Conditions for the provision of Services

[Organisation name]

Version 1.2

1. Term of Agreement
   * 1. The Agreement begins on the Commencement Date and continues until the Completion Date, unless extended in accordance with clause 1.(b) or terminated earlier in accordance with these terms. If no Completion Date is specified, the Agreement will come to an end when all Services have been completed and all payments required to be made under the Agreement have been made.
     2. A party may, by the provision of notice in writing, request the Agreement be extended beyond the Completion Date. The Agreement may only be extended for the period or periods as agreed to by the parties in writing.
2. Provision of Services
   * 1. The Supplier must provide the Services to the Organisation in accordance with this Agreement and any reasonable directions given by the Organisation from time to time.
     2. The Supplier must:
        1. complete the Services by the Completion Date and any other date(s) for delivery of the Services specified in the Purchase Order;
        2. promptly notify the Organisation as soon as it becomes aware of any delay or possible delay in the supply of the Services in accordance with the Agreement;
        3. provide fit for purpose Services in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services; and
        4. use appropriately skilled and qualified Personnel to provide the Services.
     3. After performance of the Services or delivery of any deliverable provided as part of the Services, the Organisation will undertake such reviews as it considers necessary to determine whether the Services or deliverable(s) are fit for purpose and comply with this Agreement. After reviewing the Services or deliverable(s), the Organisation may notify the Supplier in writing:
        1. 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
        2. if the Services or deliverable(s) are not fit for purpose or do not comply with this Agreement, in which case clause 2.(d) will apply.
     4. If the Organisation notifies the Supplier that the Services or deliverable(s) are not fit for purpose or do not comply with this Agreement, the Supplier must promptly rectify the non-compliance following which the Organisation will undertake further review of the Services or deliverable(s) under clause 2.(c). This process will continue until, at the Organisation's discretion, the Organisation:
        1. waives, in writing, the requirement for the Services or deliverable(s) to comply with this Agreement;
        2. is satisfied that the Services or deliverable comply with this Agreement and accepts the Services or deliverable(s) in accordance with clause 2.1(i);
        3. conditionally accepts the Services or deliverable(s), subject to the Supplier agreeing to rectify the non-compliance within a reasonable timeframe and on such terms as the Organisation specifies; or
        4. subject to the Organisation having provided the Supplier with at least two opportunities to rectify the non-compliance under clause 2.1(ii), immediately terminate this Agreement by written notice to the Supplier.

If the Organisation terminates this Agreement under this clause 2.1(iv), the Organisation will be entitled to a full refund of all moneys paid to the Supplier in respect of the Services or deliverables which the Organisation is unable to use following termination.

1. Price for the Services
   * 1. The Rates and Fees payable for the Services are fixed.
     2. The Supplier may not charge the Organisation for any additional fees or charges, or recover any expenses or other costs from the Organisation.
2. Invoicing and payment
   * 1. Upon completion of the Services, or as otherwise specified in the Purchase Order, the Supplier must submit an invoice to the Organisation at the address specified in the Purchase Order.
     2. On or following acceptance of the Services, the Organisation will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice. If the Organisation disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 14..
     3. Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.
     4. Simple interest, as at the penalty interest rate fixed for the time being under the *Penalty Interest Rates Act 1983 (Vic)*, accrues on a daily basis on any Overdue Amount and is payable by the Organisation to the Supplier on demand.
3. Fair Payments Policy
   * 1. This clause 5 applies only if the total aggregate Fees payable under this Agreement is less than $3 million.
     2. If this clause 5 applies, the reference in clause 4(b) is taken to be a reference to 10 Business Days.
     3. Simple interest payable under clause 4(d) in respect of an Overdue Amount does not become payable after 10 Business Days, but only after 30 days from the date of receipt of a correct invoice, in respect of any Overdue Amount payable before 1 April 2021.
4. Failure to perform
   * 1. If the Supplier fails to perform any Services or deliver any deliverable(s) in accordance with this Agreement the Organisation:
        1. will not be required to pay for those Services or deliverable(s) until they are provided in accordance with the Agreement; and
        2. may issue a notice to the Supplier requiring the Supplier to remedy any default or re-perform the Services or deliverable(s) within the time specified by the Organisation (which time must be reasonable having regard to the nature of the relevant Services or deliverable(s)).
     2. If:
        1. the default referred to in clause 6.(a) above is incapable of being remedied or re-performed; or
        2. the Supplier fails to remedy the default or re-perform the non-compliant Service(s) or deliverable(s) within the time specified in the notice issued under clause 6.1(ii),

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

* + 1. Nothing in this clause 6 derogates or otherwise limits any other remedy available to the Organisation at Law.

1. Liability
   * 1. The Supplier indemnifies, and will at all times keep the Organisation and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
        1. personal injury, including sickness and death;
        2. property damage;
        3. breach of an obligation of confidence or privacy, whether under this Agreement or otherwise;
        4. fraudulent acts or omissions;
        5. wilful misconduct or unlawful act or omission;
        6. breaches of logical or physical security;
        7. loss or corruption of Data;
        8. third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
        9. infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,

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

* + 1. The Supplier’s liability to indemnify the Organisation under clause 9(a) is reduced to the extent that any wilful, unlawful or negligent act or omission of the Organisation or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.
    2. To the extent that the indemnity in clause 7.(b) refers to persons other than the Organisation, the Organisation holds this clause on trust for those other persons.

1. Warranties

The Supplier represents and warrants to the Organisation that:

* + 1. (**Capacity**) it has the right to enter into the Agreement and perform the Services;
    2. (**Purpose**) where the Organisation 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;
    3. (**Conflict**) it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement;
    4. (**Trust**) it has not entered into the Agreement on behalf of a trust; and
    5. (**No infringement**) the receipt of the Services and the possession or use of any deliverables by the Organisation will not infringe the Intellectual Property Rights or other rights of any person or any Laws.

1. Termination
   * 1. The Organisation may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
        1. fails to provide the Services in accordance with the Agreement;
        2. breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
        3. breaches any provision of the Agreement that is not capable of remedy;
        4. or any of its Personnel involved in the provision of the Services commits fraud, dishonesty or any other serious misconduct;
        5. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
        6. suffers from an Insolvency Event.
     2. The Organisation may terminate the Agreement without cause on notice to the Supplier.
     3. If the Agreement is terminated pursuant to clause 9.(b), the Organisation will pay the Supplier:
        1. for the Services performed in accordance with the Agreement up to the date of the termination; and
        2. the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,

and the Organisation has no other liability to the Supplier in relation to that termination.

* + 1. When the Organisation issues a notice under clause 9.(b), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
    2. The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to the Organisation if the Organisation fails to pay amounts due under this Agreement.
    3. Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
    4. On termination or expiry the Supplier must immediately, following instructions by the Organisation, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to the Organisation.

1. Confidentiality, privacy and data protection
   * 1. The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
     2. The Supplier consents to the Organisation publishing or otherwise making available information in relation to the Supplier (and the provision of the Services):
        1. as may be required to comply with the Contract Publishing System;
        2. to other Victorian Public Entities or Ministers of the State in connection with the use of the Services;
        3. 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;
        4. to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
        5. to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
        6. to the IBAC.
     3. The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Organisation in respect of that act or practice had it been directly done or engaged in by the Organisation.
     4. The Supplier acknowledges that the Organisation is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the State, under or in connection with the Agreement.
2. Sub‑contracting
   * 1. The Supplier must not sub‑contract to any third person any of its obligations in relation to the Services without the prior written consent of the Organisation (which may be given conditionally or withheld in its absolute discretion).
     2. The Supplier will not, as a result of any sub‑contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub‑contractor as though they were the actions of the Supplier itself.
3. Compliance with Law and Policy
   * 1. The Supplier must, in performing its obligations under the Agreement, comply with the Laws relevant to the provision of Services by the Supplier under the Agreement and with the ‘Victorian Industry Participation Policy’ (if applicable).
     2. Where, in the course of providing the Services, the Supplier or its Personnel:
        1. supervise or work with Public Sector Employees;
        2. undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace; or
        3. 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.

* + 1. The Supplier acknowledges that:
       1. 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;
       2. it has read and aspires to comply with the Supplier Code of Conduct; and
       3. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.

1. Dispute Resolution
   * 1. If any dispute arises under or in connection with this Agreement (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute in good faith.
     2. If the Dispute is not resolved in 15 Business Days it will be referred to mediation (**Mediation**) conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**) with each party bearing their own cost.
     3. If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
     4. The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.
2. General
   * 1. The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
     2. Time is of the essence in relation to the provision of the Services.
     3. The Agreement may only be varied or replaced by a written document executed by the parties.
     4. A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.
     5. Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
     6. The Organisation may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to the Organisation.
     7. Subject to clause 15.(h), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
     8. The Organisation may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any Victorian Public Entity in the event of any State government restructure or other re‑organisation or change in policy.
3. Entire Understanding and order for precedence
   * 1. In the event and to the extent of any inconsistency between these General conditions for the supply of services and the Purchase Order, the General conditions will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Purchase Order without otherwise diminishing the enforceability of the remaining provisions of the Purchase Order.
     2. This Agreement contains everything the parties have agreed in relation to the Services. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
4. Survival

Clauses 3., 4., Error: Reference source not found, Error: Reference source not found, 7., 8., 9.(c), 9.(d), 9.(f), 9.(g), Error: Reference source not found, 10., 12.(b), 14., 15., 17., Error: Reference source not found and 18. of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of Services and may be enforced at any time.

1. Interpretation

Unless expressed to the contrary, in this Agreement:

* + 1. words in the singular include the plural and vice versa;
    2. any gender includes the other genders;
    3. if a word or phrase is defined its other grammatical forms have corresponding meanings;
    4. 'includes’ and 'including' are not words of limitation;
    5. 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;
    6. the obligations of the Supplier, if more than one person, under the Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of the Agreement, of the other as if those acts or omissions were its own;
    7. the rights of the Supplier, if more than one person, under the Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally); and
    8. a reference to:
       1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
       2. a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
       3. any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
       4. a party or parties is a reference to the Organisation and the Supplier (as the case requires).