

General conditions for the supply 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 all Services have been completed and all payments required to be made under the Agreement have been made.
- (b) A party may, by the provision of notice in writing, request the Agreement be extended beyond the Completion Date. The Agreement may only be extended for the period or periods agreed to by the parties in writing.

2. Provision of Services

- (a) The Supplier must provide the Services to the Customer in accordance with this Agreement and any reasonable directions given by the Customer 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 Contract;
 - (ii) promptly notify the Customer as soon as it becomes aware of any delay or possible delay in the provision of the Services in accordance with the 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 Customer 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 Customer 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 Customer 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 Customer will undertake further review of the Services or deliverable(s) under clause 2(c). This process will continue until, at the Customer's discretion, the Customer:
 - (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 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 Customer specifies; or

- (iv) subject to the Customer 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. If the Customer terminates this Agreement under this clause 2(d)(iv), the Customer will be entitled to a full refund of all moneys paid to the Supplier in respect of the Services or deliverables which the Customer is unable to use following termination.

3. Price for the services

- (a) The Rates and Fees payable for the Services are fixed, and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- (b) The Supplier may not charge the Customer for any additional fees or charges, or recover any expenses or other costs from the Customer.

4. Invoicing and payment

- (a) Upon completion of the Services, or as otherwise specified in the Purchase Order Contract, the Supplier must submit an invoice to the Customer at the address specified in the Purchase Order Contract. 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 Customer may reasonably require
- (b) On or following acceptance of the Services, the Customer will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice. If the Customer 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 17.
- (c) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (d) Simple interest, as at the penalty interest rate fixed for the time being under the *Penalty Interest Rates Act 1983* (Vic), accrues on a daily basis on any Overdue Amount and is payable by the Customer to the Supplier on demand.

5. Failure to perform

- (a) If the Supplier fails to perform any Services or deliver any deliverable(s) in accordance with this Agreement the Customer:
 - (i) will not be required to pay for those Services or deliverable(s) until they are 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 Services or deliverable(s) within the time specified by the Customer (which time must be reasonable having regard to the nature of the relevant Services or deliverable(s)).
- (b) If:
 - (i) the default referred to in clause 5(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 Service(s) or deliverable(s) within the time specified in the notice issued under clause 5(a)(ii),the Customer may either have the Services or deliverable(s) 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 Customer in doing so.
- (c) Nothing in this clause 5 derogates or otherwise limits any other remedy available to the Customer at Law.

6. Intellectual Property Rights

- (a) Ownership of any Contract Materials will vest in the Customer from the time of its creation and the Supplier irrevocably and unconditionally assigns to the Customer, free of additional charge, all rights, title and interest in and to the Contract Materials.
- (b) All Pre Existing Intellectual Property used by the parties in connection with the provision of the Services 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 Customer 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 use the Contract Materials or the Services. The licence granted to the Customer under this clause is limited to use of the relevant Pre Existing Intellectual Property by the Customer for the purposes of the Customer and for no other purpose.
- (d) The Customer grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the Customer's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Services and comply with its obligations under the Agreement during the Term.

7. Data

- (a) Data will remain (and, if necessary, will become) the property of the Customer. The Supplier will assign to the Customer 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.

8. Liability

- (a) The Supplier indemnifies, and will at all times keep the Customer 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) personal injury, including sickness and death;
 - (ii) property damage;
 - (iii) breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
 - (iv) fraudulent acts or omissions;
 - (v) wilful misconduct or unlawful act or omission;
 - (vi) breaches of logical or physical security;
 - (vii) loss or corruption of Data;
 - (viii) third party claim arising out of a 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
 - (ix) 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 or omission by the Supplier or any of its Personnel.
- (b) The Supplier's liability to indemnify the Customer under clause 8(a) is reduced to the extent that any wilful, unlawful or negligent act or omission by the Customer or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.

- (c) To the extent that the indemnity in clause 8(a) refers to persons other than the Customer, the Customer holds this clause on trust for those other persons.

9. Warranties

The Supplier represents and warrants to the Customer that:

- (a) **(Capacity)** it has the right to enter into the Agreement and perform the Services;
- (b) **(Purpose)** where the Customer has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services 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) **(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 Services and to grant to the Customer the licences contemplated by this Agreement;
- (e) **(Trust)** it has not entered into the Agreement on behalf of a trust; and
- (f) **(No infringement)** the receipt of the Services and the possession or use of any deliverables by the Customer will not infringe the Intellectual Property Rights or other rights of any person or any Laws.

10. Termination

- (a) The Customer 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 Services 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 services commits fraud, dishonesty or any other serious misconduct;
 - (v) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the Customer or the State; or
 - (vi) suffers from an Insolvency Event.
- (b) The Customer may terminate the Agreement without cause on notice to the Supplier.
- (c) If the Agreement is terminated pursuant to clause 10(b), the Customer will pay the Supplier:
 - (i) for the services delivered 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 Customer has no other liability to the Supplier in relation to that termination.
- (d) When the Customer issues a notice under clause 10(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 Customer if the Customer 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 Customer, 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 Customer.

11. Insurance

- (a) The Supplier must obtain and maintain insurance cover during the Term and, if requested by the Customer, for a period of up to 7 years after the Services have been completed, 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 professional indemnity and, if applicable, public and product liability insurance to the value specified in the Purchase Order Contract or, if no value is specified, to a value sufficient to cover any loss or costs that may be incurred.
- (b) On request, the Supplier must, within 10 Business Days, provide the Customer with evidence of the currency of any insurance it is required to obtain under this Agreement.
- (c) Where the required insurance is due to expire, on request by the Customer, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

12. 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 Customer publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) to:
 - (i) comply with the Contract Publishing System;
 - (ii) other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Services;
 - (iii) 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) the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) or the ombudsman appointed under the Ombudsman Act 1973 (Vic); or
 - (v) comply with Law, including the Freedom of Information Act 1982 (Vic).
- (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 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 Customer in respect of that act or practice had it been directly done or engaged in by the Customer.
- (d) The Supplier acknowledges that the Customer is bound by the Victorian 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 State or the customer, under or in connection with the Agreement. Within 48 hours of becoming aware of any breach, the Supplier will notify the Customer of the type and extent of the breach and remedial actions taken to contain, secure, and rectify the breach.

13. Access and Audit

- (a) When at the Customer's premises, the Supplier must, and must ensure that its Personnel:
 - (i) protect people and property;
 - (ii) prevent nuisance;
 - (iii) act in a safe and lawful manner;
 - (iv) comply with the safety standards and policies of the Customer (as notified to the Supplier);and

- (v) comply with any lawful directions of the Customer or its Personnel.
- (b) The Customer or its authorised representative may inspect and/or audit the accounts or records of the Supplier relating to the Supplier's compliance with its obligations under the Agreement. The Customer must give reasonable notice of an audit and the Supplier must participate promptly and cooperatively in any audit.

14. Sub-contracting

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the services without the prior written consent of the Customer (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.

15. Compliance with Law and policy

- (c) The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of the Services by the Supplier under the Agreement and with the 'Victorian Industry Participation Policy' (if applicable).
- (d) The Supplier acknowledges that:
 - (i) 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;
 - (ii) it has read and aspires to comply with the Supplier Code of Conduct; and
 - (iii) the expectations set out in the Code 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.
- (e) The Supplier acknowledges that it has read and understood the Customer's Gifts, Benefits and Hospitality Policy.

16. 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.

17. 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) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

18. General

- (a) The Agreement is governed by and is to be construed in accordance with the Laws. 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 Services.
- (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 Customer may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to the Customer.
- (g) Subject to clause 18(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 Customer 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.

19. Entire understanding and order for precedence

- (a) In the event and to the extent of any inconsistency between these General Conditions, any Special Conditions and the Purchase Order Contract, the following order of precedence will apply:
 - Purchase Order Contract;
 - Special Conditions;
 - General conditions.
- (b) This Agreement contains everything the parties have agreed in relation to the Services. 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.

20. Survival

Clauses 3, 4, 6, 7, 8, 9, 10(c), 10(d), 10(f), 10(g), 11(a), 12, 14(b), 17, 18, 20, 21 and 22 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of the Services and may be enforced at any time.

21. Definitions

In this Agreement, unless the context otherwise requires:

Agreement means this agreement for the provision of the Services consisting of the Purchase Order Contract, these General Conditions and any Special Conditions.

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).

Completion Date means the date by which the provision of the Services must be completed by the Supplier, as specified in the Purchase Order Contract.

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

Confidential Information means any information in any way related to the Customer, including any information designated by the Customer as confidential, which is disclosed, made available, communicated or delivered to the Supplier.

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

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.

Customer means the Independent Broad-based Anti-corruption Commission.

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

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

Fees mean a fixed fee payable to the Supplier for the provision of the Services, as specified in the Agreement.

Gifts, Benefits and Hospitality Policy means the Gifts, Benefits and Hospitality Policy issued by the Customer for responding to offers of, and providing, gifts, benefits and hospitality, as amended from time to time and published on the Customer's website.

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).

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 of Victoria 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.

Officer has the meaning given in the *Corporations Act 2001* (Cth).

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 properly rendered by the Supplier in accordance with this Agreement; and
- (c) which has been outstanding for more than 30 days from the date of receipt of the 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 Customer to ensure compliance with those standards.

Purchase Order Contract means any form of order or purchase issued by the Customer for the provision of the Services, made under or incorporating these General Conditions for the provision of services.

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 Services, as specified in the Purchase Order Contract.

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

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

Supplier means the entity supplying the Services 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.

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).

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 of Special Bodies 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).

22. Interpretation

Unless expressed to the contrary, in this Agreement:

- (e) words in the singular include the plural and vice versa;
- (f) any gender includes the other genders;
- (g) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (h) 'includes' and 'including' are not words of limitation;
- (i) 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;

- (j) 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;
- (k) 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
- (l) 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 Customer and the Supplier (as the case requires).



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