# **MODEL CLAUSES FOR AGREEMENTS**

|  |
| --- |
| **DRAFTING NOTE:**  These model clauses are designed to form a separate Schedule to the Agreement, to ensure that agreed Social Procurement Commitments and reporting requirements are contractually binding.  The clauses are drafted in generic language to minimise the need to align them with the language of the Agreement.  Key steps:   * + - 1. Insert a clause in the Agreement, in the appropriate place, stating that this Schedule applies and forms part of the Agreement.   **Example**: ‘Schedule X forms part of the terms and conditions of this Agreement. The Supplier, in performing its obligations under this Agreement, must comply with Schedule X.’   * + - 1. Ensure that the words or phrases used in this Schedule are consistent with the words or phrases used in the Agreement. For example, the words or phrases ‘Agency’, ‘Agreement’, ‘Contract Manager’, ‘Supplier’, ‘and ‘term’ may need to be changed.       2. Ensure that the clauses in this Schedule are consistent with the clauses in the Agreement (that is, to avoid any clauses in this Schedule being rendered inoperative by an order of precedence interpretation clause in the Agreement).       3. Remove all drafting notes from the model clauses.       4. Insert the agreed version of the Social Procurement Commitment Proposal (including any Social Procurement Commitments) at Attachment 1 to this Schedule. |

## **Schedule [X] – Social Procurement Framework**

#### **Definitions**

**In this Schedule:**

**Agency** means the organisation with which the Supplier has entered into this Agreement.

**Agreed Social Procurement Commitment Proposal** means the agreed proposal between the Agency and the Supplier establishing the Social Procurement Commitments set out at Attachment 1 to this Schedule.

**ICN** means Industry Capability Network (Victoria) Limited of Level 11, 10 Queens Road, Melbourne VIC 3004 ACN 007 058 120.

**Social Procurement Commitment** means an obligation required to be performed by the Supplier, as set out in the Agreed Social Procurement Commitment Proposal, in relation to delivering a Social Procurement Framework Outcome.

**VMC (formerly Victorian Management Centre)** means the information management platform that collects data to support government and industry with the Social Procurement Framework and Local Jobs First policy, project delivery and performance, administered by the ICN.

#### **Agreed Social Procurement Commitment Proposal**

1. The Supplier will, in performing its obligations under this Agreement:
   1. comply with the Agreed Social Procurement Commitment Proposal;
   2. perform all Social Procurement Commitments by the due date for performance as set out in the Agreed Social Procurement Commitment Proposal or otherwise agreed between the parties in writing.
2. The Supplier acknowledges and agrees that the Agreed Social Procurement Commitment Proposal (including the Social Procurement Commitments) applies during the term of this Agreement and any extensions to the term and until all obligations under clause 4 of this Schedule are fulfilled.

|  |
| --- |
| **DRAFTING NOTE:**  The Social Procurement Framework does not contain measures to address a Supplier’s non-compliance with the Agreed Social Procurement Commitment Proposal. Each department and agency will need to determine (and contractually negotiate) what consequences will apply if a Supplier fails to perform its Social Procurement Commitments. For example, Agreements may include financial or other disincentives that apply if the Social Procurement Commitments are not met.  Each Agency will determine whether there has been a valid reason for non-compliance (such as an unavoidable change of supplier). Where no valid reason can be identified, the Agency may determine that this represents a breach of Agreement and take appropriate action under the Agreement. A Supplier’s non-compliance with the Social Procurement Commitments as reported may also be considered in the assessment or review of the Supplier’s eligibility to tender for future Victorian Government Contracts. |

1. The Supplier’s failure to comply with clause 2 may constitute a breach of this Agreement.

|  |
| --- |
| **DRAFTING NOTE:**  Departments and agencies must ensure that reporting requirements (for example, frequency and method of reporting) are proportionate to the Social Procurement Commitments and appropriate for managing supplier performance.  Model clause 3 provides for regular reporting submitted via the VMC.   * Where the individual procurement activity has a Social Procurement Commitment, the Supplier must use the VMC to report on its performance against Social Procurement Commitments. * Using the VMC streamlines and simplifies reporting for buyers and suppliers – especially where the Social Procurement Framework and the Local Jobs First Policy apply. * Please contact [reporting@icn.org.au](mailto:reporting@icn.org.au) for technical support in relation to the VMC.   If the ICN VMC is not being used, delete the definitions of ‘ICN’ and ‘VMC’ in model clause 1 and amend model clause 3(d) to reflect the preferred method of reporting. |

#### **Reporting**

1. The Supplier will prepare and maintain records demonstrating its:
   1. compliance with the Agreed Social Procurement Commitment Proposal;
   2. performance against the Social Procurement Commitments.
2. The Supplier will, during the term of this Agreement, provide a written report to the Agency demonstrating its progress toward performing the Social Procurement Commitments at least every [insert period] and any other such times as requested by the Agency, acting reasonably.
3. The Agency may request the Supplier to meet to discuss the contents of the report and other issues concerning the progress towards the Social Procurement Commitments including any identified reporting deficiencies and timeframes for rectification.
4. The reports provided in accordance with clause 3(b) will:
   1. be submitted (where possible) by the Supplier using the VMC – or as otherwise agreed by the Agency;
   2. be in a form satisfactory to the Agency (acting reasonably);
   3. include all supporting information reasonably required by the Agency to verify the contents of the report.
5. Within two months of the completion of the Services or the expiry or termination of this Agreement, whichever is earlier, the Supplier will provide:
   1. a written final report to the Agency demonstrating its compliance with the Agreed Social Procurement Commitment Proposal and satisfactory performance of the Social Procurement Commitments; and
   2. a statutory declaration in the form set out in Attachment 2 to this Schedule to confirm that the information contained in the final report is true and accurate. The Supplier must ensure the statutory declaration is made by a director of the Supplier or the Supplier’s Chief Executive Officer or Chief Financial Officer.
6. At the request of the Agency, the Supplier will provide further information about, or explanation of, any:
   1. non-compliance with the Agreed Social Procurement Commitment Proposal;
   2. failure to perform the Social Procurement Commitments by the due date for performance.
7. The obligations set out in this clause 3 are in addition to, and do not derogate from, any other obligations set out in this Agreement.

#### **Verifying compliance**

1. The Supplier acknowledges and agrees that the Agency will have the right to inspect the Supplier's records to verify its compliance with the Agreed Social Procurement Commitment Proposal.
2. The Supplier will:
   1. permit the Agency, or a duly authorised nominee of the Agency, from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Supplier for the purposes of this clause 4;
   2. permit the Agency, or a duly authorised nominee of the Agency, from time to time to undertake a review of the Supplier’s performance against the Social Procurement Commitments; and
   3. ensure that its employees, agents and subcontractors give all reasonable assistance to the Agency, or a duly authorised nominee of the Agency, to undertake such inspection, verification or review.
3. The Supplier acknowledges and agrees that the Agency, or a duly authorised nominee of the Agency, is authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Supplier’s performance against the Social Procurement Commitments.
4. The obligations set out in this clause 4 are in addition to, and do not derogate from, any other obligations as set out in this Agreement.

#### **Use of information**

1. The Supplier acknowledges and agrees that the Agency will assess the Supplier’s performance against the Social Procurement Commitments and this information may be:
   1. provided by the Agency to other departments such as the departments responsible for the Social Procurement Framework;
   2. considered in the assessment or review of the Supplier's eligibility to tender for future Victorian Government contracts; and
   3. disclosed in accordance with this Agreement or as otherwise required by Law.

#### **Subcontracting**

1. The Supplier will ensure that any subcontracts it enters into in relation to this Agreement contain clauses requiring its subcontractors to:
   1. comply with the Agreed Social Procurement Commitment Proposal to the extent that it applies to work performed under the subcontract as though the subcontractor was the Supplier;
   2. provide any necessary information to the Supplier and/or the Agency to ensure the Supplier can comply with its obligations under this Schedule;
   3. permit the Agency to exercise its rights under clause 4 of this Schedule as though that clause referred to the subcontractor in place of the Supplier.
2. The obligations set out in this clause 6 are in addition to, and do not derogate from, any other obligations as set out in this Agreement.

|  |
| --- |
| **DRAFTING NOTE:**  The Social Procurement Framework does not contain measures to address a Supplier’s non-compliance with the Agreed Social Procurement Commitment Proposal. Each department and agency will need to determine (and contractually negotiate) what consequences will apply if a Supplier fails to perform its Social Procurement Commitments. For example, Agreements may include financial or other disincentives that apply if the Social Procurement Commitments are not met.  Each Agency will determine whether there has been a valid reason for non-compliance (such as an unavoidable change of supplier). Where no valid reason can be identified, the Agency may determine that this represents a breach of Agreement and take appropriate action under the Agreement. A Supplier’s non-compliance with the Social Procurement Commitments as reported may also be considered in the assessment or review of the Supplier’s eligibility to tender for future Victorian Government Contracts. |

1. The Supplier's failure to comply with this clause 6 may constitute a breach of this Agreement.

## **Attachment 1 – Agreed Social Procurement Commitment Proposal**

|  |
| --- |
| **DRAFTING NOTE:**  Departments and Agencies may need to clarify or negotiate the proposed Social Procurement Commitments and reporting requirements set out in the successful Bidder’s Social Procurement Commitment Proposal. For example, a successful Bidder may propose a Social Procurement Commitment, but it is unclear how performance will be measured.  Once these have been agreed, this document becomes the Supplier’s Agreed Social Procurement Commitment Proposal. Insert a copy of the Agreed Social Procurement Commitment Proposal here. |

<insert copy of agreed Social Procurement Commitment Proposal here>

## **Attachment 2 – Statutory Declaration**

#### **Instructions for completing this declaration**

1. Please delete the text between square brackets and provide your own information.
2. All fields in square brackets are required fields

### **Statutory Declaration**

I [insert name] of [insert address] and [insert occupation] make the following statutory declaration under the **Oaths and Affirmations Act 2018:**

1. I am a Director of [insert name of Recipient] (**Supplier**).
2. The contents of the report provided by the Supplier to the Agency (in accordance with clause [insert Schedule reference] of Schedule [insert Schedule reference] to the Agreement) are true and correct.

#### **Applicant signature**

**I declare that the contents of this statutory declaration are true and correct and I make it knowing that making a statutory declaration that I know to be untrue is an offence.**

|  |  |
| --- | --- |
| Signature of person making the declaration: | [insert signature] |
| Declared at: | [City, town or suburb] in the state of Victoria. |
| Date: | [insert date] |

#### **Witness signature**

A person authorised under section 30(2) of the **Oaths and Affirmations Act 2018** to witness the signing of a statutory declaration.

**I am an authorised statutory declaration witness and I sign this document in the presence of the person making the declaration**

|  |  |
| --- | --- |
| Signature of authorised witness: | [insert signature] |
| Date | [insert date] |
| Name | [insert name] |
| Capacity | [Insert capacity in which authorised person has authority to witness] |
| Address | [insert address] |

### **Certificate Identifying Exhibit**

This certificate is used to identify a document as an exhibit to the statutory declaration.

|  |  |
| --- | --- |
| Title of document: | [insert title of document] |
| Date of document (dd/mm/yyyy): | [insert date] |

**The attached document is an exhibit to the statutory declaration and is now produced and shown to the witness identified above in their capacity as a qualified statutory declaration witness.**

|  |  |
| --- | --- |
| Name of person making the statutory declaration: | [insert name] |
| Signature of person making declaration: | [insert signature] |
| Date: | [insert date] |

#### **Witness signature**

|  |  |
| --- | --- |
| Name of witness | [insert name] |
| Address | [insert address] |
| Signature of statutory declaration witness: | [insert signature] |
| Date *(dd/mm/yyyy)* | [insert date] |
| Qualification as a statutory declaration witness *(writing, typing or stamp)*: | [Insert capacity in which authorised person has authority to witness] |