

---

The State of Victoria through the Department of Energy, Environment and Climate Action (the Department) and

---

**BUSINESS NAME OF SUPPLIER** ABN ##### (the Supplier)

---

Contract Number: Drought Support: Technical decision-making program 2024

---

# Agreement for the provision of Services

(Sole Entity Multiple Purchase)

**Date: 3rd March 2025**

# Contents

Parties .....	1
Background .....	1
Agreed Terms and Conditions .....	1
Interpreting this Agreement .....	1
1. Definitions and interpretation .....	1
1.1 Definitions.....	1
1.2 Interpretation .....	6
1.3 Headings .....	7
Requesting the Services .....	7
2. Standing offer to provide the Services .....	7
3. Ordering Services .....	7
3.1 The Department may issue a Request for Quote .....	7
3.2 Requests for Quote .....	8
3.3 Provision of Quotes .....	8
3.4 Receipt of Quotes .....	8
3.5 Contents of a Purchase Order .....	8
3.6 When a Purchase Order Contract is formed .....	9
3.7 Terms incorporated into a Purchase Order Contract .....	9
3.8 Inconsistency .....	9
3.9 Costs of preparing Requests for Quotes, Quotes and Purchase Orders .....	9
Providing the Services .....	10
4. Performance of Services.....	10
4.1 When Services start and end under a Purchase Order Contract.....	10
4.2 The Supplier's Services performance obligations .....	10
4.3 Acceptance.....	11
4.4 Supplier to provide equipment .....	11
4.5 Variations .....	12
4.6 Co-operation with third parties .....	12
5. Access and safety.....	12
5.1 Access to premises .....	12
5.2 Obligations .....	12
5.3 Construction work .....	13
6. Supplier's Personnel .....	14
7. Specifications.....	14
7.1 The Specifications.....	14
7.2 Variation to the Specifications.....	14
8. Delays and failure to perform.....	15
8.1 Duty to warn of delays and failures to perform .....	15
8.2 Effect of failures to perform.....	15
8.3 Liquidated damages payable for failing to meet required dates.....	16

Pricing and payments .....	16
9. Price for the Services.....	16
10. GST and other taxes.....	17
10.1 Definitions.....	17
10.2 Consideration is exclusive of GST .....	17
10.3 GST gross up .....	17
10.4 Reimbursement.....	17
10.5 Adjustment event .....	17
10.6 CPI reviews .....	17
10.7 Other taxes.....	18
11. Staff Costs .....	18
12. Invoicing and payment.....	18
12.1 Invoicing .....	18
12.2 Payment of invoices .....	18
12.3 Fair payment .....	19
Governance and relationship management .....	19
13. Contract management .....	19
13.1 Parties' Representatives .....	19
13.2 Responsibility Chart .....	19
13.3 'Value adding' initiatives.....	19
13.4 Service Level Requirements .....	20
13.5 Progress report .....	20
13.6 Contract management review .....	20
14. Sub-contracting.....	21
15. Compliance with Law and policy.....	21
15.1 General Law and policy .....	21
15.2 Victorian Public Sector Commission Code of Conduct .....	21
15.3 Supplier Code of Conduct.....	22
15.4 Employment policy .....	22
15.5 Local Jobs First Policy .....	22
15.6 Social Procurement.....	22
15.7 Fair Jobs Code.....	22
15.8 No unlawful inducements.....	22
16. Conflict of interest .....	23
17. Change in Control .....	23
18. Disputes.....	23
18.1 Parties to meet .....	23
18.2 Mediation.....	24
18.3 Arbitration or litigation .....	24
18.4 Performance during Dispute resolution .....	24
18.5 Interlocutory relief.....	24
19. Notices.....	24
19.1 Giving a communication.....	24
19.2 Time of delivery.....	25
19.3 After hours communications .....	25

Information and intellectual property .....	25
20. Access to records .....	25
20.1 Supplier to retain records .....	25
20.2 Right to access and audit .....	25
21. Intellectual Property Rights .....	26
21.1 Ownership of Contract Materials .....	26
21.2 Ownership of Pre-Existing Intellectual Property .....	26
21.3 Licence of Pre-Existing Intellectual Property by the Supplier .....	26
21.4 Licence of Pre-Existing Intellectual Property and Contract Materials by the Department .....	26
21.5 Moral Rights .....	27
21.6 Additional obligations .....	27
22. Data .....	27
23. Confidentiality, privacy and data protection .....	28
23.1 Use of Confidential Information .....	28
23.2 Exceptions to the Supplier's obligations of confidentiality .....	28
23.3 Prevention of use or disclosure of Confidential Information .....	29
23.4 Disclosure by Supplier required by Law .....	29
23.5 Supplier's consent to disclosure of information .....	29
23.6 Return of Confidential Information by the Supplier .....	30
23.7 Privacy .....	30
23.8 Data protection .....	31
Liability .....	31
24. Liability .....	31
Representations and warranties .....	33
25. Warranties .....	33
26. Insurance .....	34
27. Accident compensation .....	35
Term and termination .....	35
28. Term .....	35
28.1 Initial Term .....	35
28.2 Extension .....	35
29. Termination .....	35
29.1 Termination for cause .....	35
29.2 Termination without cause .....	36
29.3 Grounds for termination by the Supplier .....	36
29.4 Consequences of termination or expiry .....	36
29.5 Survival .....	37
Other miscellaneous terms .....	37
30. General .....	37
30.1 Legal costs .....	37
30.2 Amendment .....	37
30.3 Waiver and exercise of rights .....	37
30.4 Severability .....	37

30.5	Rights cumulative.....	38
30.6	Set off .....	38
30.7	Time of the essence.....	38
30.8	Governing law and jurisdiction.....	38
30.9	Assignment or transfer of rights and obligations .....	38
30.10	Counterparts .....	38
30.11	Electronic Execution.....	38
30.12	Entire understanding and order of precedence .....	39
30.13	Relationship of parties .....	40
Schedule 1: Contract variables .....		41
Schedule 2: Services, Specifications and Price Schedule .....		45
Schedule 3: Service Level Requirements .....		47
Executed as an Agreement .....		48
Annexure A – Form of Purchase Order .....		50

# Parties

Date: 3<sup>rd</sup> March 205

The State of Victoria through the Department of Energy, Environment, and Climate Action  
(Department)

and

xxxx

Australian Company Number (ACN): xxx

Australian Business Number (ABN): xxx

of xxx

(Supplier)

## Background

- (a) The Supplier wishes to provide the Services to the Department.
- (b) The Department has agreed to engage the Supplier to make a standing offer to provide the Services in accordance with this Agreement.
- (c) The parties agree to work together throughout the Term in accordance with the terms of this Agreement to continuously improve the provision of Services under this Agreement for the benefit of both parties.

## Agreed Terms and Conditions

### Interpreting this Agreement

#### 1. Definitions and interpretation

##### 1.1 Definitions

In this Agreement:

**ADC** has the meaning given to that term in clause 18.2(a).

**Agreement** means this agreement for the provision of Services, including the Schedules and any annexures or attachments to the Schedule or items incorporated by reference.

**Auditor-General** has the meaning given to that term in clause 23.5(d).

**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.

.

**Change in Control Notice** has the meaning given to that term in clause 17(a).

**Code of Practice** means a code of practice as described in, and approved under, the PDP Act.

**Commencement Date** means the date from which the Supplier's standing offer to provide the Services will commence, as specified as such in Item 1 of 0 or, if no date is specified in Item 1 of 0, the date that the last party signs the Agreement.

**Commissioners** means the Privacy and Data Protection Deputy Commissioner appointed under the PDP Act and the Information Commissioner and the Public Access Deputy Commissioner appointed under the *Freedom of Information Act 1982* (Vic).

**Completion Date** for a Purchase Order Contract, means the date the Supplier is required to complete the Services required under the Purchase Order Contract as specified in the Purchase Order Contract.

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

- (a) is in or which subsequently enters the public domain (and confidential information will not be deemed to be in the public domain merely because it relates to other information which may be in the public domain), other than as a result of a breach of an obligation of confidentiality;
- (b) the Supplier can demonstrate was in its possession before the date of this Agreement;
- (c) the Supplier can demonstrate was developed by it independently of any disclosures previously made by the Department; or
- (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 Department or otherwise prohibited from disclosing the information to the Supplier.

**Contract Materials** means any materials (including any part of a Deliverable) which the Supplier creates (whether alone or jointly with any other person) in performing the Services under this Agreement or any Purchase Order Contract.

**Contract Publishing System** means the system of the Victorian Government for publication of details of contracts entered into by some Victorian Public Entities, including any replacement or amended system.

**Control** means, in relation to the Supplier, the ability of any person to, directly or indirectly, exercise effective control over the Supplier (including the ability to determine the outcome of decisions about the financial operating and other policies of the Supplier) by virtue of the holding of voting shares, units or other interest in the Supplier or by any other means.

**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 Department in connection with this Agreement (**Input Data**); or
- (b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or in the course of providing the Services or the Deliverables.

**Deliverable** means any item or material (including reports and other documentation) produced or delivered by the Supplier under this Agreement, including as an output of the Services.

**Dispute** has the meaning given to that term in clause 18.1(a).

**Dispute Notice** has the meaning given to that term in clause 18.1(a).

**Expiry Date** means the date set out in Item 1 of 0.

**Fair Jobs Code** means the Fair Jobs Code, issued by the Victorian Government for suppliers of goods and services to the Victorian Government (as amended from time to time).

**Fees** means any fixed fees payable to the Supplier for the provision of specified Services under a Purchase Order Contract, determined in accordance with the Price Schedule.

**GST Act** has the meaning given to that term in clause 10.1.

**Guidelines** has the meaning given to that term in clause 18.2(a).

**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.

**Indemnified Party** has the meaning given to that term in clause 24(a).

**Index** has the meaning given to that term in clause 10.6(a).

**Information Privacy Principles** has the meaning given in the PDP Act.

**Initial Insurance** has the meaning given to that term in clause 26(e).

**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, including:
  - (i) execution or distress being levied against any income or assets of the Supplier;
  - (ii) a meeting of the Supplier's creditors being called or held;
  - (iii) a security becoming enforceable or being enforced in relation to any of the Supplier's assets or undertakings;
  - (iv) a step being taken to make the Supplier bankrupt or to wind the Supplier up;
  - (v) the appointment to the Supplier of a controller or administrator as defined in section 9 of the *Corporations Act 2001* (Cth);
  - (vi) the Supplier entering into any type of agreement, composition or arrangement with, or assignment for the benefit of, all or any class of its creditors; or
  - (vii) the Supplier being made subject to a deed of company arrangement;
- (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.

**Invitation** means the documents published by the Department inviting the marketplace to submit offers to provide the Services pursuant to this Agreement.

**IPR Claim** has the meaning given to that term in clause 24(e).

**Key Personnel** has the meaning given to that term in clause 6(a).

**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.

**Local Jobs First Commissioner** means the person appointed under section 12 of the *Local Jobs First Act 2003* (Vic).

**Local Jobs First Policy** means the policy of the Victorian Government made under section 4 of the *Local Jobs First Act 2003* (Vic).

**Losses** has the meaning given to that term in clause 24(a).

**Mediation** has the meaning given to that term in clause 18.1(c)(ii).

**Milestone** means a milestone specified in a Purchase Order (as relevant).

**Milestone Date**, for a Milestone, means the date specified as such in a Purchase Order (as relevant) and/or any other delivery date agreed between the parties.

**Model Litigant Guidelines** means the guidelines regarding the conduct of litigation by the State, as updated from time to time.

**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.

**Offer** means the documentation and any supporting materials lodged by the Supplier in response to the Invitation containing an offer to provide Services in the form finally accepted by the Department.

**OH&S Laws** means the *Occupational Health and Safety Act 2004* (Vic) and any applicable regulations made under that Act.

**Ombudsman** has the meaning given to that term in clause 23.5(d).

**PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).

**Personal Information** has the meaning given to that term in the PDP Act and also includes, for the purposes of this Agreement, health information, as that term is defined in the *Health Records Act 2001* (Vic).

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

**Pre-Existing Intellectual Property** means all materials owned by or licensed to a party as at the Commencement Date or developed by or on behalf of a party independently of this Agreement and any Purchase Order Contracts.

**Price Schedule** means the schedule of Rates and/or Fees payable by the Department to the Supplier for the provision of the Services under a Purchase Order Contract, as set out in 0.

**Privacy Obligations** has the meaning given to that term in clause 23.7.

**Proposal** has the meaning given to that term in clause 4.5(a).

**Protective Data Security Standard** means any standard issued under Part 4 of the PDP Act.

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

**Purchase Order** means an order for Services submitted by the Department to the Supplier that is in, or substantially in, the form set out in Annexure A.

**Purchase Order Contract** means a contract for the provision of Services which is formed between the Department and the Supplier in accordance with clause 3.6.

**Quote** means a quote from the Supplier provided under clause 3.3.

**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 specified Services under a Purchase Order Contract, determined in accordance with the Price Schedule.

**Replacement Insurance** has the meaning given to that term in clause 26(e).

**Replacement Staff** has the meaning given to that term in clause 6(b).

**Representative** means, in respect of each party, the person(s) specified in Item 7 of 0 or any replacement person(s) appointed in accordance with clause 13.1(c).

**Request for Quote** means a request for a quote for the provision of Services issued by the Department to the Supplier under clause 3.2.

**Responsibility Chart** has the meaning given to it by clause 13.2.

**Responsible Minister** means the Minister with responsibility for administering the *Local Jobs First Act 2003* (Vic).

**Service Credit** means the amount by which the sums paid by the Department will be reduced for a failure by the Supplier to meet a Service Level Requirement, as calculated in accordance with 0.

**Service Level Requirements** means the minimum levels at which the Supplier must provide the Services as specified in 0, as amended from time to time in accordance with clause 4.5.

**Services** means the services, including any Deliverables, offered by the Supplier pursuant to this Agreement, as specified in 0, and in relation to a Purchase Order Contract, means the specific Services to be provided as set out in the relevant Purchase Order.

**Social Procurement Framework** means *Victoria's Social Procurement Framework* published 26 April 2018 by the Victorian Government, as amended from time to time.

**Specifications** means the specifications to which the Services must comply, including any relevant performance requirements, technical constraints and quality standards, as set out in Item 2 of 0.

**Staff Costs** means Pay as you go (**PAYG**) Income Tax Instalments, withholding tax (including PAYG withholding), superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to the Supplier's engagement or employment of persons in connection with this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

**Start Date** means the date on which the provision of Services is to start under a Purchase Order, as specified in the relevant Purchase Order.

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

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

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

**Term** means the duration of this Agreement, as calculated in accordance with clause 28.

**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 Public Sector Employees 2015 (as amended or replaced from time to time), issued by the Victorian Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic), unless the Services are services of a kind usually provided by directors of Victorian Public Entities or the Department is a special body, in which case it means either the Code of Conduct for Directors of Victorian Public Entities 2016 or the Code of Conduct for Victorian Public Sector Employees of Special Bodies 2015 (each as issued by the Victorian Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic) and as amended or replaced from time to time).

## 1.2 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 this 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 this 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 this Agreement, including the right to payment, jointly benefit each person constituting the Supplier;
- (h) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day;
- (i) 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;
  - (iv) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia and all amounts payable under this Agreement are payable in Australian dollars;
  - (v) an amount in currency other than Australian dollars (**foreign currency**) must be converted to Australian dollars using the daily exchange rate as published by the Reserve Bank of Australia on the date of this Agreement, and not any subsequent date. The Supplier acknowledges that, to the extent that it has agreed to transact in foreign currency, the Supplier has relied on its own judgment concerning the nature of payment in foreign currency and the degree of risk of financial loss inherent in such payment as a result of fluctuating exchange rates; and
  - (vi) a party or parties is a reference to the Department and the Supplier (as the case requires).

### 1.3 Headings

Headings do not affect the interpretation of this Agreement.

## Requesting the Services

### 2. Standing offer to provide the Services

The Supplier makes a standing offer to provide the Services to the Department during the Term, on and subject to the terms of this Agreement.

### 3. Ordering Services

#### 3.1 The Department may issue a Request for Quote

At any time during the Term, the Department may:

- (a) issue a Request for Quote to the Supplier; or

- (b) through its Representative, verbally request that the Supplier provide a Quote.

### **3.2 Requests for Quote**

A Request for Quote issued by the Department:

- (a) may specify the date by which a Quote is required to be delivered to the Department;
- (b) may specify whether a Quote is to be provided in a form other than a draft Purchase Order;
- (c) must specify the information required to be included in a Purchase Order (except for that information which the Department is unable to provide or calculate);
- (d) must specify the type of Quote required by the Department (for example, a fixed price Quote, a time and materials Quote or a combination of both); and
- (e) must specify any other information relevant to the Services to be provided or that the Department requires the Supplier to include in its Quote.

### **3.3 Provision of Quotes**

Within two Business Days of receipt of a Request for Quote (or a verbal request for a Quote), or the later period specified in the Request for Quote (or verbally requested), the Supplier must provide to the Department a Quote. The Quote must be in the form of a draft purchase order (in the form set out in Annexure A), or in the form otherwise requested by the Department, and must include:

- (a) the information specified in the Request for Quote (including confirmation of the proposed dates and Milestones);
- (b) a quote for the provision of the requested Services that:
  - (i) is calculated on the basis requested by the Department in its Request for Quote;
  - (ii) is calculated in accordance with the Rates and Fees specified in the Price Schedule; and
  - (iii) contains:
    - A. the total amount payable by the Department for the provision of the required Services; and
    - B. a full breakdown of the Rates and/or Fees comprising that amount, including by reference to Milestones and Deliverables, if applicable.

### **3.4 Receipt of Quotes**

On receipt of a Quote, the Department may:

- (a) negotiate with the Supplier the terms of the Quote, following which the Supplier must resubmit a Quote containing the revised agreed terms;
- (b) accept the Quote, in which case the Department must issue a Purchase Order; or
- (c) decline to accept the Quote, in which case no Purchase Order Contract will be formed.

### **3.5 Contents of a Purchase Order**

A Purchase Order issued by the Department must specify:

- (a) the identity of the Department, the Department's Representative and the order number;

- (b) the Supplier's details;
- (c) the specific Services to be provided to the Department (which may be some or all of the Services described in Item 1 of 0), including the quantity of each item required;
- (d) the applicable Rates and/or Fees, and the consequent amounts that will be payable to the Supplier;
- (e) the Start Date and Completion Date;
- (f) the Key Personnel, if any, required to provide the Services;
- (g) any applicable Milestone(s) and Milestone Date(s) relevant to the performance of the Services; and
- (h) any invoicing and/or notice requirements that are required in addition to, or instead of, the invoicing and/or notice requirements set out in 0.

### **3.6 When a Purchase Order Contract is formed**

- (a) A Purchase Order Contract is formed, and the Purchase Order will become binding on the Supplier and the Department, upon receipt of the Purchase Order by the Supplier.
- (b) Unless and until a Purchase Order Contract is formed:
  - (i) a Quote will not be binding on the Supplier or the Department;
  - (ii) the Supplier must not start performing or charge the Department for any Services; and
  - (iii) the Department has no liability to pay for any Services.
- (c) The Supplier must promptly in writing confirm to the Department its receipt of a Purchase Order and the formation of the Purchase Order Contract.

### **3.7 Terms incorporated into a Purchase Order Contract**

A Purchase Order Contract incorporates all of the terms of this Agreement (other than clauses 2, 3.1, 3.2, 3.3, 3.4, 3.5, 28.1 and 28.2 (and any corresponding Items in the Schedules)), with such necessary changes as should be made to reflect the formation of the relevant Purchase Order Contract under this Agreement.

### **3.8 Inconsistency**

Where there is any inconsistency between the provisions of this Agreement and any Purchase Order Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.

### **3.9 Costs of preparing Requests for Quotes, Quotes and Purchase Orders**

The Supplier is not entitled to charge the Department for the development of a Quote or a draft purchase order. Each party is responsible for its own costs relating to the development, negotiation and finalisation of each Purchase Order Contract.

## Providing the Services

### 4. Performance of Services

#### 4.1 When Services start and end under a Purchase Order Contract

- (a) The Supplier must start providing Services under a Purchase Order Contract on the Start Date.
- (b) The Supplier must:
  - (i) complete the Services required under a Purchase Order Contract by the Completion Date; and
  - (ii) meet each Milestone by its Milestone Date.
- (c) The Supplier must provide the Services required under a Purchase Order Contract until the earliest to occur of:
  - (i) the date that the Supplier completes those Services (whether or not this occurs on, before, or after the applicable Completion Date); and
  - (ii) the date that the Purchase Order Contract is terminated.

#### 4.2 The Supplier's Services performance obligations

- (a) The Supplier must provide the Services:
  - (i) to the reasonable satisfaction of the Department and in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, professional and experienced provider of services that are similar to the Services;
  - (ii) in accordance with any reasonable directions given by the Department; and
  - (iii) in accordance with this Agreement, including in accordance with the Specifications and the Service Level Requirements.
- (b) The Supplier must:
  - (i) act in good faith and in the best interests of the Department;
  - (ii) comply with all statements and representations as to its performance of the Services including but not limited to those set out in the Offer and any applicable Quote;
  - (iii) without limiting its obligations under clause 8.1, keep the Department informed of all matters of which it ought reasonably be made aware and provide such information in relation to the provision of the Services as may reasonably be required by the Department; and
  - (iv) use appropriately skilled and qualified Personnel to provide the Services.
- (c) Without limiting any obligation of the Supplier under this Agreement, the Supplier must ensure the Department receives:
  - (i) all standard manufacturer and other relevant third party warranties for those Deliverables provided under this Agreement that are sourced by the Supplier from third parties (if any); and
  - (ii) a copy of, and is fully advised of and approves, all such warranties (if any) prior to any order or commitment being made in respect of the relevant Deliverable.

### 4.3 Acceptance

- (a) After performance of the Services or delivery of any Deliverable provided as part of the Services, the Department may undertake such reviews as it considers necessary to determine whether the Services or Deliverable(s) are fit for purpose and comply with this Agreement (including the Specifications and Service Level Requirements). After reviewing the Services or Deliverable(s), the Department 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 4.3(b) will apply.
- (b) If the Department notifies the Supplier, in accordance with clause 4.3(a)(ii), that the Services or Deliverable(s) are not fit for purpose or do not comply with this Agreement the Supplier must rectify the non-compliance in the Service or Deliverable(s), in the time specified in the notice, following which the Department will undertake further review of the Services or Deliverable(s) in accordance with clause 4.3(a). This process will continue until, at the Department's discretion, the Department:
  - (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 4.3(a)(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 Department specifies; or
  - (iv) terminates this Agreement in accordance with clause 29.1.
- (c) If the Department terminates this Agreement and/or the relevant Purchase Order Contract under clause 4.3(b)(iv), the Department will be entitled to a full refund of all moneys paid to the Supplier in respect of the Services or Deliverable(s) which the Department is unable to use following termination.
- (d) If the Department fails to notify the Supplier of its acceptance or rejection of the Services or Deliverable(s) pursuant to clauses 4.3(a)(i) or 4.3(a)(ii) within a reasonable period following performance of the Services or delivery of any Deliverable, the Supplier may notify the Department in writing of this fact, following which the Department must promptly respond to the Supplier in accordance with clause 4.3(a)(i) or clause 4.3(a)(ii), as the case may be.
- (e) No act or omission on the part of the Department in connection with this clause 4.3 constitutes deemed acceptance of a Service or Deliverable.

### 4.4 Supplier to provide equipment

The Supplier must, at its own cost, provide any and all equipment (including computer hardware and software) necessary for the performance of the Services.



## 4.5 Variations

- (a) Either party may, at any time, give written notice to the other party proposing a variation to the scope of the Services or the Service Level Requirements. Within five Business Days of giving or receiving such notice, the Supplier must provide a written proposal (**Proposal**) setting out:
  - (i) the Rates and/or Fees that would apply with respect to the provision of the varied Services or Service Level Requirements (based on the value for money proposition reflected in the then current Price Schedule). Any increase to the Rates and/or Fees proposed by the Supplier must represent the increase in the cost to the Supplier of providing the varied Services or complying with the varied Service Level Requirements (as applicable);
  - (ii) whether or not it is intended that the variation applies to current Purchase Order Contracts, if any; and
  - (iii) any other impacts that the change will have on the Supplier's ability to perform its obligations under this Agreement.
- (b) The Department may accept a Proposal by notifying the Supplier in writing. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without any variation. Unless the Department specifies in its notice to the Supplier, the variations contained in the Proposal will apply only to Purchase Order Contracts formed following notification to the Supplier of the Department's acceptance of that Proposal.

## 4.6 Co-operation with third parties

Where the Department engages a third party to provide goods or services which are related to or otherwise necessary for the Department to accept the Services, the Supplier agrees to provide all reasonable assistance and co-operation as required by that third party to ensure the Department receives the third party's goods or services, and the Services, in a seamless and efficient manner.

## 5. Access and safety

### 5.1 Access to premises

If the Supplier requires access to the premises of the Department in connection with the provision of the Services, the Department will, subject to its usual security requirements, permit the Supplier reasonable access to the premises at such times as may be reasonably necessary to enable the Supplier to provide the Services.

### 5.2 Obligations

When carrying out the Services (including when the Supplier enters any premises owned, occupied or controlled by the Department), the Supplier must (and must ensure that its Personnel will, where applicable):

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety and wellbeing business rules, standards and policies of the Department (as notified to the Supplier from time to time);
- (d) comply with any lawful directions of the Department or its Personnel;

- (a) comply with, and cooperate with the Department in respect of its compliance with, the OH&S Laws and Laws relating to safety, wellbeing or public health, including:
  - (i) implement, regularly review and update its safety and wellbeing management system;
  - (ii) continually assess methods to eliminate or reduce so far as is reasonably practicable risks and hazards in connection with the Services; and
  - (iii) ensure that the Supplier's Personnel are properly trained and fully understand the safety and wellbeing management system and related safety and wellbeing policies and procedures before they commence any Services under the Agreement;
- (b) if requested by the Department, provide documentary evidence of its compliance with the OH&S Laws and Laws relating to safety, wellbeing or public health, including of any safety and wellbeing management system and any associated documents, within 14 days; and
- (c) if required by the OH&S Laws or Laws relating to safety, wellbeing or public health, to notify the relevant regulatory authority of an incident occurring during the performance of this Agreement:
  - (i) notify the Department of the incident at the same time or as soon as possible;
  - (ii) institute proper systems of reporting, recording and analysis of injuries, property damage and incidents with a view to preventing any recurrence of the incident; and
  - (iii) provide to the Department copies of reports on safety and wellbeing incidents, inspections, investigations, risk assessments and corrective action.

### 5.3 Construction work

- (a) Terms used in this clause 5.3 have the same meanings given to them in the OH&S Laws.
- (b) If the Supplier is undertaking any construction work under this Agreement on any site owned by the Department (**Site**), the Supplier shall:
  - (i) be and is hereby appointed the principal contractor of the Site unless otherwise notified by the Department;
  - (ii) if they are the principal contractor, comply with and discharge all obligations attaching to a principal contractor including but not limited to control and management of the Site; and
  - (iii) cooperate with and comply with the directions of the principal contractor if the Supplier is not the principal contractor.
- (c) If a Supplier is performing high risk construction work they must also provide to the Department a Safe Work Method Statement (**SWMS**). The SWMS must as a minimum identify high risk work, hazards/risks associated with the work and the controls to reduce or eliminate the risk. The Supplier must ensure that the SWMS is reviewed and if necessary revised. The Supplier must retain a copy of the SWMS and on request by the Department produce it for inspection.

## 6. Supplier's Personnel

- (a) If specified, the Services must be performed by the persons specified in Item 3 of 0 (**Key Personnel**) and referenced in the relevant Purchase Order Contract. The Supplier may not remove or replace any Key Personnel without the Department's written consent, which will not be unreasonably withheld.
- (b) If any of the Key Personnel are unable to provide the Services, the Supplier must promptly notify the Department of that fact and provide details of alternate, suitably qualified and experienced Personnel to replace such Key Personnel (**Replacement Staff**).
- (c) The Department must notify the Supplier in writing within two Business Days as to whether or not it accepts the Replacement Staff proposed by the Supplier pursuant to clause 6(b). The Supplier acknowledges and agrees that the Department will be under no obligation to accept any Replacement Staff proposed by the Supplier if the Department is not satisfied as to the qualifications and experience of such person.
- (d) The Department may request that the Supplier withdraw any of its Personnel (including any Key Personnel) from providing any part of the Services. If the Department makes a request under this clause 6(d), the Supplier must:
  - (i) promptly arrange for that person to cease being involved in providing the Services;
  - (ii) ensure that the person does not return to the Department's premises except with the Department's prior written consent, which may be withheld in its absolute discretion; and
  - (iii) replace that person with another person of suitable ability and qualifications, at no additional charge within the time period specified by the Department, which must be reasonable in the circumstances.

## 7. Specifications

### 7.1 The Specifications

- (a) The Services must comply in all respects with the Specifications.
- (b) Without limiting anything else in the Specifications, the Services must:
  - (i) utilise the latest available technology; and
  - (ii) comprise the most recent model or version of the relevant Services that are available at the time of provision.

### 7.2 Variation to the Specifications

- (a) The Department may, at any time, give written notice to the Supplier proposing a variation to the Specifications (including any resulting extension of the Completion Date or a Milestone Date).
- (b) The Supplier must, if it reasonably considers that a proposed variation will result in an increase in the Rates and/or Fees for providing the Services, or affect any Completion Date and/or Milestone Date(s) under any current Purchase Order Contracts, within five Business Days of receiving a notice under clause 7.2(a), provide to the Department a written proposal for a variation to the Price Schedule

(based on the value for money proposition reflected in the current Price Schedule), and if applicable, the Completion Date and/or Milestone Date(s).

- (c) The Department may, by giving written notice to the Supplier, accept such proposal in full or with conditions, or reject the proposal, within five Business Days of its receipt from the Supplier. If the Department rejects the proposal, the parties may negotiate to finalise any aspects of the Supplier's proposal. In the absence of acceptance by the Department of a proposal, the Services must be provided in accordance with this Agreement without such variation.

## **8. Delays and failure to perform**

### **8.1 Duty to warn of delays and failures to perform**

- (a) If the Supplier is aware of any actual or possible delay in the provision of the Services or delivery of a Deliverable, including any failure to complete the Services by the Completion Date or a Milestone by the relevant Milestone Date, the Supplier:
  - (i) must advise the Department by written notice immediately upon becoming aware of such delay or possible delay; and
  - (ii) may include in the notice a request for an extension of time.
- (b) A notice given under clause 8.1(a)(i) must set out:
  - (i) the circumstances giving rise to the actual or possible delay, including the cause of the delay;
  - (ii) the likely length of the actual or possible delay; and
  - (iii) the steps the Supplier intends to take to prevent the delay from occurring or minimise the delay.
- (c) On request from the Department, the Supplier must promptly provide any additional information the Department requires about a notice given under clause 8.1(a)(i).
- (d) The Department may, in its absolute discretion and by written notice to the Supplier, extend any Milestone Date or Completion Date.

### **8.2 Effect of failures to perform**

- (a) If the Supplier fails to perform any of the Services or deliver any Deliverables in accordance with this Agreement, the Department:
  - (i) will not be required to pay for those Services or Deliverables until they are provided in accordance with the requirements set out in this Agreement; and
  - (ii) may issue a notice to the Supplier requiring the Supplier to remedy any default in a Deliverable or re-perform the Services within the time specified by the Department (which time must be reasonable having regard to the nature of the relevant Services or Deliverables).
- (b) If, in the time specified in the notice issued under clause 8.2(a)(ii):
  - (i) the default referred to in clause 8.2(a) is remedied; or
  - (ii) the relevant Services are re-performed to the standard required by this Agreement, including the applicable Service Level Requirements, and otherwise to the reasonable satisfaction of the Department,

the Department will pay the applicable Rates and/or Fees for the remedied Deliverable or re-performed Services (which the parties acknowledge may be less

than the cost to the Supplier of remedying the default in the Deliverable or re-performing the Services).

- (c) If:
  - (i) the default referred to in clause 8.2(a) is not capable of being remedied or the Services are not capable of being re-performed; or
  - (ii) the Supplier fails to remedy the default or re-perform the Services within the time specified in the notice issued under clause 8.2(a)(ii),the Department may either have the Services or Deliverables 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 Department in doing so.
- (d) If the Department exercises its rights under clause 8.2(c), the Department will issue the Supplier with an invoice for all reasonable costs incurred in remedying the default or re-performing the Services. The Supplier must pay this invoice within 10 Business Days of its receipt.
- (e) Nothing in this clause 8.2 derogates or otherwise limits any other remedy available to the Department, including at Law.

### **8.3 Liquidated damages payable for failing to meet required dates**

- (a) If the Supplier fails to provide the relevant Services or Deliverables, or the Department does not accept the relevant Services or Deliverables, by the Completion Date or applicable Milestone Date(s), the Department may recover from the Supplier (or deduct from money owed to the Supplier) liquidated damages.
- (b) Liquidated damages will be payable at the rate (if any) specified in Item 2 of 0 for each day that the Supplier does not provide the Services or the Department does not accept the Deliverables after the relevant date(s) for performance as specified in the relevant Purchase Order Contract. The Supplier will not be required to pay liquidated damages to the extent that a delay is caused by the Department.
- (c) The parties agree that any such liquidated damages constitute a genuine and reasonable pre-estimate of the loss that would be incurred by the Department arising from such failure by the Supplier, and are not the Department's sole remedy in relation to the circumstances giving rise to the liquidated damages.

## **Pricing and payments**

### **9. Price for the Services**

- (a) The Price Schedule according to which the Supplier will charge the Department for the Services is set out in Item 3 of 0. Subject to any change in the Rates and/or Fees agreed under clauses 4.5, 7.2 or 9(b), the Rates and/or Fees are fixed for the Term and are inclusive of all taxes (excluding GST).
- (b) Where a price review mechanism is set out in Item 4 of 0:
  - (i) the parties will adopt that price review mechanism in accordance with the requirements in Item 4 of 0; and
  - (ii) any revised Rates and/or Fees resulting from the operation of the price review mechanism in Item 4 of 0 will take effect from the review dates set out in Item 4 of 0.

- (c) The Supplier may not recover its expenses or other disbursements in relation to the Services, which must be set out in Item 3 of O, unless it has received the Department's approval prior to incurring the expense or disbursement.

## 10. GST and other taxes

### 10.1 Definitions

Terms used in this clause 10 have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).

### 10.2 Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

### 10.3 GST gross up

If GST is imposed on any supply made under or in accordance with this 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 this Agreement.

### 10.4 Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

### 10.5 Adjustment event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Supplier must recalculate the amount payable on account of GST under clause 10.3 to take account of the adjustment event. The Supplier must issue an adjustment note to the Department within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Supplier to the Department, or by the Department to the Supplier, as the case may be.

### 10.6 CPI reviews

The Supplier agrees that, if:

- (a) the parties agree to review the Rates and/or the Fees pursuant to clause 9(b) by reference to a specific index or indices (**Index**); and
- (b) such Index is increased as a result of any change to either (or both) the GST rate or the GST base,

the impact of that GST related increase on the Index will be excluded for the purposes of calculating any consideration or other adjustments under this Agreement. If requested by the Department, the parties must use their best endeavours to agree either a replacement Index, or an adjustment to the published Index, for the purposes of excluding the impact of the GST related increase on the Index. If the parties cannot agree within 10 Business Days on either a replacement Index, or an adjustment to the published Index, the Dispute will be resolved in accordance with clause 18.

## **10.7 Other taxes**

Subject to the other provisions of this Agreement, the Rates and/or Fees include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Agreement.

## **11. Staff Costs**

- (a) The Supplier will indemnify and keep indemnified the Department from and against all liability for the Staff Costs in any way relating to the Services.
- (b) If the Department is or becomes liable to pay any Staff Costs, the Department may deduct the amount of its liability for the Staff Costs from any amount due by the Department to the Supplier, whether under this Agreement or otherwise.

## **12. Invoicing and payment**

### **12.1 Invoicing**

- (a) The Supplier must submit Tax Invoices to the Department in respect of the Services as soon as practical after completion of the Services, or at the time(s) and to the address specified in Item 5 of 0, or as otherwise set out in the relevant Purchase Order Contract.
- (b) A Tax Invoice submitted for payment pursuant to clause 12.1(a) must contain each of the matters specified in Item 5 of 0 as well as all information required in a tax invoice for the purposes of the GST Act.

### **12.2 Payment of invoices**

- (a) Subject to the remainder of this clause 12.2, clause 12.3(a)(i) and clause 30.6, the Department will pay each undisputed invoice which meets the requirements in clause 12.1 to the Supplier, less any amount required by Law, within 30 days of receipt of the invoice, in the manner specified in Item 6 of 0.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Department's Representative. An invoice will not be certified for payment unless the Department's Representative is satisfied that it is correctly calculated with respect to the Services that are the subject of the relevant invoice.
- (c) If the Department's Representative disputes the invoiced amount (whether in whole or in part) for any reason, the Department must pay the undisputed amount of such invoice (if any), and notify the Supplier of the amount the Department believes is due for payment. If the Department and the Supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 18. If requested, the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.
- (d) Payment of an invoice is not to be taken as:
  - (i) evidence or an admission that the Services have been provided in accordance with the Specifications, Service Level Requirements or otherwise in accordance with this Agreement;
  - (ii) evidence of the value of the Services supplied;
  - (iii) an admission that the Services were satisfactorily supplied;

- (iv) an admission of liability; or
  - (v) acceptance or approval of the Supplier's performance,
- but must be taken only as payment on account.

### 12.3 Fair payment

- (a) If the value of a Purchase Order Contract is less than \$3 million:
  - (i) the reference in clause 12.2(a) to 30 days is taken to be a reference to 10 Business Days; and
  - (ii) the Department will, on demand by the Supplier, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purposes of clause 12.3(a), **overdue amount** means an amount (or part thereof) that:
  - (i) is not, or is no longer, disputed in accordance with this Agreement;
  - (ii) is due and owing under a Tax Invoice properly rendered by the Supplier in accordance with this Agreement; and
  - (iii) has been outstanding for more than 10 Business Days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

## Governance and relationship management

### 13. Contract management

#### 13.1 Parties' Representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the Department and the Supplier under this Agreement, the Department and Supplier each agree to nominate the relevant person(s) specified in Item 7 of 0 as its Representative in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
- (b) The Supplier will have regard to all requirements of the Department's Representative and will comply with all reasonable directions of the Department's Representative.
- (c) Either party may nominate a replacement Representative by providing the other party with written notice. The appointment of the replacement Representative will be effective from the date on which such notice is given.

#### 13.2 Responsibility Chart

If required by Item 8 of 0, the Supplier must prepare a chart identifying the key tasks and obligations under this Agreement, and the party or person responsible for completing or otherwise performing the relevant task or obligation (**Responsibility Chart**).

#### 13.3 'Value adding' initiatives

- (a) The Supplier agrees that it will, to the extent that it is commercially feasible to do so, identify new measures or initiatives during the Term to continuously improve the provision of Services under this Agreement (including the Specifications and any Purchase Order Contract), including through the:



- (i) identification of efficiencies in the provision of Services;
  - (ii) implementation of any applicable technological improvements; and
  - (iii) utilisation of any applicable industry-wide productivity gains, with a view to achieving improvements in value for both parties.
- (b) Any value adding measures or initiatives identified by the Supplier will be discussed with the Department and, if accepted by the Department, implemented by the parties as soon as practicable. If the implementation of a value adding measure or initiative in accordance with this clause 13.3 results in a change to the Services or the Service Level Requirements, the parties will follow the process in clause 4.5.

#### **13.4 Service Level Requirements**

- (a) The Supplier must meet or exceed the Service Level Requirements when performing the Services.
- (b) The Supplier's performance against the Service Level Requirements must be tracked, monitored and reported on by the Supplier to the Department in accordance with Item 9 of O and O.
- (c) Where the Supplier fails to meet any of the Service Level Requirements, the Supplier must, at no additional cost to the Department, promptly:
  - (i) notify the Department of the failure in writing; and
  - (ii) arrange all additional resources reasonably necessary to perform the Services in accordance with the Service Level Requirements as soon as reasonably practicable.
- (d) Without limiting clause 13.4(c), if there is any failure by the Supplier to meet a Service Level Requirement, Service Credits will be payable by the Supplier if specified in Schedule 3. If applicable, the parties agree that the Service Credits are a genuine pre-estimate of the loss likely to be suffered by the Department as a result of the Supplier's actions, including the diminution in value of the Services resulting from the failure and do not constitute a penalty.

#### **13.5 Progress report**

The Supplier must provide to the Department's Representative:

- (a) a progress report in respect of the Supplier's performance under this Agreement or each Purchase Order Contract, such report to be provided at the times, in the format and containing the matters specified in Item 9 of O; and
- (b) all other data or information that the Department's Representative may request to enable it to adequately assess the performance of the Supplier.

#### **13.6 Contract management review**

The parties must meet at the time and in the manner specified in Item 10 of O to discuss contract management issues and to review the Supplier's performance under this Agreement and the Purchase Order Contracts, including:

- (a) a review of the Supplier's compliance with the Service Level Requirements; and
- (b) an examination of the value adding measures or initiatives proposed or implemented by the parties pursuant to clause 13.3.

## **14. Sub-contracting**

- (a) The Supplier must not sub contract to any person any of its obligations under this Agreement or a Purchase Order Contract without the prior written consent of the Department, which consent may be given (conditionally or unconditionally) or withheld by the Department in its absolute discretion.
- (b) If requested by the Department, the Supplier must provide reasonable details of the following when requesting the Department's approval for a proposed sub-contractor under clause 14(a):
  - (i) the purposes for which the proposed sub-contractor will be employed, including the scope of any services to be provided by the proposed sub-contractor;
  - (ii) the proposed sub-contractor's capabilities in performing services of a similar nature;
  - (iii) the proposed sub-contractor's financial standing; and
  - (iv) a copy of the proposed sub-contract (provided that commercially sensitive payment or security terms, and pricing information, may be omitted).
- (c) The Supplier must ensure that any sub-contractor engaged by it complies with all obligations imposed on the Supplier by this Agreement.
- (d) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.
- (e) No sub-contractor of the Supplier will itself be entitled to sub-contract or assign its obligations.

## **15. Compliance with Law and policy**

### **15.1 General Law and policy**

The Supplier must (and must ensure that its Personnel will), in performing its obligations under this Agreement and any Purchase Order Contract, comply with:

- (a) all applicable Laws when providing Services under this Agreement;
- (b) the State's policies and procedures as notified to the Supplier in writing from time to time; and
- (c) any applicable Australian standards, codes of practice and compliance codes, including those specified in Item 14 of 0.

### **15.2 Victorian Public Sector Commission Code of Conduct**

Where, in the course of providing the Services, the Supplier, or its Personnel:

- (a) supervise or work with Public Sector Employees;
- (b) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace; or
- (c) 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.

### 15.3 Supplier Code of Conduct

The Supplier acknowledges that:

- (a) 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;
- (b) it has read the Supplier Code of Conduct; and
- (c) 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 this Agreement or at Law.

### 15.4 Employment policy

- (a) The Supplier and any Personnel engaged in the provision of the Services must not:
  - (i) engage in unethical work practices; or
  - (ii) engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (b) Where a federal industrial award may apply to the capacity in which an employee is engaged by the Supplier, or by a sub-contractor, in the provision of the Services, the Supplier must:
  - (i) where applicable, comply with the better off overall test under section 193 of the *Fair Work Act 2009* (Cth) in relation to any enterprise agreement it is bound by; or
  - (ii) otherwise ensure that the conditions on which that employee is engaged are no less beneficial to the employee than the rates and conditions under that award.

### 15.5 Local Jobs First Policy

If the Local Jobs First Policy applies to this Agreement (as indicated by Item 15 of 0), then the terms and conditions set out in **Error! Reference source not found.** are incorporated into and form part of this Agreement.

### 15.6 Social Procurement

If the Social Procurement Framework applies to this Agreement (as indicated by Item 16 of 0) then terms and conditions set out in **Error! Reference source not found.** are incorporated into and form part of this Agreement.

### 15.7 Fair Jobs Code

If the Fair Jobs Code applies to this Agreement (as indicated by Item 17 of 0), then the terms and conditions set out in **Error! Reference source not found.** are incorporated into and form part of this Agreement.

### 15.8 No unlawful inducements

- (a) The Supplier will not, and will ensure that its Personnel will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of their obligations under this Agreement.

- (b) The Department may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any conduct under clause 15.7(a) and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

## 16. Conflict of interest

- (a) The Supplier warrants to the Department that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interests under this Agreement.
- (b) The Supplier must promptly inform the Department of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the Department in terms of dealing with that conflict.
- (c) The Supplier acknowledges and agrees that failure to comply with this clause 16 will constitute a breach of a fundamental term of this Agreement.

## 17. Change in Control

- (a) The Supplier must notify the Department in writing of any Change in Control of the Supplier (or of the ultimate holding company of the Supplier) within five Business Days after that change occurs (**Change in Control Notice**).
- (b) The Department may, upon receiving a Change in Control Notice, in its absolute discretion, terminate this Agreement and any Purchase Order contracts on written notice to the Supplier.
- (c) Termination under clause 17(b) will take effect from the Department's nominated date, provided the nominated date is no later than 12 months after the Department received the Change in Control Notice.

## 18. Disputes

### 18.1 Parties to meet

- (a) If any dispute arises under or in connection with this Agreement or a Purchase Order Contract (**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.
- (b) The parties' Representatives must, within five Business Days of the date of service of a Dispute Notice, meet to discuss the Dispute in good faith with a view to resolving the Dispute.
- (c) If the Dispute has not been resolved within:
  - (i) 10 Business Days from the date of service of a Dispute Notice or such later date as the parties may agree, it will escalate to the nominated senior executive officer (or equivalent) of each of the Department and the Supplier, who will promptly meet and discuss the Dispute in good faith with a view to resolving the Dispute; and

- (ii) 15 Business Days of the date of service of a Dispute Notice or such later date as the parties may agree, the Dispute is referred to mediation (**Mediation**) in accordance with clause 18.2.

## **18.2 Mediation**

- (a) Subject to clause 18.2(b), the Mediation will be conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**). The Guidelines set out the procedures to be adopted, the process of selection of the mediator, and the costs involved. The terms of those Guidelines (as amended from time to time) are incorporated into this Agreement.
- (b) The mediator will be selected by mutual agreement. If the parties have not reached agreement on a mediator within three Business Days of the date that the Dispute was referred to Mediation (or such other time frame agreed between the parties), the mediator will be selected in the manner specified in the Guidelines.
- (c) Each party must bear its own costs in relation to the Mediation and the costs of the mediator will be shared equally by the parties.
- (d) Any breach of the Guidelines will constitute a breach of this Agreement.

## **18.3 Arbitration or litigation**

- (a) If the parties fail to settle the Dispute at the Mediation in accordance with clause 18.2, the parties may agree to submit the Dispute for determination at arbitration under the Resolution Institute Arbitration Rules 2020 (as amended from time to time) by one or more arbitrators appointed in accordance with those rules. The parties acknowledge that any determination made at arbitration will be final and binding.
- (b) If the parties do not agree to refer the Dispute to arbitration in accordance with clause 18.3(a), either party may submit the Dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.

## **18.4 Performance during Dispute resolution**

The parties to a Dispute will continue to perform their respective obligations under this Agreement and the relevant Purchase Order Contract pending the resolution of the Dispute under this clause 18.

## **18.5 Interlocutory relief**

Nothing in this clause 18 restricts or limits the right of either party to obtain urgent interlocutory or injunctive relief, or to immediately terminate this Agreement where this Agreement provides such a right.

# **19. Notices**

## **19.1 Giving a communication**

A notice, demand, certification, process or other communication relating to this Agreement (or a Purchase Order Contract) must be in writing in the English language, and may be sent by pre-paid post, pre-paid courier, document exchange or (only if an email address is included in Item 18 of 0 or as specified in a Purchase Order Contract) by email as follows:

- (a) to the Department: to the relevant address which is set out in Item 18 of 0 (or as specified in the Purchase Order Contract); and

- (b) to the Supplier: to the relevant address which is set out in Item 18 of 0 (or as specified in the Purchase Order Contract).

## **19.2 Time of delivery**

A notice or document will be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post within Australia, five Business Days after the date of posting or, if sent via a next day delivery service, on the next Business Day following the date of posting;
- (c) in the case of delivery by post to or from an address outside Australia, eight Business Days after the date of posting;
- (d) in the case of delivery by document exchange, two Business Days after being placed into the document exchange; and
- (e) in the case of email, when the message is correctly addressed to and successfully transmitted to that party's email address, and acknowledgment of receipt is recorded on the sender's computer.

## **19.3 After hours communications**

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00pm in the place of receipt; or
  - (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,
- it is taken as having been delivered at 9.00am on the next day which is not a Saturday, Sunday or public holiday in that place.

# **Information and intellectual property**

## **20. Access to records**

### **20.1 Supplier to retain records**

The Supplier must, during the Term and for a period of seven years after the performance of the Services, keep true and particular accounts and records of all Services provided under this Agreement (and any Purchase Order Contract) and all associated records, including all supporting materials used to generate and substantiate Tax Invoices submitted in respect of the Services supplied under this Agreement.

### **20.2 Right to access and audit**

- (a) The Department or its authorised representatives may, during ordinary business hours, inspect and/or audit the accounts and records of the Supplier relating to the Supplier's compliance with its obligations under this Agreement, including calculation of the Rates and/or Fees. The Department or its authorised representatives will be entitled to take copies of or extracts from any such records.
- (b) The Supplier must participate promptly and cooperatively in any audits conducted by the Department or its authorised representative.
- (c) Except in those circumstances in which the Department determines that notice is not practicable or appropriate, the Department must give the Supplier reasonable notice

of an audit and, where reasonably practicable, an indication of which documents or class of documents the auditor may require access to.

- (d) If the outcome of an audit does not require any corrective action, each party must bear its own costs associated with any audits. If the audit identifies any error, non-compliance or inaccuracy requiring remedial action (other than a trivial or insignificant error, non-compliance or inaccuracy), the Department's costs in respect of the audit will, if notified by the Department to the Supplier, be payable by the Supplier as a debt due to the Department.
- (e) The Supplier must promptly take corrective action in order to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Supplier has, under this Agreement:
  - (i) provided any Service or Deliverable; or
  - (ii) calculated any Rates and/Fees or any other amounts or fees billed to the Department.

## **21. Intellectual Property Rights**

### **21.1 Ownership of Contract Materials**

- (a) Subject to clause 21.2, ownership of the Contract Materials vests in and is the property of the Department from the time of its creation.
- (b) Subject to clause 21.2, the Supplier irrevocably and unconditionally assigns and agrees to assign to the Department, free of additional charge, all rights, titles and interests (including all Intellectual Property Rights) in the Contract Materials. To avoid doubt, nothing in this clause 21.1(b) requires the Supplier to assign its Intellectual Property Rights in its Pre-Existing Intellectual Property.
- (c) The Supplier warrants that it owns and is entitled to assign to the Department all rights, titles and interests (including all Intellectual Property Rights) in the Contract Materials in accordance with clause 21.1(b).

### **21.2 Ownership of Pre-Existing Intellectual Property**

The Department's and the Supplier's Pre-Existing Intellectual Property will remain vested in each of them (or the relevant third parties).

### **21.3 Licence of Pre-Existing Intellectual Property by the Supplier**

The Supplier hereby irrevocably and unconditionally grants to the Department, free of additional charge, a perpetual, non-exclusive, royalty-free, worldwide, transferable, licence (including the right to sub-license) to exercise all Intellectual Property Rights in any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or any Deliverables or to obtain the benefit of the Services, for any purpose the Department sees fit.

### **21.4 Licence of Pre-Existing Intellectual Property and Contract Materials by the Department**

The Department grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use:

- (a) the Department's Pre-Existing Intellectual Property; and
- (b) the Contract Materials,

for the sole purpose of performing, and only to the extent required to perform, the Services and complying with its obligations under this Agreement and any Purchase Order Contracts for the Term.

## **21.5 Moral Rights**

- (a) The Supplier warrants that the Department may use any Service or Deliverable (or any part of any Service or Deliverable) in any way, without identifying any person as the individual responsible for creating any particular material comprised in it, and with the consent of any person who has Moral Rights in such material.
- (b) The Supplier must obtain from any person (including the Supplier's Personnel and Personnel of any sub-contractor) whose Moral Rights may be affected, a written consent, in the form required by the Department, that such person:
  - (i) irrevocably consents to any amendment of the material to which the Moral Rights relate in any manner by the Department and for any purposes;
  - (ii) irrevocably consents to the Department using or applying the materials to which the Moral Rights relate for any purpose and in any manner, including by identifying the Department as the author of the material, without any attribution of authorship;
  - (iii) agrees that his or her consent extends to acts and omissions of any of the Department's licensees and successors in title; and
  - (iv) agrees that his or her consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress.
- (c) The Supplier must ensure that in relation to any consent required under clause 21.5(b):
  - (i) the consent has not been obtained by duress; and
  - (ii) the consent has not been obtained on the basis of a false or misleading statement.
- (d) The Supplier must provide a copy of any consent required under clause 21.5(b) to the Department, upon request.

## **21.6 Additional obligations**

The Supplier must do all things reasonably requested by the Department to give full effect to this clause 21, including entering into further agreements to assign the rights referred to in clauses 21.1 and 21.3 to the extent applicable.

## **22. Data**

- (a) Data will remain (and, if necessary, will become) the property of the Department. The Supplier will assign to the Department from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier. For the avoidance of doubt, Data includes data that does not form part of the Deliverables.
- (b) If the Supplier or a sub-contractor is deemed to be the first owner of any database right or other Intellectual Property Rights in the Data, it must assign those Intellectual Property Rights to the Department.
- (c) The Supplier must only use the Data to the extent necessary to perform its obligations under this Agreement.
- (d) The Supplier must:



- (i) subject to any more stringent requirements imposed pursuant to this Agreement, prohibit and prevent any person who does not have the appropriate level of security clearance from gaining access to the Data; and
  - (ii) comply with any policies of the Department in effect from time to time in respect of the secure disposal of equipment and destruction of records and the Data.
- (e) If the Supplier suspects that any Data has (or may) become lost or corrupted or there is unauthorised access to that Data, it will immediately notify the Department and propose remedial action, including action to ensure that this does not recur.
- (f) The Supplier must not, and must ensure that its Personnel and sub-contractors do not, without the Department's prior written consent:
  - (i) remove Data or allow the Data to be removed from the Department's or the Supplier's premises or equipment; or
  - (ii) take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Victoria.

## **23. Confidentiality, privacy and data protection**

### **23.1 Use of Confidential Information**

- (a) The Supplier must keep the Confidential Information confidential and secure and must (and must ensure that its Personnel and advisers will):
  - (i) use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement; and
  - (ii) not disclose or otherwise make available Confidential Information other than to its Personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement.
- (b) The Supplier acknowledges that the Department will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this clause 23.1 and without the need on the part of the Department to prove any special damage or to comply with the requirements of clause 18.
- (c) The Supplier must not make any public announcement in relation to this Agreement without the prior written consent of the Department.
- (d) On request by the Department, the Supplier must ensure that all of its Personnel involved in providing the Services who may have access to the Department's Confidential Information execute a deed of confidentiality in a form acceptable to the Department prior to commencing the provision of any Services under or in connection with this Agreement.

### **23.2 Exceptions to the Supplier's obligations of confidentiality**

- (a) Notwithstanding clause 23.1, the Supplier may disclose the Confidential Information:
  - (i) to its legal advisors, auditors and other advisors who require this information to provide advice to the Supplier in relation to this Agreement or a Purchase Order Contract; or
  - (ii) subject to clause 23.4, if required to do so by Law, court order, a House of Parliament, or Committee of a House of Parliament.

### 23.3 Prevention of use or disclosure of Confidential Information

- (a) The Supplier must immediately notify the Department in writing of any actual, threatened or suspected unauthorised use or disclosure of any Confidential Information, and must include in its notification:
  - (i) the nature of the Confidential Information; and
  - (ii) the person to whom the Confidential Information has been (or may be) disclosed or is being used by.

### 23.4 Disclosure by Supplier required by Law

- (a) Subject to the Supplier first complying with clauses 23.4(b)(iii), 23.4(b)(iv) and 23.4(b)(v), the Supplier may disclose Confidential Information to the extent that is required under clause 23.4(b)(i) or clause 23.4(b)(ii).
- (b) In the event that the Supplier:
  - (i) is required by Law, court order, a House of Parliament, or a Committee of a House of Parliament to disclose all or any part of the Confidential Information; or
  - (ii) anticipates or has cause to anticipate that it may be required by Law, court order, a House of Parliament, or a Committee of a House of Parliament,the Supplier must, as soon as possible and to the extent permitted by the relevant requirement:
  - (iii) notify the Department of such actual or anticipated requirement(s);
  - (iv) cooperate fully with the Department to try to lawfully avoid or limit the scope of that disclosure, if the Department so requests; and
  - (v) take such steps as the Department reasonably requires to permit the Department to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means.
- (c) If required by the Department, if the Supplier is required to disclose Confidential Information to a Court, the Supplier must notify the Court of the obligations the Supplier owes to the Department in respect of the Confidential Information and use its reasonable endeavours to have the relevant Confidential Information disclosed only on a confidential basis and any proceedings be held in private (as appropriate).

### 23.5 Supplier's consent to disclosure of information

The Supplier consents to the Department publishing or otherwise making available information in relation to the Supplier (and the provision of the Services):

- (a) as may be required in order to comply with the requirements of the Contract Publishing System;
- (b) to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Services;
- (c) 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;
- (d) to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) (**Auditor-General**) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**);

- (e) to comply with the Law, including the *Freedom of Information Act 1982* (Vic); or
- (f) to the IBAC.

## 23.6 Return of Confidential Information by the Supplier

- (a) All Confidential Information will remain the property of the Department and all copies or other records containing Confidential Information (or any part of it) must, except to the extent necessary to comply with:
  - (i) clause 20;
  - (ii) any requirements of Law; or
  - (iii) any reasonable requirements of professional indemnity insurance,
 upon request or upon termination or expiry of this Agreement, be returned by the Supplier to the Department, or at the election of the Department, destroyed.
- (b) Upon the occurrence of any of the events specified in clause 23.6(a), the Supplier must not make any further use of, exploit or deal with in any way the relevant Confidential Information unless expressly permitted to do so by clause 23.
- (c) The Supplier must not refuse to comply with, or delay the performance of, its obligations under clauses 23.6(a) and 23.6(b) whether on the basis of any alleged lien, set off, proprietary or quasi proprietary right or any other claim or demand against the Department or any other person.
- (d) Despite clause 23.6(a), the Supplier may retain copies of information (including Confidential Information) that it is required to retain for its legitimate internal audit or quality assurance purposes, but any information so retained will be retained and held subject in all respects to the terms of this Agreement.

## 23.7 Privacy

- (a) The Supplier acknowledges that it and its Personnel 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 this Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Department in respect of that act or practice had it been directly done or engaged in by the Department.
- (b) The Supplier agrees that it will:
  - (i) assist the Department to comply with its obligations under the Privacy Obligations, to the extent possible;
  - (ii) immediately notify the Department upon becoming aware of any breach or potential breach of the Privacy Obligations and comply with all directions of the Department in respect of the breach or potential breach;
  - (iii) provide the Department with such co-operation as the Department requires in relation to resolving any complaint concerning privacy; and
  - (iv) provide access to or amendment of any record as directed by the Department.
- (c) The Supplier also agrees to comply with any directions made by any of the Commissioners, the Commonwealth Information Commissioner or the Victorian Health Complaints Commissioner relevant to this Agreement.
- (d) Without limiting clauses 23.7(a) to 23.7(c), in relation to any Personal Information obtained by the Supplier in connection with this Agreement, the Supplier must:

- (i) not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
  - (ii) not, without the prior consent of the Department, disclose the information to a person who is outside Victoria;
  - (iii) take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
  - (iv) take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of this Agreement;
  - (v) co-operate with any reasonable request or direction the Department makes which relates to the protection of the information or the exercise of the functions of any of the Commissioners, the Commonwealth Information Commissioner or the Victorian Health Complaints Commissioner;
  - (vi) ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of this Agreement; and
  - (vii) comply with any reasonable direction of the Department in relation to a complaint concerning privacy received by either party.
- (e) Without limiting clauses 23.4 and clauses 23.7(a) to 23.7(d), if required by Law to notify the Commonwealth Information Commissioner or affected individuals about any breach relating to Personal Information obtained by the Supplier in connection with this Agreement, the Supplier must:
- (i) notify and consult with the Department in advance, as soon as reasonably practicable;
  - (ii) provide the Department with a copy of such notice reasonably in advance of issuing it; and
  - (iii) provide the Department with a reasonable opportunity to be involved with and approve such notice (provided that those changes would not cause the Supplier to breach or prevent it from complying with any Laws).

## 23.8 Data protection

The Supplier acknowledges that the Department is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to contravention of a Protective Data Security Standard by the Department in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier on behalf of the Department under or in connection with this Agreement.

## Liability

## 24. Liability

- (a) The Supplier indemnifies, and will at all times hold harmless, defend and keep the Department and each of its Personnel indemnified (**Indemnified Party**), against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) (**Losses**) or compensation arising out of, or in any way connected with, any:

- (i) breach of this Agreement by the Supplier, including any failure to provide the Services in accordance with this Agreement or any Purchase Order Contract;
  - (ii) personal injury, including sickness and death;
  - (iii) property damage;
  - (iv) 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) breaches of logical or physical security;
  - (viii) loss or corruption of Data;
  - (ix) third party claim arising out of a breach of this Agreement by the Supplier or its Personnel (including breach of warranty) or any act or omission of the Supplier or its Personnel; or
  - (x) infringement or alleged infringement of the Intellectual Property Rights, Moral Rights or any other rights of any person, including any third party,
- which was caused, or contributed to by, any act or omission of the Supplier or any of its Personnel.
- (b) The Supplier's liability to indemnify the Department under clause 24(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of the Department or its Personnel contributed to their liability, loss, damage, cost, expense or compensation.
  - (c) To the extent that the indemnity in this clause 24 refers to persons other than the Department, the Department holds this clause on trust for those other persons.
  - (d) If any indemnity payment is made by the Supplier under this clause 24, the Supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
  - (e) The Department may, in its absolute discretion, permit the Supplier, at the Supplier's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any litigation that may occur following a claim that receipt of the Services or use of the Deliverables violates the Intellectual Property Rights, Moral Rights or any other rights of a third party (**IPR Claim**).
  - (f) If the Department requests the Supplier to defend an IPR Claim in accordance with clause 24(e):
    - (i) the Supplier must comply at all times with any Government policy relevant to the conduct of the IPR Claim (including the Model Litigant Guidelines) and with any conditions imposed and directions given by the Department;
    - (ii) the Supplier may not settle or compromise the IPR Claim conducted by it without the Department's consent;
    - (iii) the Department may, at any time, give notice to the Supplier that the Department wishes to conduct the IPR Claim (including associated settlement discussions) and the Supplier will permit the Department to do so; and
    - (iv) the Supplier must comply at all times with any instructions provided by the Department in relation to the day to day conduct and management of the IPR Claim.

## Representations and warranties

### 25. Warranties

The Supplier represents and warrants to the Department that:

- (a) it has the right to enter into this Agreement and perform the Services and provide the Deliverables;
- (b) the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligation that applies to it;
- (c) it holds all licences, permits, consents and authorisations required under any Law in relation to the provision of the Deliverables and Services;
- (d) it is entitled to use and deal with any Intellectual Property Rights, and obtained all necessary consents to use and deal with any Moral Rights, which may be used by it in connection with the Services and Deliverables and to grant to the Department the licences contemplated by this Agreement;
- (e) the receipt of the Services and the possession or use of any Deliverable by the Department will not infringe the Intellectual Property Rights or other rights of any person or any Laws;
- (f) the Services will be:
  - (i) provided with due care and skill;
  - (ii) provided in accordance with all applicable standards, principles, practices and in accordance with the requirements of this Agreement (including the Specifications and any Purchase Order Contract); and
  - (iii) completed within a reasonable time;
- (g) it has the accreditation or membership of professional or other bodies in relation to the provision of the Services as set out in the Offer and that it will use its best endeavours to maintain such accreditation or membership during the Term;
- (h) it and its Personnel are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with this Agreement;
- (i) whilst on the premises owned or controlled by the Department, the Supplier and its Personnel will at all times comply with the Department's lawful directions and policies, of which the Supplier is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
- (j) where the Department 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;
- (k) all representations made by the Supplier in or in connection with the Offer were and remain accurate and the Supplier has and will maintain at all relevant times the quality assurance arrangements set out in the Offer (if any);
- (l) the Supplier will not vary the Specifications of the Services without first obtaining the written consent of the Department; and
- (m) if Item 12 of 0 states that the Supplier is entering into this Agreement on behalf of a trust:
  - (i) it is a validly appointed trustee of the Trust;

- (ii) there has not been any contravention of or non-compliance with any of the terms of the Trust Deed;
  - (iii) it has the right to be indemnified out of, and a lien over, the assets of the Trust except where the Supplier is fraudulent, negligent or in breach of trust;
  - (iv) this Agreement does not conflict with the operation or terms of the Trust or the Trust Deed;
  - (v) this Agreement constitutes valid and enforceable obligations of the Trust;
  - (vi) it has full and valid power and authority under the Trust to enter into this Agreement and to carry out the transactions contemplated by this Agreement (including all proper authorisations and consents);
  - (vii) it enters into this Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and
  - (viii) it is the sole trustee of the Trust,
- and the terms **Trust** and **Trust Deed** have the meaning given to them in Item 12 of 0.

## 26. Insurance

- (a) The Supplier must (and must ensure that any sub-contractors appointed by it) obtain and maintain for the Term and, if requested by the Department, for a period of up to seven years after the provision of the Services, the insurances specified in Item 13 of 0 in respect of any claim related to this Agreement.
- (b) Any public liability insurance that the Supplier is required to obtain and maintain under this Agreement must include a principal's indemnity which covers any liability of the Department to third parties arising directly from the performance of the Services under this Agreement by the Supplier.
- (c) In addition to the requirements of clause 26(b), any public liability insurance that the Supplier is required to obtain and maintain under this Agreement must:
  - (i) include the Department as an insured under the policy but only to the extent of the Supplier's indemnification responsibilities under this Agreement; and
  - (ii) where applicable, include a cross liability clause which has the effect that the policy will apply to each of the persons so named as if a separate policy of insurance had been issued to each of them; and
  - (iii) include a clause to the effect that the Supplier and/or the insurer agrees to waive all rights of subrogation and/or contribution against the Department and/or their insurers, but only to the extent of the Supplier's indemnification responsibilities under this Agreement.
- (d) The Supplier must, within 10 Business Days of a request by the Department, provide evidence of the currency of any insurance it is required to obtain under this Agreement.
- (e) Where any insurance the Supplier is required to obtain and maintain is due to expire (**Initial Insurance**), the Supplier must, on request by the Department, provide the Department with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance (**Replacement Insurance**).

- (f) Any insurance, including any Replacement Insurance, obtained by the Supplier pursuant to this clause 26 must be:
  - (i) taken out with a reputable insurer; and
  - (ii) on reasonable commercial terms.

## **27. Accident compensation**

The Supplier must ensure that, in respect of its Personnel and any other persons engaged by the Supplier to provide the Services, it:

- (a) complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);
- (b) insures against its liability to pay compensation, whether under Law or otherwise; and
- (c) produces to the Department on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

## **Term and termination**

### **28. Term**

#### **28.1 Initial Term**

This Agreement begins on the Commencement Date and continues until the Expiry Date, unless extended in accordance with clause 28.2 or terminated earlier in accordance with its terms.

#### **28.2 Extension**

- (a) The Department may elect, by notice in writing to the Supplier not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for one or more further periods, as set out in Item 1 of 0.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this clause 28.2).

## **29. Termination**

### **29.1 Termination for cause**

The Department may terminate this Agreement and any or all Purchase Order Contracts with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:

- (a) fails to provide the Services in accordance with the Service Level Requirements or otherwise in accordance with the requirements of this Agreement;
- (b) breaches any provision of this Agreement or a Purchase Order Contract 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);
- (c) breaches any provision of this Agreement that is not capable of remedy;



- (d) or any of its Personnel involved in the provision of the Services is guilty of fraud, dishonesty or any other serious misconduct;
- (e) commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
- (f) suffers from an Insolvency Event, subject to any applicable statutory stay on the exercise of rights including sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth) (as the case may be).

## **29.2 Termination without cause**

- (a) The Department may terminate a Purchase Order Contract without cause by giving the Supplier 14 days' notice in writing.
- (b) If a Purchase Order Contract is terminated pursuant to clause 29.2(a), the Department will pay the Supplier:
  - (i) for the Services performed in accordance with the Purchase Order Contract 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 Department has no other liability to the Supplier in relation to the termination of that Purchase Order Contract.
- (c) When the Department issues a notice under clause 29.2(a), the Supplier must 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 relevant Purchase Order Contract.

## **29.3 Grounds for termination by the Supplier**

- (a) The Supplier may terminate a Purchase Order Contract by giving at least 20 Business Days written notice to the Department if the Department fails to pay amounts due under that Purchase Order Contract which have the following characteristics:
  - (i) are the subject of Tax Invoices complying with this Agreement;
  - (ii) are due and payable in accordance with this Agreement;
  - (iii) are not the subject of a good faith dispute;
  - (iv) are overdue for a period of at least 60 Business Days; and
  - (v) are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that the Supplier will have the right to terminate the Purchase Order Contract on 20 Business Days' notice after the expiration of five Business Days following service of the demand if the demand is not met within that five Business Day period.
- (b) Clause 29.3(a) constitutes the Supplier's sole and exclusive right to terminate a Purchase Order Contract, and the Supplier has no right to terminate this Agreement.

## **29.4 Consequences of termination or expiry**

- (a) Termination or expiry of this Agreement or a Purchase Order Contract will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.

- (b) Except as required or permitted by clause 20 or clause 23, on termination or expiration of this Agreement or a Purchase Order Contract (as the case may be), the Supplier must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Data or Confidential Information in relation to the Agreement or the Purchase Order Contract (as the case may be) and, at the election of the Department:
  - (i) delete or destroy the materials, as applicable; or
  - (ii) return the materials to the Department in the format in which they were first provided by the Department and, in addition, if required by the Department, in a non-proprietary and open access file format (such as .txt, .csv, .rtf, etc) as specified by the Department,

at no additional cost to the Department.

## **29.5 Survival**

Clauses 1, 3.7, 4, 8, 9, 10, 11, 12, 13, 14(c), 14(d), 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 30 of this Agreement survive the termination or expiry of this Agreement and any Purchase Order Contract or the completion of the Services and may be enforced at any time.

## **Other miscellaneous terms**

### **30. General**

#### **30.1 Legal costs**

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

#### **30.2 Amendment**

This Agreement may only be varied or replaced by written agreement between the parties.

#### **30.3 Waiver and exercise of rights**

- (a) A waiver of any right, power or remedy under this 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 this Agreement does not amount to a waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

#### **30.4 Severability**

Any provision of this Agreement or a Purchase Order Contract 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.

### **30.5 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

### **30.6 Set off**

The Department may set off against any sum owing to the Supplier under this Agreement, or any Purchase Order Contract, any amount then owing by the Supplier to the Department.

### **30.7 Time of the essence**

Time is of the essence in relation to the provision of the Services under this Agreement and all Purchase Order Contracts.

### **30.8 Governing law and jurisdiction**

- (a) This Agreement is governed by and is to be construed in accordance with the laws of Victoria.
- (b) Each party irrevocably and unconditionally submits to the non-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.

### **30.9 Assignment or transfer of rights and obligations**

- (a) Subject to clause 30.9(c), a party may not assign any right under this Agreement without the prior written consent of the other party.
- (b) The Supplier will be responsible for acts and omissions of any assignee.
- (c) The Department may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate this Agreement to any other Victorian Public Entities in the event of any State government restructure or other re-organisation or change in policy.
- (d) Each party agrees to execute any documents necessary to document the exercise of a permitted right of assignment, transfer or novation under this Agreement.

### **30.10 Counterparts**

This Agreement or any Purchase Order Contract may consist of a number of counterparts (including electronic counterparts) and, if so, the counterparts taken together constitute one document.

### **30.11 Electronic Execution**

Each party consents to the other party executing this Agreement using one or more of the following methods:

- (a) the insertion in graphic form of a visual representation of the signature of the authorised signatory; and/or
- (b) the application of a digital signature using a recognised digital signature standard that meets the Victorian Government's electronic approval standard (**Electronic Signature**), as issued by the Department of Premier and Cabinet from time to time,
- (c) if:

- (d) the Supplier is a company and signs with an Electronic Signature, the Supplier warrants and represents to the Department that it has complied with section 127 of the *Corporations Act 2001* (Cth); and
- (e) the Department signs with an Electronic Signature, the Department warrants and represents to the Supplier that it has complied with section 9(1) of the *Electronic Transactions (Victoria) Act 2000*.

### **30.12 Entire understanding and order of precedence**

- (a) This Agreement is comprised of the following items:
  - (i) clauses 1 to 30 (inclusive);
  - (ii) the Schedules to this Agreement;
  - (iii) the Invitation (if specified in Item 19 of 0);
  - (iv) the Offer (if specified in Item 19 of 0); and
  - (v) any other documents or representations specified in Item 16 of Schedule 1.
- (b) In the event and to the extent of any inconsistency between the items listed in clause 30.12(a), the provisions of the earlier mentioned item 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 item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.
- (c) Each Purchase Order Contract is comprised of the following items:
  - (i) the terms of this Agreement incorporated into the Purchase Order Contract as specified in clause 3.7;
  - (ii) the Purchase Order;
  - (iii) the Request for Quote;
  - (iv) the Quote; and
  - (v) any other documents or representations specified in the Purchase Order or the Request for Quote.
- (d) In the event and to the extent of any inconsistency between the items listed in clause 30.12(c), the provisions of the earlier mentioned document 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 item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.
- (e) This Agreement, and each Purchase Order Contract formed under this Agreement, contains everything the parties have agreed in relation to the subject matter it deals with. 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.
- (f) Except as otherwise provided in clause 30.12(a):
  - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of a Purchase Order Contract are merged in and superseded by the Purchase Order Contract and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:

- A. affects the meaning or interpretation of this Agreement or a Purchase Order Contract; or
- B. constitutes any collateral agreement, warranty or understanding between any of the parties.

### **30.13 Relationship of parties**

- (a) This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.
- (b) The parties agree that the Supplier is engaged as an independent contractor and not as an employee of the Department.

DRAFT

## Schedule 1: Contract variables

Item 1	<b>Commencement Date and Expiry Date (Clause 28)</b>	Commencement Date:	3 <sup>rd</sup> March 2025
		Expiry Date:	30 <sup>th</sup> June 2025
		Extension period(s):	N/A
Item 2	<b>Liquidated damages (Clause 8.3)</b>	<input checked="" type="checkbox"/> Liquidated damages are not applicable but general damages will apply. <input type="checkbox"/> Liquidated damages are applicable at a rate of \$[Insert] per day.	
Item 3	<b>Supplier's Key Personnel (Clause 6)</b>	<input type="checkbox"/> Key Personnel are applicable	
		<b>Name:</b>	<b>Role:</b>
		<input checked="" type="checkbox"/> Key Personnel are not applicable	
Item 4	<b>Price review (Clause 9(b))</b>	<input checked="" type="checkbox"/> A price review mechanism is not applicable <input type="checkbox"/> A price review mechanism is applicable <b>Review mechanism:</b>  <b>Review Dates:</b>	
Item 5	<b>Invoicing (Clause 12.1)</b>	<b>When to submit Tax Invoice(s):</b> Tax Invoices must be submitted as soon as practical after completion and acceptance of the Services.	
		<b>Address for Tax Invoice(s):</b> By post to: Accounts Payable Department of Energy, Environment, and Climate Action Locked Bag 32017 Collins Street East Vic 8003 Attention: Tess McDougall, Statewide Agriculture Recovery Manager By email to: ap.invoices@delwp.vic.gov.au copy to: <a href="mailto:drought.support@agriculture.vic.gov.au">drought.support@agriculture.vic.gov.au</a>  For further queries, email the Department's accounts help desk <a href="mailto:accounts.payable@delwp.vic.gov.au">accounts.payable@delwp.vic.gov.au</a>	

		<b>Tax Invoice requirements:</b> Without limiting clause 12.1(b), a Tax Invoice must also include: <ul style="list-style-type: none"> <li>(a) the Services covered by the Tax Invoice;</li> <li>(b) the Supplier's basis for calculating the amount payable in that Tax Invoice (including any Service Credits that may be applicable);</li> <li>(c) the Supplier's performance against the Service Level Requirements for the invoicing period (if applicable);</li> <li>(d) the name of the Department's Representative;</li> <li>(e) the relevant contract number and Department purchase order number; and Including clients individual reference number</li> <li>(f) any other information requested by the Department from time to time.</li> </ul>																								
Item 6	Payment (Clause 12.2)	Payment for Services is to be made in accordance with any of the following methods: Electronic transfer of funds																								
Item 7	Parties' Representatives (Clause 13.1)	<table border="1"> <tr> <td colspan="2"><b>Department's Representative:</b></td> </tr> <tr> <td>Name:</td> <td></td> </tr> <tr> <td>Title:</td> <td></td> </tr> <tr> <td>Telephone:</td> <td></td> </tr> <tr> <td>Mobile:</td> <td></td> </tr> <tr> <td>Email:</td> <td></td> </tr> <tr> <td colspan="2"><b>Supplier's Representative:</b></td> </tr> <tr> <td>Name:</td> <td></td> </tr> <tr> <td>Title:</td> <td></td> </tr> <tr> <td>Telephone:</td> <td></td> </tr> <tr> <td>Mobile:</td> <td></td> </tr> <tr> <td>Email:</td> <td></td> </tr> </table>	<b>Department's Representative:</b>		Name:		Title:		Telephone:		Mobile:		Email:		<b>Supplier's Representative:</b>		Name:		Title:		Telephone:		Mobile:		Email:	
<b>Department's Representative:</b>																										
Name:																										
Title:																										
Telephone:																										
Mobile:																										
Email:																										
<b>Supplier's Representative:</b>																										
Name:																										
Title:																										
Telephone:																										
Mobile:																										
Email:																										
Item 8	Responsibility Chart (Clause 13.2)	<input type="checkbox"/> Responsibility Chart required <input checked="" type="checkbox"/> No Responsibility Chart required If a Responsibility Chart is required, the following provisions apply: <ul style="list-style-type: none"> <li>(a) The Supplier must submit the draft Responsibility Chart to the Department for acceptance within 20 Business Days of the Commencement Date (or such other period agreed between the parties in writing).</li> <li>(b) Following the Department's receipt of the draft Responsibility Chart from the Supplier, the Department shall notify the Supplier in writing whether it: <ul style="list-style-type: none"> <li>(i) accepts the Responsibility Chart; or</li> </ul> </li> </ul>																								

		<p>(ii) rejects the Responsibility Chart, in which case the Department may specify the reasons for its rejection and request amendments to the Responsibility Chart which must be made before the Department will accept it.</p> <p>(c) Within five Business Days of the Department rejecting the draft Responsibility Chart under clause (b)(ii), the Supplier must submit a revised draft of the Responsibility Chart, incorporating the Department's requested modifications (if any), to the Department.</p> <p>(d) The Department will respond to the revised Responsibility Chart submitted by the Supplier under clause (c) in accordance with clause (b) and the process will continue until the Responsibility Chart is accepted by the Department pursuant to clause (b)(i).</p> <p>(e) To assist with the management and successful implementation of the tasks and obligations contained in this Agreement, the parties agree to regularly review the Responsibility Chart throughout the Term.</p> <p>(f) If the Supplier is required to, or otherwise wishes to, update the Responsibility Chart following its acceptance by the Department, the Supplier must submit its proposed amendments to the Responsibility Chart to the Department and the process in clause (b) will apply.</p> <p>Until a proposed amendment to the Responsibility Chart is accepted in writing by the Department, the original Responsibility Chart will remain in effect.</p>		
Item 9	Progress Report (Clause 13.5)	<input type="checkbox"/> Progress reports are required. Details are as follows: <input checked="" type="checkbox"/> Progress reports are not required		
Item 10	Contract management review (Clause 13.6)	<input type="checkbox"/> Contract management meetings are required. Details are as follows: <input checked="" type="checkbox"/> Contract management meetings are not required		
Item 11	Approved sub-contractor (Clause 14(a))	<p>The Supplier has obtained the Department's prior written consent to engage the following sub-contractors listed below:</p> <p>(a) Not applicable</p>		
Item 12	Trust (Clause 25(m))	<input checked="" type="checkbox"/> The Supplier is entering into this Agreement as a trustee on behalf of the Trust and the warranties in clause 25(m) are incorporated into this Agreement  <p><b>Trust</b> means THE LEAN FAMILY TRUST</p> <input type="checkbox"/> The Supplier is not entering into this Agreement as a trustee		
Item 13	Insurance (Clause 26)		<b>Type of coverage</b>	<b>Amount (AUD)</b>
		<input checked="" type="checkbox"/>	Public liability insurance	\$20 million per occurrence
		<input checked="" type="checkbox"/>	Professional indemnity insurance	\$2 million per claim
		<input type="checkbox"/>	Other (please specify):	
		<p><b>Additional requirements:</b></p> <p>Professional indemnity insurance to be maintained during the Term and up to 7 years after.</p>		



Item 14	<b>Applicable Laws (Clause 15.1)</b>	Without limiting any of its obligations under this Agreement, the Supplier must comply with all Laws, including any which may be listed here for information purposes due to their particular relevance to the Services:	
Item 15	<b>Local Jobs First Policy (Clause 15.5 and Error! Reference source not found.)</b>	<input type="checkbox"/> The Local Jobs First Policy is applicable to this Agreement If ticked, the Local Jobs First Policy is applicable to this Agreement and the provisions of <b>Error! Reference source not found.</b> are incorporated into this Agreement. <input checked="" type="checkbox"/> The Local Jobs First Policy is not applicable to this Agreement	
Item 16	<b>Social Procurement Framework (Clause 15.6 and Error! Reference source not found.)</b>	<input type="checkbox"/> The Social Procurement Commitments and model clauses are applicable to this Agreement If ticked, the Social Procurement Commitments and model clauses are applicable to this Agreement and the provisions of <b>Error! Reference source not found.</b> are incorporated into this Agreement. <input checked="" type="checkbox"/> The Social Procurement Commitments and model clauses is not applicable to this Agreement	
Item 17	<b>Fair Jobs Code (Clause 15.7 and Error! Reference source not found.)</b>	<input type="checkbox"/> Fair Jobs Code is applicable to this Agreement If ticked, the Fair Jobs Code is applicable to this Agreement and the provisions of <b>Error! Reference source not found.</b> are incorporated into this Agreement. <input checked="" type="checkbox"/> The Fair Jobs Code is not applicable to this Agreement	
Item 18	<b>Notice particulars (Clause 19)</b>	<b>Department:</b>	
		Addressee:	
		Address:	
		Email:	
		<b>Supplier:</b>	
		Addressee:	
		Address:	
		Email:	
Item 19	<b>Additional Items (Clause 30.11)</b>	<input type="checkbox"/> Additional items form part of this Agreement <input checked="" type="checkbox"/> No additional items form part of this Agreement	

## Schedule 2: Services, Specifications and Price Schedule

### Item 1: Services and Deliverables (Clause 2) and Specifications (Clause 7)

Scope of Services      The supplier will arrange **one consultation of up to 3 hours**, directly with the farmer. The delivery method and location to be negotiated by the two parties.

The contracted supplier will develop a **farm drought management action plan** during the consultation and will provide a completed copy to the client **within one week** of the consultation. A draft template will be provided but may be expanded.

The consultation is recommended to include discussion on the following key areas:

- clarify farmer goals and priorities (reference farm business or strategic plan, if available).
- identify key business and farm risks, stress and/or pressure points (economic, social, environmental)
- conduct feed and/or water budgets, or other analysis
- explore options and trigger points e.g. destock, lease,
- talk through decisions and trigger points over the short (next few weeks), medium (next 2-3 months) and longer term (6+ months).
- Develop an action plan with smart goals:
  - Specific – Is the goal specific about what the participant is trying to achieve?
  - Measurable – Are there indicators that can be measured to demonstrate the attainment of the goal?
  - Actionable – Are there actions that can realistically be applied, that will result in the goal being achieved?
  - Realistic – Does the goal make sense against the overall vision/intent of the plan?
  - Timebound – In what timeframe should the action be taken?
- Offer relevant referrals to signpost to other support services where relevant (e.g. Rural Financial Counselling Service, wellbeing or mental health services etc).

Arrange time for a **60 minute follow up phone call** to discuss action plan progress or outstanding questions.

**Provide summary / report to the AgVic Project Manager** using the MS form below, including the client's unique identifier:

<https://forms.office.com/r/Q48F63RG7W>

**Submit Invoice/Purchase Order** including the unique client identifier and purchase order number.

Key Deliverables & Timeframe	<ul style="list-style-type: none"> <li>Attend (or view recorded) information session to be held by Ag Vic – online via Zoom.</li> <li>Complete delivery of all one-on-one (1:1) services by 30 April 2025</li> <li>Complete Evaluation Form (<a href="https://forms.office.com/r/Q48F63RG7W">https://forms.office.com/r/Q48F63RG7W</a>) by 15 May 2025</li> <li>Provide invoice/s for payment by 15 May 2025.</li> </ul>
------------------------------	--

## Item 2: Price Schedule (Clause 9)

Criteria	Supplier Response
<p><b>2.1 Financial</b></p> <p>Please provide <b>total rate</b> to deliver services outlined in section 2.3 (scope of services) per client (inclusive of GST).</p> <p><b>Your quote must be valid to 30 June 2025</b></p> <p><i>You will be paid based on number of unique clients contracted and completed.</i></p> <p><i>For one-to-one consult, preparation of their advice, follow-up 1 hour phone call and completing DEECA feedback</i></p>	<p><b>XXX incl GST</b></p> <p><i>For one-to-one consult, preparation of their advice, follow-up</i></p> <p><i>1 hour phone call and completing DEECA feedback</i></p>
<p><b>2.2. Travel</b></p> <p><b>Travel will be capped at a maximum of 500km.</b></p> <p>Travel is paid on a per kilometre rate of 0.85c and should be itemised in the tax invoice provided.</p>	<p><b>Acknowledgement</b></p> <p>Yes/No</p>

## Schedule 3: Service Level Requirements

### 1. Service Level Requirements

In providing the Services and otherwise performing its obligations under the Agreement, the Supplier must comply with the following Service Level Requirements, detailed in *Section 2.4 Key Deliverables & Timeframe* of the RFQ document:

#### a) Key Deliverables & Timeframe

- Attend (or view recorded) information session to be held by Ag Vic – online via Zoom. Date and details TBA.
- Complete delivery of all one-on-one (1:1) services by 30 April 2025
- Complete Evaluation Form (<https://forms.office.com/r/Q48F63RG7W>) by 15 May 2025
- Provide invoice/s for payment by 15 May 2025.

## Executed as an Agreement

Signed by [INSERT] a duly authorised officer for and on behalf of the **STATE OF VICTORIA** through the **Department of Energy, Environment and Climate Action** in the presence of:

.....

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (print)

\_\_\_\_\_  
Date

☐ The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* have been met.\*

\*Check the box if this is applicable.

### **Where the Supplier is a corporate trustee:**

Executed by [INSERT] ACN [INSERT] as a trustee of [INSERT] acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of Company Secretary/Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Company Secretary/Director (print)

\_\_\_\_\_  
Name of Director (print)

\_\_\_\_\_  
Date

By signing the document and sending it back to us, you are consenting to the Agreement being executed electronically, and you also confirm that your nominated signatory(s) has the appropriate authority to enter into the Agreement.

☐ The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000* have been met.\*

*\*Check the box if this is applicable.*

DRAFT

# Annexure A – Form of Purchase Order

[This is an example of a Purchase Order template to be used with the head terms, which can be adapted. When finalising the Agreement, a blank Purchase Order template should be included in Annexure A.]

## PURCHASE ORDER

issued by

The State of Victoria through the Department of Energy, Environment and Climate Action  
(Department)

to

[Supplier name] (Supplier)

under the Agreement for the supply of Goods (Contract Number: [Insert]) dated [Insert date of Agreement] (Agreement)

1.	<b>Purchase Order Contract number</b>	[Insert a Purchase Order Contract number]								
2.	<b>Date of Purchase Order</b>	[Insert date the Supplier receives the Purchase Order]								
3.	<b>Start Date</b>	[Insert date for start of supply of Goods in this Purchase Order.]								
4.	<b>Completion Date</b>	[Insert date for completion of delivery of all Goods in this Purchase Order.]								
5.	<b>Goods</b>	[Describe which Goods from Item 1 of Schedule 2 are to be provided.]								
6.	<b>Number of units</b>	[Insert number of units to be delivered.]								
7.	<b>Delivery</b>	<p><b>Delivery Point(s):</b> [Insert the address and location for delivery of the Goods specific to this Purchase Order (together with any necessary / helpful details to facilitate delivery).]</p> <p><b>Time(s) for Delivery:</b> [Insert details regarding date(s) and time(s) for delivery, for example within three Business Days of the Start Date stated in the relevant Purchase Order Contract, during ordinary business hours.]</p>								
8.	<b>Milestones</b>	<p>[Describe the applicable Milestones and Milestone Dates by which those Milestones must be achieved, if any. Any Milestones which are also payment Milestones (if used in item 12) should also be referred to consistently.]</p> <table><thead><tr><th>Milestones</th><th>Milestone Date</th></tr></thead><tbody><tr><td>e.g. Milestone 1 Acceptance of the following Goods/ deliverables: (a) Specify ... (b) Specify ... (c) ...</td><td>[insert]</td></tr><tr><td>e.g. Milestone 2</td><td>[insert]</td></tr><tr><td>e.g. Milestone 3</td><td>[insert]</td></tr></tbody></table>	Milestones	Milestone Date	e.g. Milestone 1 Acceptance of the following Goods/ deliverables: (a) Specify ... (b) Specify ... (c) ...	[insert]	e.g. Milestone 2	[insert]	e.g. Milestone 3	[insert]
Milestones	Milestone Date									
e.g. Milestone 1 Acceptance of the following Goods/ deliverables: (a) Specify ... (b) Specify ... (c) ...	[insert]									
e.g. Milestone 2	[insert]									
e.g. Milestone 3	[insert]									

		<div style="border: 1px solid black; background-color: #cccccc; padding: 2px;">Total</div> ]
9.	<b>Warranty Period</b>	The Warranty Period (if any) is as specified in Item 14 of Schedule 1 of the Agreement.
10.	<b>Price</b>	<b>Purchase Price:</b> \$[Insert] (ex GST), being \$[Insert] (inc GST) <i>[Include a breakdown of the Purchase Price with reference to the relevant Unit Price(s), and any other necessary information relating to the pricing for the Goods. At minimum, you must state the GST exclusive figures for all pricing. The GST inclusive figure can be included as an option.]</i>
11.	<b>Liquidated damages</b>	<i>[If no liquidated damages apply, delete the text below and insert "Not Applicable".]</i> Liquidated damages apply to the Purchase Order Contract at the rate (if any) set out in Item 2 of Schedule 1 of the Agreement for each day after the Time for Delivery by which the delivery of the Goods remains outstanding.
12.	<b>Invoicing requirements</b>	<i>[Select one, and insert details where applicable]</i> <input type="checkbox"/> The invoicing requirements set out in Item 5 of Schedule 1 of the Agreement apply to this Purchase Order. <input type="checkbox"/> The following invoicing requirements apply in addition to, or instead of (as applicable), the invoicing requirements set out in Item 5 of Schedule 1 of the Agreement. <i>[Describe additional / alternative invoicing requirements.]</i>
13.	<b>Notice requirements</b>	<i>[Select one, and insert details where applicable]</i> <input type="checkbox"/> The notice particulars set out in Item 18 of Schedule 1 of the Agreement apply to this Purchase order. <input type="checkbox"/> The following notice particulars apply in addition to, or instead of (as applicable), the notice particulars set out in Item 18 of Schedule 1 of the Agreement. <i>[Describe additional / alternative notice particulars.]</i>
14.	<b>Other information</b>	<i>[Describe any other information relevant to the supply of the Goods under the Purchase Order Contract. Note that this information will not over-ride the terms and conditions of the Agreement.]</i>



DRAFT

© State of Victoria 2021



Licensed under a Creative Commons Attribution  
4.0 licence with adaptations.