purposes of the Organisation and for no other purpose.
- (e) The Organisation grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the Organisation's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Supply and comply with its obligations under the Agreement during the Term.
- (f) The Supplier undertakes that the Supply may be used in any way by the Organisation, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- (g) The Supplier must, upon request by the Organisation, do all things necessary (including executing any documents) to give full effect to this clause 10.

## 11. Data

- (a) Data will remain (and, if necessary, will become) the property of the Organisation. The Supplier will assign to the Organisation from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier.
- (b) The Supplier must only use the Data to the extent necessary to perform its obligations under the Agreement.

## 12. Liability

- (a) The Supplier indemnifies, and will at all times keep the Organisation and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
  - i. provision of the Supply;
  - ii. personal injury, including sickness and death;
  - iii. property damage;
  - iv. actual or alleged breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
  - v. fraudulent acts or omissions;
  - vi. wilful misconduct or unlawful act or omission;
  - vii. actual or alleged breaches of logical or physical security;
  - viii. loss or corruption of Data;
  - ix. third party claim arising out of an actual or alleged breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
  - x. infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

which was caused, or contributed to by, any act (negligent or otherwise) or omission of the Supplier or any of its Personnel.

- (b) The Supplier's liability to indemnify the Organisation under clause 12(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of the Organisation or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.
- (c) To the extent that the indemnity in clause 12(a) refers to persons other than the Organisation, the Organisation holds this clause on trust for those other persons.

## 13. Warranties

The Supplier represents and warrants to the Organisation that:

- (a) **(Capacity)** it has the right to enter into the Agreement and provide the Supply;
- (b) **(Purpose)** where the Organisation has, either expressly or by implication, made known to the Supplier any particular purpose for which the Supply is required, the Supply will be performed in such a way as to achieve that result;
- (c) **(Conflict)** it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement;
- (d) **(Title)** it has the right to sell, and transfer title to and property in, the Supply to the Organisation;
- (e) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Supply and to grant to the Organisation the licences contemplated by this Agreement;
- (f) **(Trust)** it has not entered into the Agreement on behalf of a trust;
- (g) **(No infringement)** the receipt of the Supply and the possession or use of any deliverables by the Organisation will not infringe the Intellectual Property Rights or other rights of any person or any Laws.
- (h) **(Goods)** in respect of any Goods provided as part of the Supply:
  - i. the Goods:
    - A. are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
    - B. conform in all respects with this Agreement;
    - C. are free from defects (including defects in installation); and
    - D. are of merchantable quality and comply with all Laws; and
  - ii. the Supplier must obtain the benefit of any manufacturer's warranties for the Organisation.

## 14. Termination

- (a) The Organisation may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
  - i. fails to provide the Supply in accordance with the Agreement;
  - ii. breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
  - iii. breaches any provision of the Agreement that is not capable of remedy;
  - iv. or any of its Personnel involved in the provision of the Supply commits fraud, dishonesty or any other serious misconduct;
  - v. there is a change in the identity of the person who has control of the Supplier from that which was in effect as at the date of this Agreement;
  - vi. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the Organisation; or
  - vii. suffers from an Insolvency Event.
- (b) The Organisation may terminate the Agreement without cause on notice to the Supplier.
- (c) If the Agreement is terminated pursuant to clause 14(b), the Organisation will pay the Supplier:
  - i. for the accepted Supply in accordance with the Agreement up to the date of the termination; and
  - ii. the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,and the Organisation has no other liability to the Supplier in relation to that termination.
- (d) When the Organisation issues a notice under clause 14(b), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
- (e) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to the Organisation if the Organisation fails to pay amounts due under this Agreement.
- (f) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (g) On termination or expiry the Supplier must immediately, following instructions by the Organisation, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to the Organisation.

## 15. Insurance

- (a) The Supplier must obtain and maintain insurance cover during the Term and, if requested by the Organisation, for a period of up to 7 years after the Supply has been completed.
- (b) The insurance cover must be sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including:
  - i. professional indemnity;
  - ii. public liability insurance; and/or
  - iii. product liability insurance to the value specified in the Purchase Order or, if no value is specified, to the value sufficient to cover any loss or costs that may be incurred. Product liability insurance must be maintained for the longer of any warranty period and three years from acceptance of the Goods.
- (c) On request, the Supplier must, within 10 Business Days, provide the Organisation with evidence of the currency of any insurance it is required to obtain under this Agreement.
- (d) Where the required insurance is due to expire, on request by the Organisation, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

## 16. Confidentiality, privacy and data protection

- (a) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier consents to the Organisation publishing or otherwise making available information in relation to the Supplier (and the Supply):
  - i. as may be required to comply with the Contract Publishing System;
  - ii. to other Victorian Public Entities or Ministers of the State in connection with the Supply;
  - iii. to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
  - iv. to the office of the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) or the ombudsman appointed under the Ombudsman Act 1973 (Vic);
  - v. to comply with Law, including the Freedom of Information Act 1982 (Vic); or
  - vi. to the IBAC.
- (c) The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the

# General conditions for the supply of Goods and/or provision of Services

Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Organisation in respect of that act or practice had it been directly done or engaged in by the Organisation.

- (d) The Supplier acknowledges that the Organisation is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the Organisation, under or in connection with the Agreement.

## 17. Access

- (a) When at the Organisation's premises, the Supplier must, and must ensure that its Personnel:
- protect people and property;
  - prevent nuisance;
  - act in a safe and lawful manner;
  - comply with the safety standards and policies of the Organisation (as notified to the Supplier); and
  - comply with any lawful directions of the Organisation or its Personnel.

## 18. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the Supply without the prior written consent of the Organisation (which may be given conditionally or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## 19. Compliance with Law and Policy

- (a) The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of the Supply by the Supplier under the Agreement and with the Local Jobs First Policy comprising the 'Victorian Industry Participation Policy' and 'Major Project Skills Guarantee' (if applicable).
- (b) Where, in the course of providing the Services, the Supplier or its Personnel:
- supervise or work with Public Sector Employees;
  - undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace; or
  - use or have access to public sector resources or information that are not normally accessible or available to the public,

the Supplier must (and must ensure that its Personnel) comply with the VPSC Code of Conduct.

- (c) The Supplier acknowledges that:
- the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
  - it has read and aspires to comply with the Supplier Code of Conduct; and
  - the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.
- (d) If the Supplier provides Services or facilities for children and is an applicable entity under the *Child Wellbeing and Safety Act 2005* (as amended from time to time) and is not otherwise exempt from the requirements of that Act, the Supplier must ensure that all the Supplier's staff, agents, contractors, volunteers and guests: comply with the Child Safe Standards. The Supplier must provide the Organisation with any information or documentation that the Organisation reasonably requires to determine whether the Supplier is complying with the Child Safe Standards. Applicable Suppliers must also ensure compliance with the *Worker Screening Act 2020* and when requested Working with Children Checks are provided to the Organisation for all personnel providing services on behalf of the supplier.

## 20. GST

- (a) The terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

## 21. Dispute Resolution

- (a) If any dispute arises under or in connection with this Agreement (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved in 15 Business Days it will be referred to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**) with each party bearing their own cost.
- (c) If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- (d) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

## 22. General

- (a) The Agreement is governed by and is to be construed in accordance with the laws of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the provision of the Supply.
- (c) The Agreement may only be varied or replaced by a written document executed by the parties.
- (d) A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.
- (e) Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (f) The Organisation may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to the Organisation.
- (g) Subject to clause 22(h), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
- (h) The Organisation may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any Victorian Public Entity in the event of any State government restructure or other re-organisation or change in policy.
- (i) This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties. The parties agree that the Supplier is engaged as an independent contractor and not as an employee of the Organisation.
- (j) Nothing in this Agreement implies that the Organisation may not acquire a supply of the same kind as or similar to the Supply at any time from any other person.

## 23. Access for AFAC Members and other Victorian Public Entities

- (a) CFA, as a member organisation of The Australasian Fire and Emergency Service Authorities Council (AFAC), requires that if any other AFAC member agency requires the Supplier to provide the Supply, the Supplier must enter into a separate customer contract with the AFAC member on the same terms provided in this Agreement as though the Principal entered into this Agreement on behalf of that AFAC member, having regard only to necessary changes (including Free into Store price changes if the AFAC member delivery costs are at variance to the CFA cost issues) to reflect that the Supply is to be supplied to the other AFAC agency.
- (b) Products and services provided to an AFAC member other than CFA, can be as provided to CFA, but must not carry any CFA-specific labelling (including logo), badging, or unique identification characteristics as carried by a CFA, specific item.

## 24. Entire Understanding and order for precedence

- (a) In the event and to the extent of any inconsistency between these General conditions for the provision of the Supply and the Purchase Order, the General conditions will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Purchase Order without otherwise diminishing the enforceability of the remaining provisions of the Purchase Order.
- (b) This Agreement contains everything the parties have agreed in relation to the Supply. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

## 25. Survival

Clauses 2, 3, 7, 10, 11, 12, 13, 14, 15, 16, 18, 21, 22, 24, 25, 26 and 27 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of the Supply and may be enforced at any time.

## 26. Definitions

In this Agreement, unless the context otherwise requires:

**AFAC Member** means a member agency of the National Council for the Australasian Fire and Emergency Service Authorities Council Limited (ABN 52 060 049 327).

**Agreement** means the agreement for the provision of the Supply consisting of these General conditions and the Purchase Order.

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne.

**Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic).

**Commencement Date** means the date on which the provision of the Supply will commence, as specified in the Purchase Order.

**Completion Date** means the date by which the Supply must be completed by the Supplier, as specified in the Purchase Order.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Organisation, including any information designated by the Organisation as confidential, which is disclosed, made available, communicated or delivered to the Supplier, but excludes information which:

- (a) is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;

# General conditions for the supply of Goods and/or provision of Services

- (b) the Supplier can demonstrate was in its possession prior to the date of the Agreement;
- (c) the Supplier can demonstrate was developed by it independently of any disclosures previously made by the Organisation;
- (d) is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with the Organisation or otherwise prohibited from disclosing the information to the Supplier; or
- (e) is required to be disclosed pursuant to Law, court order or other legal process.

**Contract Materials** means any materials (including any Intellectual Property) which the Supplier creates (whether alone or jointly with any other person) in performing the Supply.

**Contract Publishing System** means the system of the Victorian Government requiring publication of details of contracts entered into by Victorian Government departments, bodies and agencies, including any replacement or amended system.

**Data** means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

- (a) supplied by or on behalf of the Organisation in connection with this Agreement (Input Data); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or the Supply.

**Delivery Point** means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

**Fees** mean a fixed fee payable to the Supplier for the provision of the Supply, as and if specified in the Purchase Order.

**Goods** means the goods specified in the Purchase Order and as provided under this Agreement.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic).

**IBAC** means the commission established under the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

**Information Privacy Principles** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).

**Insolvency Event** means, in relation to the Supplier, any of the following:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

**Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Laws** means:

- (a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State of Victoria, irrespective of where enacted; and
- (b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

**Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

**Organisation** means the department, body or agency of the State party to this Agreement.

**Overdue Amount** means an amount (or part thereof) that:

- (a) is not, or is no longer, disputed;
- (b) is due and owing under a tax invoice (as defined in the GST Act), properly rendered by the Supplier in accordance with this Agreement; and
- (c) which has been outstanding for more than 30 days, or if clause 8 applies, 10 Business Days from the date of receipt of the correctly rendered tax invoice (or the date that the amount ceased to be disputed, as the case may be).

**Personnel** of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

**Pre-Existing Intellectual Property** means all materials owned by or licensed to a party as at the date of the Agreement or developed by or on behalf of a party independently of the Agreement.

**Protective Data Security Standards** means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by the Organisation to ensure compliance with those standards.

**Purchase Order** means any form of order or purchase issued by the Organisation, made under or incorporating these General conditions for the provision of the Supply.

**Public Sector Employee** has the same meaning as in section 4(1) of the *Public Administration Act 2004* (Vic).

**Purchase Price** means the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered.

**Rates** means the monetary amount (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Supply, as specified in the Purchase Order.

**Services** means the services, and includes any deliverables provided as part of the services, specified in the Purchase Order and as provided under this Agreement.

**State** means the Crown in right of the State of Victoria.

**Supplier** means the entity supplying the Supply under the Agreement.

**Supplier Code of Conduct** means the Code of Conduct issued by the Victorian Government for suppliers providing goods or services to the Victorian Government (as amended from time to time).

**Supply** means the provision by the Supplier of either Goods and/ or Services under this Agreement and in accordance with the Purchase Order.

**Term** means the duration of this Agreement from the Commencement Date to the Completion Date or otherwise as extended in accordance with clause 1(b).

**Time for Delivery** means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing by the parties) by or on which the Supply must be delivered by the Supplier.

**Unit Price** means the price per item of each of the Goods, as specified in the Purchase Order.

**Victorian Public Entity** means:

- (a) a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
- (b) a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic);
- (c) a "Council" as defined in the *Local Government Act 1989* (Vic); or
- (d) an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c).

**Victorian Public Sector Commission (VPSC) Code of Conduct** means the Code of Conduct for Victorian Public Sector Employees 2015 (as amended or replaced from time to time) issued by the Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic).

## 27. Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' and 'including' are not words of limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) the obligations of the Supplier, if more than one person, under the Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of the Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Supplier, if more than one person, under the Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally); and
- (h) a reference to:
  - i. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - ii. a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - iii. any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
  - iv. a party or parties is a reference to the Organisation and the Supplier (as the case requires).