**eServices Registration Deed**

(Version 6.0)

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**Registration Deed**

The Department of Government Services (ABN 43 381 068 109) ("**DGS**") is the department responsible for the implementation of the Victorian Government Digital Strategy and for the management of the Register.

The Victorian Government Digital Strategy recognises the importance of involving small and medium enterprises either directly or through the supply chain, and the establishment and maintenance of a register of suppliers for eServices is a way of achieving that objective. Suppliers who are members of the Register will be eligible to supply eServices to government buyers.

By agreeing to the terms and conditions of this deed ("**Terms**"), You will be appointed a member of the Register in accordance with clause 1 and you agree to operate in accordance with these Terms. DGS may terminate or suspend Your membership in accordance with clause 6.

You agree to supply services and deliverables to Customers under, and in accordance with, the following (choose one only):

Short Form Contract (Version 6.0) **ONLY**; or

Short Form Contract **AND** Long Form Contract (Version 6.0).

***[IMPORTANT INSTRUCTIONS:*** *Please tick* ***only one*** *box above. If you agree to provide services and deliverables on the terms of:*

* *the Short Form Contract ONLY, tick the first box above. Suppliers who tick this box will not be invited to respond to requests for quotes for procurement activities requiring the Long Form Contract (unless otherwise agreed with DGS); or*
* *the Short Form Contract AND Long Form Contract, tick the second box above.*

*Suppliers who tick the first box above and subsequently wish to enter into a Long Form Contract will need to notify DGS and update their registration details as instructed.]*

**Execution page**

Executed as a **deed**.

[***Execution block 1:*** *Company with two or more directors*]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered by** [insert name and ABN/ACN]in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
| Signature of director |  |  | Signature of company secretary/director |
|  |  |  |  |
| Full name of above signatory |  |  | Full name of above signatory |

|  |
| --- |
|  |
| Date |

[***Execution block 2:*** *Company with one director only*]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** by [insert name and ABN/ACN]in accordance with section 127 of the *Corporations Act 2001* (Cth): |  |  |  |
|  |  |  |  |
| Full name of signatory |  |  | Sole director |
| Date |  |  |  |

[***Execution block 3:*** *Sole trade**r*]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed, sealed and delivered** by [insert name and ABN (if any)] in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature |
|  |  |  |  |
|  |  |  |  |
| Full name of witness |  |  |  |
| Date |  |  |  |
|  |  |  |  |

# Your appointment and responsibilities

## General terms

### DGS appoints You to the Register on the Appointment Date to supply eServices in the categories You have nominated for on the Digital Marketplace.

### These Terms and Your appointment to the Register will continue until terminated in accordance with clause 6.1.

## Your responsibilities

### You acknowledge and agree that:

### the eServices You offer to supply will be listed on the Digital Marketplace and it is Your responsibility to update these details in accordance with clause 4.1.2 from time to time;

### membership of the Register is required to participate on the Digital Marketplace;

### You will only accept eServices related engagements through the Digital Marketplace;

### no agreement between You and a Customer is formed until an Ordering Document is entered into between You and the Customer in accordance with the eServices Contract;

### You will conduct business ethically, honestly, transparently, safely and in compliance with Victorian Government policies, and legal and regulatory obligations; and

### DGS may use and disclose any information You provide, including any Confidential Information of Yours:

#### to Customers;

#### for our lawful functions or purposes;

#### on the Victorian contracts publishing system in order to comply with Victorian Government policy requiring publication of details of contracts entered into by Victorian Government departments, as amended from time to time;

#### to the Auditor-General;

##### in accordance with, or to the extent required to comply with, laws, including the *Freedom of Information Act 1982* (Vic); or

##### to satisfy the requirements of parliamentary accountability;

#### to Victorian Public Entities for the purpose of or in connection with:

##### the management of a Probity Event or Probity Breach or investigating whether a Probity Event or Probity Breach has occurred; or

##### considering Your suitability in any future approach to market or procurement processes administered by DGS or any Customer; or

#### to satisfy DGS public accountability or transparency obligations or the requirements of a Government Authority.

## Existing arrangements

Acceptance of these Terms does not terminate or alter any other contracts between You and any Customer that existed as at the Appointment Date (unless otherwise set out in the Ordering Document).

## No commitment to procure or exclusivity

You acknowledge and agree that DGS and Customers:

### may engage any other person to provide deliverables and services the same as, or similar to, the deliverables and services You provide (whether or not they are on the Register); and

### are under no obligation to invite You to make proposals to supply services or deliverables, or to acquire any volume of services or deliverables from You and make no representation that they will do so.

# Standing offer

## You make a standing offer to Customers

### You make a standing offer to supply deliverables and services to Customers on the terms of the eServices Contract (and any Ordering Document agreed between You and the relevant Customer). You must not vary the terms of the eServices Contract in any Ordering Document entered into between You and a Customer.

### A Customer may elect to purchase deliverables and services from You by submitting an Ordering Document to You.

### You agree that DGS may change the terms of the eServices Contract from time to time by publishing updated terms on the eServices Website. DGS will provide You with reasonable prior notice before publishing the updated terms.

### If You do not agree to any changes to the eServices Contract, You must notify the eServices Contract Manager promptly.

### You acknowledge that the Victorian Government Purchasing Board mandates certain Customers to procure eServices under the eServices Contract and You agree not to enter into an alternative agreement to provide eServices to such Customers unless a written exemption from DGS is in place.

# Warranties

## Your general warranties

### You warrant that as at the Appointment Date and for the duration of your appointment to the Register:

### ***Conflict of interest***. No Conflict of Interest exists or is likely to arise;

### ***Insurance requirements***. You hold and maintain the following types of insurance policies with an insurance company approved by the Customer:

#### public liability insurance for an insured amount of not less than $5 million per occurrence or as otherwise specified in the Ordering Document, whichever is the higher;

#### professional liability or 'errors and omissions' insurance for an insured amount of not less than $2 million in aggregate or as otherwise specified in the Ordering Document, whichever is the higher, to cover any claim against You for any reason for any loss, damage, costs or expense due to the errors or any negligent or wrongful act or omission by You (or any of its employees, agents or contractors) in rendering or failing to render professional services;

#### workers compensation insurance as required by law; and

#### if You offer to supply any physical information and communication technologies equipment, product liability insurance (including product recalls) for an insured amount of not less than $5 million per claim or as otherwise specified in the Ordering Document, whichever is the higher;

### ***Financial and operational viability*.** You will maintain Your capacity and capability to provide the categories of eServices You offer to supply, including with regard to Your financial viability;

### ***Fair Jobs Code***. You hold a valid Pre-Assessment Certificate, and when performing Your obligations under these Terms, You must comply with the FJC and the FJC Plan (if applicable); and

### ***Victorian Government Policies***. You and Your Personnel will comply with additional obligations required by Customers relating to Victorian Government Policies, including the FJC, Local Jobs First and the Social Procurement Framework.

# Relationship management

## Governance and reporting

### You must (at Your own cost):

#### immediately notify the eServices Contract Manager if:

##### You are (or reasonably suspect that you are likely to be) subject to an Insolvency Event or Change of Control;

##### a Conflict of Interest arises or is likely to arise;

##### You experience a Probity Event or Probity Breach;

##### You undergo any material change in Your financial or operational viability; or

##### Your Pre-Assessment Certificate expires;

#### provide any reports or declarations of compliance reasonably requested by DGS for You and Your Personnel the purposes of administering the Register;

#### promptly provide any information requested by DGS related to:

##### Your and Your Personnel's compliance with the Supplier Code of Conduct; and

##### any policies, frameworks or systems established to monitor and assess Your compliance or Your Personnel’s with the Supplier Code of Conduct; and

##### any ICT goods and services (including the fees and related costs paid or payable for such goods and services) that You provide to any Customer, whether or not such goods and services are on the Register.

#### comply with, regularly monitor and assess Your and Your Personnel's compliance (as though those requirements applied directly to them) with all relevant Victorian Government policies (specified at: <https://www.buyingfor.vic.gov.au/goods-services-procurement-policies>), including the Supplier Code of Conduct.

### If Your contact details or other information listed on the Digital Marketplace change, You must promptly update Your profile on the Digital Marketplace to reflect the changes. If You are unable to update Your profile, you must notify the eServices Contract Manager of the change in writing.

### You acknowledge and agree that You may be subject to further and more detailed enquiries by DGS at any time for DGS to evaluate Your suitability for admission to, and remainder on, the Panel. You must, within five Business Days of receiving a written request from DGS provide all information and supporting evidence reasonably requested for such purposes.

### If DGS receives adverse information about You, from anyone other than You, DGS will provide you with a copy of the adverse information for comment. You must provide DGS with Your written comments within five Business Days from Your receipt of DGS’ request for comment.

### If you provide, or anticipate providing, eServices to a Customer under an agreement other than the eServices Contract (such provision not to be in breach of these Terms), then You must provide DGS with full details of the relevant eServices and arrangements under which they are to be provided.

### You acknowledge and agree that reports or other information You provide to a Customer under an eServices Contract may be disclosed by the Customer to DGS.

### Unless specified otherwise, any notification to DGS under these Terms must be in writing and sent to [eServices@dgs.vic.gov.au](mailto:eServices@dgs.vic.gov.au).

## Performance reviews

### DGS may review Your performance against any eServices Contract, which may include:

#### collecting feedback from You and Customers; and

#### conducting a comparison of the fees, services or deliverables provided by You under an eServices Contract against the fees, services or deliverables charged by providers of similar services.

### DGS may notify You in writing of any fees, services or deliverables that are the subject of review and You will cooperate with DGS and its nominees at your own cost, including complying with any reasonable direction given to You.

### The parties will work together collaboratively and cooperatively to implement any findings of a review.

### If the review indicates that Your fees are unfavourable (as determined by the independent third party), then You must meet with DGS and negotiate in good faith any changes to the fees, services or deliverables You offer.

# Dispute resolution

## Process for handling a dispute

### If a dispute arises under these Terms, the parties must follow the dispute resolution process. The dispute resolution process does not stop a party from seeking urgent interlocutory or injunctive relief, or immediately terminating these Terms if permitted.

### A party claiming that a dispute has arisen must provide notice to the other party stating the nature of the dispute ("**Dispute Notice**"). When the other party receives a Dispute Notice, then the parties must attempt in good faith to resolve the dispute using the following escalation process:

| Step | Timeframe | Escalate to next level if dispute not resolved within |
| --- | --- | --- |
| Meeting with eServices Category Manager | Within five Business Days of escalation | 10 Business Days of meeting with eServices Category Manager |
| Meeting with Director of Procurement of DGS | Within five Business Days of escalation | 10 Business Days of meeting with Director of Procurement of DGS |
| Meeting with Executive Director of Procurement of DGS | Within five Business Days of escalation | 10 Business Days of meeting with Executive Director of Procurement of DGS |
| Meeting with Deputy Secretary of DGS | Within five Business Days of escalation | N/A |
| Legal proceedings | May be commenced 40 Business Days after escalation | N/A |

### If the party that receives a Dispute Notice fails to comply with paragraph 5.1.2 within the relevant timeframes, the party that provided the Dispute Notice may commence legal proceedings immediately.

### Despite the existence of a dispute, each party must continue to perform its obligations under these Terms.

# Suspension or Termination

## DGS may suspend or terminate your appointment

### DGS may at its absolute discretion, suspend or terminate your appointment to the Register:

### for convenience on five Business Days’ notice; or

### immediately if:

#### You do not within five Business Days of receiving a request from DGS for information under clause 4.1.3, provide such information and supporting evidence requested by DGS;

#### You are subject to a Probity Breach;

#### You may be engaged in fraudulent activity or subject to an Insolvency Event or Change in Control; or

#### following a performance review, You and DGS cannot agree to changes to the fees, services or deliverables You offer within 30 days of commencing negotiations in accordance with clause 4.2.4.

## When suspension for a Probity Event is applicable

### If You give DGS notice under clause 4.1.1(a)(iii), or DGS receives information from a third party under clause 4.1.4 about a Probity Event or Probity Breach:

### DGS may immediately suspend Your appointment to the Register;

### You must:

#### provide any additional information reasonably requested by DGS within five Business Days;

#### meet with DGS (and any affected Customers, where applicable) within five Business Days and try to agree a course of action to be taken by You (and by when) to remedy the Probity Event or Probity Breach and ensure that it does not happen again;

#### comply with any agreement made under paragraph (b);

#### provide DGS (and any affected Customer, as applicable) such reports and other information about Your progress implementing any agreement made under paragraph (b) as is reasonably requested by DGS or the Customer (as applicable) from time to time; and

### If:

#### the parties acting reasonably do not agree to a course of action under clause 6.2.2(b) within 10 Business Days after notice has been provided or information received; or

#### if You fail to comply with this clause 6.2,

then DGS may give You a notice setting out the actions DGS reasonably require You to take to address the adverse effect of the Probity Event or Probity Breach and to prevent the Probity Event or Probity Breach from happening again, and You must comply with that notice.

## Consequences of suspension or termination

### If Your appointment to the Register is suspended, You must not engage with any Customer in relation to entry into a new eServices Contract during the period of suspension commencing on the date specified in the relevant notice from DGS and ending on the date notified by DGS. For clarity, You must continue to perform Your obligations under any existing eServices Contracts between You and a Customer that existed as at the date the suspension commenced.

### DGS may revoke any suspension under clause 6.1 or clause 6.2 by written notice to You.

### You must, on reasonable notice from DGS, provide DGS with reasonable access to Your books and records and any other assistance acting reasonably requested by DGS for the purpose of confirming whether any of the activities in clause 6.1.2 has occurred.

### If Your appointment to the Register is terminated by DGS:

#### You will be removed from the Register on the date of DGS’ termination (or such other time set by DGS); and

#### any eServices Contracts You have entered into with a Customer will continue until they expire or are validly terminated.

# Definitions and interpretation

## Definitions

In these Terms:

**"Appointment Date"** means the date You agree to these Terms;

**"Business Day"** has the meaning given in the eServices Contract;

**"Change in Control"**, in relation to an entity, means there is a change in the ability of any person directly or indirectly to exercise effective control over that entity by virtue of the holding of voting shares, units or other interests in that entity or by any other means;

**"Conflict of Interest"** means any state of affairs, activity or interest, including:

#### any relationship with a person or entity;

#### the employment of any individuals or the sub-contracting of any obligations to any third parties;

#### the holding of any office;

#### the possession of any property, including intangible property, and including any beneficial rights; or

#### engaging in any hobby, profession, business, trade or calling,

whether in the past, the present or future, whether it is of a financial or non-financial nature, that is likely to (or could be) perceived to adversely affect either directly or indirectly Your (or Your Personnel's) ability to perform Your obligations under an eServices Contract or any Ordering Document in an objective, independent and diligent manner and in the best interests of the Customer, and that state of affairs, activity or interest has not been approved in writing by the Customer.

**"Control"** means:

#### the meaning given to that term inability to control, directly or indirectly, the composition of the board of the corporation, to exercise the rights to vote in relation to more than 50% of the voting shares or other form of voting equity in the corporation or to dispose or control the disposal of more than 50% of the shares or other form of equity in the corporation; or

#### being taken to have an ability to control an entity under s 50AA of the *Corporations Act 2001* (Cth);

**"Controlling Entity"** means an entity that has Control over You.

**"Customer"** means:

#### each Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic));

#### a "Government Owned Entity", meaning 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);

#### an "Administrative Office" as defined in the *Public Administration Act 2004* (Vic);

#### a "Council" as defined in the *Local Government Act 1989* (Vic);

#### an organisation that is a charitable or not-for-profit organisation and receives at least 25 per cent of its funding from a Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic)); or

#### an entity which receives any funding from any of the entities listed in paragraphs (a) to (e) above or any entity under the control of any of the entities listed in paragraphs (a) to (e) above;

**"Digital Marketplace"** means the online procurement platform managed by DGS;

**"Dispute Notice"** has the meaning given in clause 5.1.2;

**"eServices Category Manager"** means the "eServices Category Manager" appointed by DGS from time to time;

**"eServices Contract"** means the terms and conditions on which You may supply services and deliverables to Customers, being:

#### the applicable eServices Contract as set out in the Ordering Document; and

#### any other versions published by DGS from time to time on the eServices Website and referred to as an eServices Contract.

**"eServices Contract Manager"** means the "eServices Contract Manager" appointed by DGS from time to time;

**"eServices"** means any of the services described on the Victorian Government "eServices register category descriptions" available at https://www.buyingfor.vic.gov.au/eservices-register-category-descriptions (as amended from time to time);

**"eServices Website"** means https://www.buyingfor.vic.gov.au/eservices-register (as amended from time to time);

**"FJC"** means the Fair Jobs Code issued by the State of Victoria available at https://www.buyingfor.vic.gov.au/fair-jobs-code;

**"FJC Plan"** means Your Fair Jobs Code Industrial Relations and Occupational Health and Safety Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required by the FJC;

**"FJC Unit"** means the Fair Jobs Code Unit, an administrative group within the Department of Jobs, Skills, Industry and Regions with responsibilities in relation to the FJC;

**"Insolvency Event"** means You are unable to pay your debts as and when they fall due and payable;

**"Local Jobs First"** means the policy of the Victorian Government made under section 4 of the *Local Jobs First Act 2003* (Vic); **"Ordering Document"** means an order form or other document executed by You and a Customer prescribing the details of particular deliverables and services to be provided by You to that Customer, which is populated based on the form prescribed in the eServices Register Contract;

**"Personnel”** of a party means:

#### directors, officers, employees, agents, third party contractors and subcontractors; and

#### any director, officer, employee, agent, third party contractor or subcontractor of any person referred to in paragraph (a) above, whether directly or indirectly through any number of such persons;

**"Pre-Assessment Certificate"** means a certificate issued to You by the FJC Unit prior to entering into these Terms (or renewed during Your appointment to the Register);

**"Professional Standards"** means any rules, regulations, standards or code of practice which a person must comply with as a result of, or as a condition of, that person providing or holding any accreditation, qualification or legal entitlement to provide or hold themselves out as being able to provide a particular service, including those issued, monitored or enforced by any "occupational association" (as that term is defined in the *Professional Standards Act 2003* (Vic));

**"Probity Breach"** means any of the following (in the course of performing, or in relation to, Your appointment to the Register, these Terms or any Ordering Document) each of which will be interpreted without limiting the other:

#### a breach by You or Your Personnel of the Supplier Code of Conduct; or

#### a Relevant Finding;

**"Probity Event"** means:

#### a Conflict of Interest;

#### a breach by You or Your Personnel of the Supplier Code of Conduct;

#### any event or circumstance occurring before or after Your Appointment Date, which:

##### has or may have a material adverse effect on, or on the perception of You, Your Personnel, or Your shareholder's character, integrity, honesty or fitness for appointment to the Register or supply services and deliverables under Purchase Orders;

##### involves a failure by You or Your Personnel or shareholders to comply with reasonable standards of ethical behaviour, or the standards of conduct that a reasonable person would otherwise expect of a contractor to the Customer;

#### the commencement of any proceedings, investigation or administrative or disciplinary process (whether civil or criminal) in or by a Relevant Body in relation to an alleged breach of any law, equitable or legal duty or Professional Standard by the You or any of Your Personnel or shareholders;

#### You or any of Your Personnel being the subject of a Relevant Investigation or Relevant Finding; or

#### any matter relating to You or Your Personnel or shareholders that adversely affects a Customer's reputation or brings a Customer into disrepute;

**"Register"** means the eServices register of suppliers for IT services, equipment and maintenance kept and maintained by DGS;

**"Relevant Body"** means a court, a judicial or administrative body, tribunal, commission, regulator, statutory authority, self-regulatory organisation or "occupational association" (as that term is defined in the *Professional Standards Act 2003* (Vic));

**"Relevant Finding"** means, in relation to an individual, any comment or finding by a Relevant Body:

#### that an individual has engaged in fraudulent, corrupt, unethical or dishonest conduct, have misused confidential information, has committed a breach of any law, legal or equitable duty or Professional Standard (whether or not in the course of performing or in relation to these Terms or an Ordering Document), or from which that could be perceived; or

#### which a reasonable person would consider creates a Relevant Perception;

**"Relevant Investigation"** means, in relation to an individual, an investigation or threatened prosecution, civil penalty or disciplinary proceeding in relation to that individual which involves an allegation of fraud, corrupt, unethical or dishonest conduct, misuse of confidential information or misconduct or unprofessional conduct in relation to the practice of the individual's occupation or profession;

**"Relevant Perception"** means, in relation to an individual, an adverse perception of the professional capacity, capability, fitness or reputation of the individual to perform services or discharge obligations of the Supplier under or in connection with this agreement;

**"Relevant Staff"** means Your Personnel who undertake advisory or other professional services work of any kind for the Victorian Government or any other employees who handle confidential information for any Victorian Public Entity;

**"Social Procurement Framework"** means the Victoria’s Social Procurement Framework published on 26 April 2018 by the Victorian Government, as amended from time to time;

**"Supplier Code of Conduct"** means the supplier code of conduct found at https://www.buyingfor.vic.gov.au/supplier-code-conduct (as amended from time to time);

**"You"** means the supplier that has agreed to these Terms and **“Your”** has a corresponding meaning;

**"Your Personnel"** means Your:

#### directors, officers, employees, agents, third party contractors and subcontractors; and

#### any director, officer, employee, agent, third party contractor or subcontractor of any person referred to in paragraph (a) above, whether directly or indirectly through any number of such persons;

**“Victorian Government Digital Strategy”** means the Victorian Government Digital Strategy 2021-2026 found at https://www.vic.gov.au/a-future-ready-victoria/digital-strategy-2021-2026 (as amended from time to time);

**“Victorian Government Purchasing Board”** means the Victorian Government Purchasing Board established under the *Financial Management Act 1994*; and

**"Victorian Public Entity"** means:

#### each Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic));

#### a "Government Owned Entity", meaning 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);

#### an Administrative Office as defined in the *Public Administration Act 2004* (Vic);

#### a "Council" as defined in the *Local Government Act 2020* (Vic);

#### an organisation that is a charitable or not-for-profit organisation and receives at least 25 per cent of its funding from a Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic)); or

#### an entity which receives any funding from any of the entities listed in paragraphs (a) to (e) above or any entity under the control of any of the entities listed in paragraphs (a) to (e) above.

## Interpretation

Unless expressed to the contrary, in these Terms:

### words in the singular include the plural and vice versa;

### any gender includes the other genders;

### if a word or phrase is defined its other grammatical forms have corresponding meanings;

### "includes" means includes without limitation;

### 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; and

### a reference to:

#### a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;

#### a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;

#### an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

#### a party or parties is a reference to DGS and You (as the case requires); and

#### a website includes its successor website.

## Execution

You may sign and execute, and DGS consents to You signing and executing, these Terms by any method of electronic signature.