



Government  
Services

# eServices Short Form Contract

(Version 6.0)

OFFICIAL

# Table of Contents

1.	<a href="#">Terms of Appointment</a>	6
1.1	You must not change these terms and conditions	6
1.2	Your appointment is on a non-exclusive basis	6
2.	<a href="#">Term</a>	6
2.1	General	6
2.2	Extending the Term	6
3.	<a href="#">Creating a Contract</a>	6
3.1	General	6
3.2	This Contract is made up of several documents	6
3.3	Inconsistency between documents	6
4.	<a href="#">Your General Performance Obligations</a>	7
4.1	Deliverables and Services	7
4.2	Third Party Services	7
4.3	Interoperability	7
5.	<a href="#">Warranties</a>	7
5.1	Your general warranties	7
6.	<a href="#">Access to our Premises</a>	8
6.1	General	8
7.	<a href="#">Personnel</a>	8
7.1	General	8
7.2	Key Personnel	9
7.3	Background Checks	9
7.4	Removal of Personnel	9
7.5	Training Our Personnel	10
8.	<a href="#">Delay</a>	10
8.1	Notice of Delay	10
8.2	Qualifying Relief Event allows You to claim an extension of time	10
8.3	How to claim an extension	10
8.4	We may grant an extension	10
8.5	We have discretion to extend	10

8.6	Consequences of Delay	10
<b>9.</b>	<b>Acceptance</b>	<b>11</b>
9.1	Application	11
9.2	Your Responsibility	11
9.3	Our decision about Acceptance	11
9.4	Resubmission for Acceptance	11
9.5	Updated User Documentation Requires Acceptance	12
9.6	No Deemed Acceptance	12
<b>10.</b>	<b>Service Levels</b>	<b>12</b>
10.1	You must meet the Service Levels	12
10.2	Reporting on Service Levels	12
<b>11.</b>	<b>Fees and Invoicing</b>	<b>12</b>
11.1	General	12
11.2	Fees are inclusive	12
11.3	Tax Invoice	12
11.4	Payment	12
11.5	Disputed Invoices	13
11.6	Payment is not Acceptance	13
<b>12.</b>	<b>Tax</b>	<b>13</b>
12.1	Definitions in GST Act	13
12.2	All amounts include all taxes	13
12.3	How GST will operate	13
12.4	How adjustment events will impact on GST	13
12.5	How GST will impact on expenses	14
12.6	How GST will impact on revenues	14
<b>13.</b>	<b>Subcontracting</b>	<b>14</b>
13.1	Subcontracting not permitted unless We have previously agreed	14
13.2	You are still responsible for any obligations that are subcontracted	14
<b>14.</b>	<b>Compliance with Law and Policies</b>	<b>14</b>
14.1	You must comply with Law and Policies	14
14.2	Supplier Code of Conduct applies	14
14.3	Code of Conduct for VPS Employees may apply to Your Personnel	15

<b>15.</b>	<b>Conflict of Interest and Probity Events</b>	<b>16</b>
15.1	You warrant that You do not have any Conflict of Interest	16
15.2	You must tell us about a Probity Event	16
15.3	Resolving Probity Events	16
15.4	If We cannot resolve a Probity Event	16
<b>16.</b>	<b>Dispute Resolution</b>	<b>17</b>
16.1	Parties can only commence court proceedings in certain circumstances	17
16.2	Dispute resolution process	17
16.3	Failure to engage	18
16.4	Dispute doesn't excuse performance	18
<b>17.</b>	<b>Notices</b>	<b>18</b>
17.1	Notice is only valid if it complies with notice details	18
17.2	Time of notice	18
<b>18.</b>	<b>Intellectual Property Rights</b>	<b>18</b>
18.1	Ownership of Deliverables	18
18.2	You grant us a licence to Your Pre-existing Intellectual Property	19
18.3	We grant you a licence to Our Pre-Existing Intellectual Property	19
18.4	Moral Rights	19
18.5	Licensed Software	19
18.6	Open Source Software	19
18.7	IP Claims	20
18.8	Termination for IP Claim	20
<b>19.</b>	<b>Our Data</b>	<b>20</b>
19.1	We own Our Data	20
19.2	Licence to Use Our Data	20
19.3	Obligations regarding Our Data	20
19.4	Restoration of deleted Our Data	20
19.5	We must have access to Our Data	21
19.6	Deletion of Our Data	21
19.7	Record of Access to Our Data	21
<b>20.</b>	<b>Confidentiality</b>	<b>21</b>
20.1	Confidential Information must be kept confidential	21
20.2	Confidentiality Deed	21
20.3	Return or Destruction of Our Confidential Information	21

20.4	Your Confidential Information	22
<b>21.</b>	<b>Privacy</b>	<b>23</b>
21.1	Compliance with Privacy Laws	23
21.2	Handling Personal Information	23
21.3	Directions and Inquiries	23
<b>22.</b>	<b>Security Measures</b>	<b>23</b>
22.1	Your Security Obligations	23
22.2	Security Certifications	24
22.3	Notification of Security Incidents	24
22.4	Cooperation if a Security Incident Happens	25
<b>23.</b>	<b>Indemnities</b>	<b>25</b>
23.1	Your indemnification of Us	25
<b>24.</b>	<b>Liability</b>	<b>25</b>
24.1	Limitations and exclusions may apply	25
24.2	Exceptions to limitations and exclusions	25
24.3	Approved Schemes under Professional Standards Legislation	25
24.4	Reduction in liability	26
<b>25.</b>	<b>Insurance</b>	<b>26</b>
25.1	You must have insurance	26
25.2	Alternative insurance	26
25.3	You must confirm insurance	26
25.4	You must notify Us if You don't have insurance	26
<b>26.</b>	<b>Records</b>	<b>27</b>
26.1	Records	27
26.2	Access	27
26.3	Regulatory bodies can still request documents and audit	27
<b>27.</b>	<b>Audit</b>	<b>27</b>
27.1	We may audit You	27
27.2	Notification of audits	27
27.3	We should not audit more than once a year	28
27.4	You must fix issues found in audits	28
27.5	You must still work even if an audit is happening	28
27.6	Costs for Audits	28

<b>28.</b>	<b>Suspension</b>	<b>28</b>
28.1	Suspension by Us for Convenience	28
28.2	When suspension for a Probity Event is applicable	29
28.3	Recommencing the Services	29
28.4	Re-instatement following suspension for a Probity Event	29
<b>29.</b>	<b>Termination</b>	<b>30</b>
29.1	Termination by Us for Convenience	30
29.2	Termination by Us for Your Default	30
29.3	Termination by Us for change in Control	30
29.4	Termination by You	31
<b>30.</b>	<b>General</b>	<b>31</b>
30.1	Victorian Law applies to the Contract	31
30.2	Consent is at a party's absolute discretion	31
30.3	Your obligations keep running	31
30.4	You are not to assign or novate	31
30.5	Certain clauses keep applying after the Contract ends	31
30.6	Provisions are severable if illegal or unenforceable	31
30.7	Variations must be in writing and signed	32
30.8	Waivers must be in writing	32
30.9	Multiple copies of this contract can form one agreement	32
30.10	Click-wrap and similar terms are not applicable	32
30.11	Services provided before the Commencement Date	32
30.12	Parties pay own expenses	32
30.13	You must not use Our name or logo	32
30.14	Parties don't form additional legal relationships	33
30.15	Rights are cumulative	33
<b>31.</b>	<b>Definitions and Interpretation</b>	<b>33</b>
31.1	Definitions	33
31.2	Interpretation	44

# 1. Terms of Appointment

## 1.1 You must not change these terms and conditions

You must supply Deliverables and Services to Us on these terms and conditions, which may not be amended, changed or altered by the Ordering Document.

## 1.2 Your appointment is on a non-exclusive basis

Nothing in these terms and conditions requires Us to procure any deliverables or services similar to the Deliverables or Services exclusively from You and We may procure such deliverables or services from any other person.

# 2. Term

## 2.1 General

The Contract starts on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with clause 29 ("**Term**").

## 2.2 Extending the Term

Before the Contract expires, We may notify You that We want to extend the Contract by any further periods stated in the Ordering Document. The Term of the Contract will be extended when We provide this notification.

# 3. Creating a Contract

## 3.1 General

A Contract is formed between Us and You on the date specified in the Ordering Document ("**Commencement Date**").

## 3.2 This Contract is made up of several documents

A Contract is made up of these terms and conditions, the Ordering Document, any Schedules indicated in the Ordering Document, any attachments to the Ordering Document, the Project Plan, the Requirements and any Additional Conditions. Unless expressly stated otherwise, a request for quote, request for tender or other request for services or associated response will not form part of a Contract.

## 3.3 Inconsistency between documents

In the event of any inconsistency between any of the documents in a Contract, the relevant document first listed in clause 3.2 will prevail to the extent of the inconsistency.

## 4. Your General Performance Obligations

### 4.1 Deliverables and Services

You must provide the Deliverables and Services in accordance with the Contract, including:

- 4.1.1 by meeting any Milestone Dates and Requirements;
- 4.1.2 in accordance with Good Industry Practice;
- 4.1.3 in a manner that causes the least disruption, interference or inconvenience to Us and Our Personnel; and
- 4.1.4 inclusive of all resources needed to perform the Services.

### 4.2 Third Party Services

You must attend meetings, exchange information and cooperate with Third Party Suppliers and Third Party Software Suppliers to ensure We receive seamless Deliverables and Services. You may request that Third Party Suppliers or Third Party Software Suppliers (as applicable) agree in writing to comply with Your reasonable confidentiality requirements.

### 4.3 Interoperability

You must ensure that the Deliverables and Services are compatible and interoperable with Our Environment and will not detrimentally affect the operation or performance of Our Environment.

## 5. Warranties

### 5.1 Your general warranties

You warrant that:

- 5.1.1 You have:
  - (a) the right and hold all Intellectual Property Rights necessary to enter into the Contract, perform the Services, provide the Deliverables and grant all licences and make all assignments granted or made under the Contract; and
  - (b) all licences, permits, consents and authorisations required under any law or the Contract;
- 5.1.2 You have taken all reasonable steps (including obtaining appropriate advice) to satisfy Yourself about the nature and extent of the Services, the cost of providing the Services, and all risks, contingencies and circumstances associated with the performance of the Services;

- 5.1.3 as at the Commencement Date, neither You nor any of Your Related Bodies Corporate are the subject of an Adverse Event; and
- 5.1.4 You are not aware of any Probity Event that You have not notified to Us.
- 5.1.5 if You are entering into the Contract on behalf of a trust:
- (a) You are validly appointed as trustee of the trust;
  - (b) You have complied with the trust deed;
  - (c) You have the right to be indemnified out of, and create a lien over, the assets of the trust except where You act fraudulently, negligently or in breach of the trust;
  - (d) the Contract does not conflict with the operation or terms of the trust;
  - (e) the Contract constitutes valid and enforceable obligations of the trust;
  - (f) You have full and valid power and authority under the trust to enter into and carry out the Contract;
  - (g) You enter into the Contract for the proper administration of the trust and for the benefit of all of the beneficiaries of the trust; and
  - (h) You are the sole trustee of the trust; and
- 5.1.6 You, at all times during the Term, will not use any Gen-AI in connection with the performance or delivery of any Services or Deliverables (as applicable), or in connection with Our Data or Licensed Materials, except as indicated in the Ordering Document.

## **6. Access to Our Premises**

### **6.1 General**

We may provide You with access to Our premises. When on Our premises You must avoid, and ensure that Your Personnel avoid, causing harm to people and property or creating nuisance, and You must ensure and ensure that Your Personnel act safely and lawfully, and comply with applicable occupational health and safety Laws.

## **7. Personnel**

### **7.1 General**

You must ensure that Your Personnel providing the Services have the requisite skills, qualifications, authorisations and experience required to deliver the Services.

## 7.2 Key Personnel

You will ensure that the personnel listed in the Ordering Document as 'Key Personnel' will provide the Services. You may not remove or replace any Key Personnel without Our written approval, which shall not be unreasonably withheld.

## 7.3 Background Checks

- 7.3.1 You must ensure, at Your own expense, that all Your Personnel involved in providing the Deliverables and Services are subject to a National Police Check (“NPC”) in a form and through a service provider acceptable to Us, such NPC to have been conducted no more than six months (or such other period as specified in the Requirements) prior to Your Personnel commencing their involvement in providing the Deliverables and Services and on an annual basis thereafter.
- 7.3.2 You must perform any other screening or security checks (collectively, “**Security Checks**”) at Your own cost as specified in an Ordering Document or as requested by Us from time to time.
- 7.3.1 For each of Your Personnel, before the person becomes involved in performing any Services, You must provide Us with written confirmation of:
- (a) the date on which each NPC and Security Check relating to that person was conducted; and
  - (b) whether or not any such NPC or Security Check discloses that the person:
    - (i) has been convicted of any indictable offence, or of any criminal offence (whether or not an indictable offence); or
    - (ii) has failed to meet any other criteria specified for these purposes in the Requirements.

## 7.4 Removal of Personnel

- 7.4.1 You must immediately remove any member of Your Personnel from the performance of the Services and not permit such person to have continued access to the Deliverables, Our Data or Our Environment or premises:
- (a) if that person fails to meet any of the requirements of this clause 7;
  - (b) if We give You notice that, in our opinion and on reasonable grounds, that person has performed unsatisfactorily in relation to the performance of the Services; or
  - (c) We notify You that the outcome of that person’s NPC or Security Check is, in our reasonable opinion, unsatisfactory.
- 7.4.2 If You are required to remove or limit access rights of Your Personnel under clause 7.4.1, You must promptly replace that person with another person of suitable ability and qualifications at no additional charge to Us.

## 7.5 Training Our Personnel

You must provide Us and Our nominated Personnel with the training specified in the Requirements (if any).

# 8. Delay

## 8.1 Notice of Delay

If You become aware of an actual or potential delay in meeting any Milestone under the Contract ("**Delay**"), You must notify Us within 5 Business Days after becoming aware of the Delay, specifying the cause of the Delay, the anticipated length of the Delay and how You will mitigate the Delay. You must use best efforts to minimise the impact of any Delay.

## 8.2 Qualifying Relief Event allows You to claim an extension of time

If the Delay is caused by a Qualifying Relief Event, You are entitled to claim an extension of time for affected Milestone Dates in accordance with clause 8.3.

## 8.3 How to claim an extension

Without limiting clause 8.1, to claim an extension of time You must promptly (not later than 5 Business Days after the date of Your notice under clause 8.1) notify Us, setting out details of the relevant Qualifying Relief Event and how the Delay has been caused by that Qualifying Relief Event.

## 8.4 We may grant an extension

If You claim an extension of time in accordance with clause 8.3 and We agree that the Delay is caused by the relevant Qualifying Relief Event, We will (by notice to you) grant You a reasonable extension of the Milestone Dates affected by that Delay.

## 8.5 We have discretion to extend

Notwithstanding any other provision, We may at Our absolute discretion extend any Milestone Date by notice to You.

## 8.6 Consequences of Delay

If You do not provide Deliverables or Services by the relevant Milestone Date (or if the Deliverables or Services are subject to Acceptance and the Deliverables or Services are not Accepted by Us by the relevant Milestone Date), then We may:

- 8.6.1 notify You of that delay and require You to take steps (including submitting a written cure plan to Us) to overcome or minimise the delay within 10 Business Days of Our notice or such other period agreed by Us in the applicable cure plan ("**Cure Period**"); and

- 8.6.2 if the delay subsists following the expiry of the Cure Period, We may terminate the Contract immediately by notice to You.

## 9. Acceptance

### 9.1 Application

Unless otherwise specified in the Requirements, Deliverables and Services are subject to Acceptance Testing, and Documents are subject to review and Acceptance to confirm that they meet the Acceptance Criteria.

### 9.2 Your Responsibility

You must:

- 9.2.1 for Deliverables and Services, establish and maintain any required test environments, generate and load all required test data and supply all tools and test scripts reasonably required to perform Acceptance Testing; and
- 9.2.2 for Documents, provide the Documents in English and in an open, industry standard electronic format.

### 9.3 Our decision about Acceptance

If the Deliverables, Services and Documents meet or exceed the Acceptance Criteria, We will give you a written Acceptance Certificate. If a Deliverable, Service or Document does not meet the Acceptance Criteria, We may elect to reject or conditionally accept the Deliverable, Service or Document by notice. If We:

- 9.3.1 **Rejection.** reject the Deliverable, Service or Document, We must provide details about how the Acceptance Criteria haven't been met and provide a reasonable timeframe for You to rectify the failure to meet the Acceptance Criteria; or
- 9.3.2 **Conditional Acceptance.** conditionally accept the Deliverable, Service or Document, We must issue an Acceptance Certificate stating the conditions on which We accept, which may include that You deliver a Workaround or other mechanism to rectify the failure to meet the applicable Acceptance Criteria within a reasonable timeframe.

### 9.4 Resubmission for Acceptance

You must ensure that the Deliverable, Service or Document meets the Acceptance Criteria within the timeframe stated in the notice described in clause 9.3. We will review the re-submitted Deliverable, Service or Document against the Acceptance Criteria (including any conditions for Conditional Acceptance). The process in this clause 9 will be repeated as many times as necessary for each Deliverable, Service or Document to achieve Acceptance. However, if a Deliverable, Service or Document is not Accepted by the time required by this Contract or the Requirements, We may elect to either continue to repeat the process in this clause 9 or reject the Deliverable, Service or Document and terminate the Contract.

## 9.5 Updated User Documentation Requires Acceptance

If changes to Deliverables or Services are made for any reason, You must update the associated User Documentation. Until updated User Documentation has received a Certificate of Acceptance, the original User Documentation will remain in effect.

## 9.6 No Deemed Acceptance

No act or omission by Us constitutes deemed acceptance of a Deliverable, Service or Document (including the act of using the Deliverable, Service or Document). An Acceptance Certificate is the only valid form of Acceptance.

# 10. Service Levels

## 10.1 You must meet the Service Levels

You must provide the Deliverables and perform the Services in a manner that meets or exceeds the Service Levels.

## 10.2 Reporting on Service Levels

You must provide a Service Level report to Us each month unless otherwise specified in the Requirements. Service Level reports must contain the Service Level Data for that month, or the time period specified in the Requirements.

# 11. Fees and Invoicing

## 11.1 General

The only fees and charges payable by Us are those specified in the Ordering Document.

## 11.2 Fees are inclusive

The Fees are all inclusive and have provision for all tasks and activities incidental and necessary for the proper performance of the Services. You shall have no entitlement to receive, and We shall have no obligation to pay, additional disbursements or other expenses.

## 11.3 Tax Invoice

You must provide a tax invoice to Us for the Fees due for Services once they are completed or at any other times permitted by the Ordering Documents. Each tax invoice must be a tax invoice for the purposes of the GST Act, include any information We request and be sent to the address in the Ordering Document.

## 11.4 Payment

We will pay any undisputed invoiced amounts within 10 Business Days of receipt of an accurate and correctly rendered invoice ("**Due Date**"). If:

- 11.4.1 We do not pay an undisputed invoiced amount by the Due Date;
- 11.4.2 the Victorian Government Fair Payments Policy applies;
- 11.4.3 the Fees payable for the Contract don't exceed \$3 million (or such other amount set out in the Victorian Government Fair Payments Policy); and
- 11.4.4 the *Building and Construction Industry Security of Payment Act 2002* (Vic) is not applicable to the Contract,

then You may issue a notice claiming penalty interest. If You issue a notice, We must pay simple interest calculated on a daily basis at the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) on any undisputed amount outstanding, from the Due Date until the date of payment.

## 11.5 Disputed Invoices

If We dispute an invoiced amount, We must pay the undisputed amount (if any) and the parties must follow the dispute resolution procedure in clause 16. We shall have no obligation to pay a disputed amount until the dispute has been resolved in accordance with clause 16.

## 11.6 Payment is not Acceptance

Payment of an invoice is only to be taken as payment on account.

# 12. Tax

## 12.1 Definitions in GST Act

Words defined in the GST Act have the same meaning in this clause.

## 12.2 All amounts include all taxes

Unless otherwise stated, all prices or other sums payable or consideration to be provided under or in accordance with this Contract are inclusive of all taxes that may be levied, assessed, charged or collected in connection with the Contract.

## 12.3 How GST will operate

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

## 12.4 How adjustment events will impact on GST

If an adjustment event varies the amount of GST payable by a party making a taxable supply under the Contract, that party will adjust the amount payable by the other party

to take account of the adjustment event and notify the other party of the same. The party providing the taxable supply will issue an adjustment note to the other party within 10 Business Days of becoming aware of the adjustment event.

## 12.5 How GST will impact on expenses

Any Fee, price or other sum is calculated by reference to an expense paid or payable to a third party will be calculated as an expense which is inclusive of GST, less any amount of input tax credit which a payee is entitled to claim on that expense.

## 12.6 How GST will impact on revenues

Any revenue is exclusive of GST unless otherwise specified in the Contract.

# 13. Subcontracting

## 13.1 Subcontracting not permitted unless We have previously agreed

You must not subcontract any of Your obligations unless the subcontractor is listed in the Ordering Document, or We provide prior written consent.

## 13.2 You are still responsible for any obligations that are subcontracted

Even if we have agreed that You can subcontract Your obligations, You are liable for all acts and omissions of a subcontractor as though they were Your acts or omissions.

# 14. Compliance with Law and Policies

## 14.1 You must comply with Law and Policies

14.1.1 You must, and must ensure that Your Personnel, the Deliverables and the Services comply with all applicable Laws and Policies, Codes and Standards.

14.1.2 You must complete and submit any reports as requested by Us to demonstrate Your compliance with applicable Laws and Policies, Codes and Standards and in the format requested by Us from time to time.

## 14.2 Supplier Code of Conduct applies

14.2.1 You acknowledge that the Supplier Code of Conduct is an important part of Our approach to procurement and that:

- (a) You have read the Supplier Code of Conduct and understand that it describes Our expectations for suppliers' conduct; and

- (b) 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 You, whether under the Contract or at Law.

14.2.2 You must, at no additional cost to Us:

- (a) comply with the Supplier Code of Conduct and ensure that Your Personnel comply with the Supplier Code of Conduct;
- (b) conduct business ethically, honestly, transparently, safely and in compliance with Our policies, and legal and regulatory obligations;
- (c) at all times, ensure that Your Personnel are currently, or were not previously, subject to any Relevant Investigation, Relevant Finding or Relevant Perception;
- (d) on request, in respect of those of Your Personnel who are providing the Services and Deliverables, provide to Us a declaration (in the form required by Us from time to time) of their compliance with clauses 14.1 and 14.2 (as though those requirements applied directly to them) and of whether or not they or any of their own Personnel are the subject of a Relevant Investigation or Relevant Finding; and
- (e) monitor and assess Your and Your Personnel's compliance with the Supplier Code of Conduct on a regular basis for the term of any Ordering Document.

14.2.3 You must on request by Us, promptly provide information regarding:

- (a) Your and Your Personnel's compliance with the Supplier Code of Conduct; and
- (b) the policies, frameworks or systems that You have established to monitor and assess Your and Your Personnel's compliance with the Supplier Code of Conduct.

## 14.3 Code of Conduct for VPS Employees may apply to Your Personnel

If You supervise Our Personnel (including any contractors or subcontractors), perform functions and duties on behalf of Us at Our premises or have access to information not usually available to the general public, then You and Your Personnel must observe the Code of Conduct for Victorian Public Sector Employees (as if You and Your Personnel were bound to comply with the Code of Conduct) in the course of performing Your obligations under the Contract.

## 15. Conflict of Interest and Probity Events

### 15.1 You warrant that You do not have any Conflict of Interest

You warrant to Us that You do not, and will ensure that Your Personnel do not have any Conflict of Interest. You must promptly tell Us of any actual, suspected or likely Conflict of Interest that arises. You must comply with any reasonable directions given by Us regarding any such Conflict of Interest. You must describe the circumstances giving rise to the actual suspected or likely occurrence of any Conflict of Interest. If We are not satisfied that You have complied with Our directions or the Conflict of Interest cannot be resolved to Our satisfaction, We may terminate the Contract immediately by notice.

### 15.2 You must tell us about a Probity Event

You must promptly tell Us (or if We consider a Probity Event has occurred, We must tell You) after becoming aware of an actual, suspected or likely Probity Event. You must provide Us with details about the circumstances giving rise to the actual, suspected or likely Probity Event, including when it occurred, and the individuals and entities involved as soon as reasonably possible after notice is provided under this clause.

### 15.3 Resolving Probity Events

If You provide Us, or We provide You, with notice of a Probity Event under clause 15.2, then We may:

- 15.3.1 Require You to meet with Us within 5 Business Days after the date of that notice and try to agree a course of action to be taken by You (and when) to remedy the Probity Event to ensure it does not happen again; and
- 15.3.2 You must:
  - (a) comply with any agreement We make with You under clause 15.3.1; and
  - (b) provide reports and information to Us about Your progress in implementing any agreement under clause 15.3.1 as We may reasonably request from time to time.

### 15.4 If We cannot resolve a Probity Event

If:

- 15.4.1 the parties acting reasonably cannot agree how to resolve a Probity Event under clause 15.3.1;
- 15.4.2 You do not comply with clause 15.3.2(a); or
- 15.4.3 you fail to provide notice under clause 15.2 when required,

then We may (in addition to any other rights or remedies We have) give notice to You setting out the action We reasonably require You to take to deal with the Probity Event and prevent it from happening again. You must comply with that notice within the time stated in the notice. Such action may include in relation to Your Personnel:

- 15.4.4 removal of that person from any involvement with the provision of the Services or Deliverables; or
- 15.4.5 terminating any subcontract relating to Your Personnel whose acts or omissions have caused or contributed to the Probity Event.

## 16. Dispute Resolution

### 16.1 Parties can only commence court proceedings in certain circumstances

If a dispute arises under the Contract, the parties must follow the dispute resolution process set out in clause 16.2. The dispute resolution process does not stop a party from seeking urgent interlocutory or injunctive relief, or immediately terminating the Contract if the Contract permits.

### 16.2 Dispute resolution process

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 in accordance using the following escalation process:

Step	Timeframe	Escalate to next level if dispute not resolved within
Meeting of Representatives	Within five Business Days of receipt of Dispute Notice	10 Business Days of receipt of Dispute Notice
Meeting of senior executives	Within five Business Days of escalation	10 Business Days of meeting of senior executives
Mediation administered by the Australia Disputes Centre	As agreed with mediator	N/A
Legal proceedings	May be commenced 40 Business Days after referral to mediation	N/A

## 16.3 Failure to engage

If the party that receives a Dispute Notice fails to comply with any aspect of clause 16.2 within the relevant timeframe, the party that provided the Dispute Notice may commence legal proceedings immediately.

## 16.4 Dispute doesn't excuse performance

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

# 17. Notices

## 17.1 Notice is only valid if it complies with notice details

Notice is only valid if it is in writing and sent in accordance with the notice details set out in the Ordering Document.

## 17.2 Time of notice

Any notice is to be treated as given at the following time:

- 17.2.1 if it is sent by post within Australia, 6 (or 1, in the case of a next day delivery service) Business Days after it is posted;
- 17.2.2 if it is sent by post to or from an address outside of Australia, 9 Business Days after it is posted; or
- 17.2.3 if it is sent by email, when the message is correctly addressed to and the sender's email system successfully records that the email (including any attachments) has been sent, unless within four hours, the sender is notified by an automatic notice or otherwise that the email has not been received by the recipient.

# 18. Intellectual Property Rights

## 18.1 Ownership of Deliverables

The Ordering Document will set out who owns the Deliverables. If the Ordering Document states that We own the Deliverables, You unconditionally and irrevocably assign all of Your rights, title and interest (including all Intellectual Property Rights) in and to the Deliverables, including all present and future rights, to Us immediately on creation. If the Ordering Document states that You own the Deliverables, You grant Us a worldwide, perpetual, irrevocable, transferable, royalty-free, fully paid up and non-exclusive licence (including the right to sublicense) to exercise all Intellectual Property Rights in the Deliverables for any purpose.

## 18.2 You grant us a licence to Your Pre-existing Intellectual Property

Subject to clause 1.3 of Schedule 3 in relation to Cloud Services and clause 18.5, You grant Us a worldwide, perpetual, irrevocable, transferable, royalty-free, fully paid up and non-exclusive licence to exercise all Intellectual Property Rights in all Your Pre-Existing Intellectual Property incorporated in or required to exercise the Intellectual Property Rights in, or to use, the Deliverables ("**Licensed Material**"). Our licence:

18.2.1 does not include a right to commercialise Your Pre-Existing Intellectual Property by sub-licensing it to a third party for a fee (other than as part of Our services or operations); and

18.2.2 includes a right to:

- (a) use Your Pre-Existing Intellectual Property for the purpose of providing services to any Victorian Public Entity;
- (b) grant a sublicense of Your Pre-Existing Intellectual Property to any Victorian Public Entity; and
- (c) grant a sublicense of Your Pre-Existing Intellectual Property to any third party permitting that third party to use the Licensed Material for the benefit of any Victorian Public Entity.

## 18.3 We grant you a licence to Our Pre-Existing Intellectual Property

We grant You a limited, revocable, non-exclusive licence to use Our Pre-Existing Intellectual Property and the Deliverables solely for the purpose of fulfilling Your obligations under the Contract.

## 18.4 Moral Rights

You warrant that each Service or Deliverable may be used in any way by Us without infringing the Moral Rights of any person. This clause does not apply to Licensed Software.

## 18.5 Licensed Software

All Licensed Software provided by You under the Contract is licensed to Us on the terms set out in Schedule 4 unless otherwise specified in the Requirements.

## 18.6 Open Source Software

You must not use Open Source Software in any Deliverable without Our prior written consent. If We have provided consent, You must ensure that Your use of Open Source Software does not result in any obligation to disclose, license or otherwise make available any part of Our Environment, Our Data or Our Confidential Information to any third party, or diminish Your obligations under the Contract.

## 18.7 IP Claims

If there is an IP Claim that prevents Us from using the Services or Deliverables, You must use best endeavours to promptly, at Your own expense, with Our prior consent:

- 18.7.1 get the rights required for Us to continue to use the affected Service or Deliverable; or
- 18.7.2 replace or modify the affected Service or Deliverable with an alternative Service or Deliverable that is acceptable to Us.

## 18.8 Termination for IP Claim

If You fail to comply with clause 18.7, then without limiting Our other rights or remedies, We may terminate the Contract immediately by notice.

# 19. Our Data

## 19.1 We own Our Data

We keep all rights in Our Data. If You create Our Data, You assign all rights, title and interest in Our Data to Us on creation.

## 19.2 Licence to Use Our Data

We grant you a limited licence to use Our Data solely to the extent required to provide the Deliverables and Services.

## 19.3 Obligations regarding Our Data

You must (and must ensure that Your Personnel):

- 19.3.1 only use Our Data for the purpose of providing the Services;
- 19.3.2 not sell, assign, lease or commercially transfer Our Data, and ensure that Our Data is at all times managed in accordance with the Policies, Codes and Standards; and
- 19.3.3 not disclose Our Data to any person outside of Australia or store Our Data outside of Australia without Our prior written consent.

## 19.4 Restoration of deleted Our Data

Without limiting any other rights We may have under the Contract, if any of Our Data is lost or there is any unauthorised destruction or alteration of Our Data, You must take all measures and use Your best efforts to immediately restore Our Data at Your expense.

## 19.5 We must have access to Our Data

If Our Data is in Your possession, then You must ensure that We can at no additional cost:

- 19.5.1 access and use Our Data; and
- 19.5.2 extract or retrieve the data in an electronic, human readable, commonly accepted format which does not require Us to purchase additional licences, or equipment (or where Our Data was originally provided by Us to You, in the same format as Our Data was provided unless We request that it be made available to Us in a different format).

## 19.6 Deletion of Our Data

If Our Data is in Your possession, then You must on Our request permanently and irreversibly delete Our Data.

## 19.7 Record of Access to Our Data

You must maintain complete, accurate and up-to-date records of how Our Data is accessed, collected or changed by You and Your Personnel, and make copies of these records available to Us immediately upon request.

# 20. Confidentiality

## 20.1 Confidential Information must be kept confidential

You and Your Personnel must not disclose any of Our Confidential Information to any other person. You can disclose Our Confidential Information:

- 20.1.1 when disclosure is required by Law or the listing rules of any recognised stock exchange (provided You notify Us prior to give Us an opportunity to defend the need to disclose or to minimise the effect of disclosure);
- 20.1.2 to Your Personnel for the purposes of performing the Contract; or
- 20.1.3 to a person with Our prior written consent,

(each a "**Permitted Recipient**"). Before disclosing to a Permitted Recipient, You must ensure that Permitted Recipients comply with obligations under this clause 20.

## 20.2 Confidentiality Deed

Upon Our request, You must get Permitted Recipients to execute a deed of confidentiality regarding Confidential Information in the form required by Us.

## 20.3 Return or Destruction of Our Confidential Information

On termination or expiration of the Contract, You must immediately cease using Our Data, Our Confidential Information and any Materials (electronic or tangible) that

record or contain any of Our Data or Our Confidential Information, and at Our election and at no additional cost to Us:

- 20.3.1 delete or destroy the Materials, as applicable, and provide Us with written notice that You have complied with these obligations; or
- 20.3.2 return the Materials to Us (and if provided by Us, in the format in which they were first provided).

However, You may keep one copy of any Materials that contain any of Our Data or Our Confidential Information to the extent necessary to comply with Law or for legitimate internal audit or quality assurance purposes, subject always to the requirements in this clause 20.

## 20.4 Your Confidential Information

We must keep Your Confidential Information confidential and not disclose it or permit it to be disclosed to any person. We may use and disclose Your Confidential Information:

- 20.4.1 with Your prior written consent;
- 20.4.2 for Our lawful functions or purposes (including to use any Intellectual Property Rights licenced by You to Us);
- 20.4.3 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;
- 20.4.4 to the Auditor-General;
- 20.4.5 in accordance with or to the extent required to comply with Laws, including the *Freedom of Information Act 1982 (Vic)*;
- 20.4.6 to any Minister, 'Victorian Government department' (as defined in the *Financial Management Act 1994 (Vic)*), 'Government Owned Entity' (as defined in the *State Owned Enterprises Act 1992 (Vic)*), 'Administrative Office' (as defined in the *Public Administration Act 2004 (Vic)*), 'Council' (as defined in *Local Government Act 1989 (Vic)*), and any entity which receives funding from any of the entities listed in this clause or any entity under the control of any of the entities listed in this clause;
- 20.4.7 to satisfy the requirements of parliamentary accountability; or
- 20.4.8 to Victorian Public Entities for the purpose of:
  - (a) the management of a Probity Event or investigating whether a Probity Event has occurred; and
  - (b) considering Your suitability in any future approach to market or procurement processes by a Victorian Public Entity; or

20.4.9 to satisfy Our public accountability or transparency obligations or the requirements of a Government Authority.

## **21. Privacy**

### **21.1 Compliance with Privacy Laws**

With respect to Our Personal Information, You agree to be bound by and comply with the Privacy Laws that apply to Us and any applicable codes of practice with respect to any act done or practice engaged in, in connection with the performance of the Services, in the same way and to the same extent as they apply to Us and as We would have been bound had the relevant act or practice been done or engaged in by Us.

### **21.2 Handling Personal Information**

You must Handle Our Personal Information only for the purpose of performing the Services or as required by Law and except if required by Law or under the Contract, You must not transfer or disclose Our Personal Information to any individual to whom Our Personal Information relates.

### **21.3 Directions and Inquiries**

You must comply with any reasonable directions and promptly respond to any inquiries notified to You by Us in relation to:

- 21.3.1 Your Handling, management or protection of Our Personal Information by or on Our behalf;
- 21.3.2 compliance with Privacy Laws;
- 21.3.3 any likely, suspected or actual interferences with privacy or breaches of Privacy Laws in relation to Our Personal Information; and
- 21.3.4 the exercise of the functions of a person with powers under Privacy Laws.

## **22. Security Measures**

### **22.1 Your Security Obligations**

You must implement, maintain and enforce a comprehensive program of technical and organisational security measures for information technology and cyber security that covers all components of the Deliverables and Services. The technical and organisational security measures must, without limitation (as applicable):

- 22.1.1 monitor, audit, detect, identify, report and protect against Security Incidents, viruses and any other threats or hazards to the security or integrity of Our operations (including Our Environment) and the Deliverables and Services;
- 22.1.2 ensure the security (including the confidentiality, availability and integrity) of the Deliverables and Services;

- 22.1.3 ensure that Our Data is protected against misuse, interference and loss, and from unauthorised access, modification or disclosure;
- 22.1.4 manage any potential security risks in Your supply chains;
- 22.1.5 monitor, detect, identify and protect against fraud and corruption in Your organisation and Your Personnel;
- 22.1.6 ensure that You comply with the Protective Data Security Standards, and any other Policies, Codes and Standards applicable; and
- 22.1.7 comply with any other security requirements stated in the Requirements, (collectively, the "**Security Program**").

## 22.2 Security Certifications

You must maintain, for the Term, the security certifications and accreditations stated in the Requirements from an accredited, independent, third party register or accredited, independent third party certification body.

## 22.3 Notification of Security Incidents

If You become aware that there has been a Security Incident, You must (at Your own cost):

- 22.3.1 immediately notify Us and provide to Us, to the extent known at the time, the date of the Security Incident and a detailed description of the Security Incident;
- 22.3.2 as soon as practicable:
  - (a) investigate and diagnose the Security Incident;
  - (b) take immediate action to manage and contain the Security Incident and mitigate the impact of the Security Incident (working on a 24 x 7 basis if required); and
  - (c) promptly investigate and identify the root cause of the Security Incident and seek to understand the risks posed by the Security Incident and identify how these risks can be addressed; and
- 22.3.3 provide to Us, as such information becomes available:
  - (a) a list of actions taken by You to mitigate the impact of the Security Incident;
  - (b) a summary of Our records impacted or potentially impacted, and Our Data and other information that has been or may have been lost, accessed or disclosed, as a result of the Security Incident; and
  - (c) provide copies of the results of Your analysis, including:

- (i) a summary of Your investigation and diagnosis of the Security Incident;
- (ii) the results of Your investigation and diagnosis under clauses 22.3.2(a) and 22.3.2(c); an
- (iii) a copy of Your remediation plan; and
- (iv) such other information reasonably required by Us.

## 22.4 Cooperation if a Security Incident Happens

You must provide any assistance reasonably required by Us in relation to any criminal, regulatory or other investigation relating to a Security Incident.

# 23. Indemnities

## 23.1 Your indemnification of Us

You indemnify Us and each of Our employees and agents against any loss, damage, expense (including legal costs on a full indemnity basis) or other liabilities that any of them may incur in connection with any IP Claim or any breach of Laws. We do not need to incur an expense before enforcing a right of indemnity. You must pay on demand any amount required by an indemnity.

# 24. Liability

## 24.1 Limitations and exclusions may apply

Subject to clauses 24.2 and 24.3 and to the maximum extent permitted by law, a party's total liability for losses, damages, liability, costs, expenses, suits and claims arising under or in connection with the Contract (regardless of whether based on breach of contract, tort (including negligence), under statute or otherwise) is limited to the amount specified in the Ordering Document, and neither party is liable for any Consequential Loss in connection with the Contract.

## 24.2 Exceptions to limitations and exclusions

The limitations and exclusions in clause 24.1 don't apply to personal injury, death or damage to tangible property, a breach of an obligation of confidence, privacy or information security, fraud or Your liability under the indemnities in clause 23.1.

## 24.3 Approved Schemes under Professional Standards Legislation

If You are a member of a relevant scheme approved under the *Professional Standards Act 2003* (Vic) or other equivalent Law, then to the extent that the scheme limits Your liability under the Contract, that liability will be limited in accordance with that scheme.

## 24.4 Reduction in liability

The liability of a party for loss or damage sustained by the other party under this Contract will be reduced proportionately to the extent that such loss or damage has been caused by the other party's failure to comply with its obligations and responsibilities under the Contract or to the extent that the other party's negligence or failure to mitigate has contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or negligence.

# 25. Insurance

## 25.1 You must have insurance

Unless otherwise specified in the Ordering Document, You must maintain the following types of insurance policies for the insured amounts and durations provided, with an insurance company approved by Us:

Insurance	Insured Amount	Duration
Public liability insurance	Not less than \$5 million per occurrence	For the Term
Professional liability insurance to cover any claim against You for any reason, and for any loss, damage, costs or expense due to the errors or any negligent or wrongful act or omission by You (or any of Your employees, agents or contractors) in rendering or failing to render professional services	Not less than \$2 million in aggregate	For the Term and seven years after the Term
Workers' compensation insurance	As required by law	For the Term
If You provide Hardware Services, product liability insurance (including product recalls)	Not less than \$5 million per claim	For the Term

## 25.2 Alternative insurance

You must get any additional insurance types specified in the Ordering Document.

## 25.3 You must confirm insurance

On request by Us You must provide Us with certificates from Your insurer or insurance brokers demonstrating that You have the required insurance.

## 25.4 You must notify Us if You don't have insurance

You must immediately tell Us if You no longer have any of the insurance policies required under this clause 25.

## 26. Records

### 26.1 Records

You must maintain full, true and complete accounts and records relating to the Contract in accordance with all applicable Australian accounting standards for the Term and for at least seven years after the Term or such longer period stated in the Requirements. The accounts and records must:

- 26.1.1 include appropriate audit trails for transactions performed;
- 26.1.2 record all receipts and expenses in relation to the Services;
- 26.1.3 be kept in a manner that permits them to be conveniently and properly audited; and
- 26.1.4 in the case of any Service performed on a time and materials or cost-plus basis, identify the time spent by the Your Personnel in performing that Service.

### 26.2 Access

You must grant, and ensure that Your subcontractors (where relevant) grant, Us and Our nominees access as required by Us to Your premises and data, records, accounts and other financial material or material relevant to the performance of the Contract, including by letting Us inspect and copy documentation, books and records, however stored and in any form, in the custody or under the control of You, Your employees, agents or subcontractors.

### 26.3 Regulatory bodies can still request documents and audit

Nothing in the Contract reduces, limits or restricts any function, power, right or entitlement of any Government Authority (or any Government Authority's delegate). Our rights under the Contract are in addition to any other power, right or entitlement of any Government Authority (or any Government Authority's delegate).

## 27. Audit

### 27.1 We may audit You

During the Term, We or Our nominee may conduct an audit regarding Your compliance with Your obligations under the Contract, and any other matter considered by Us to be relevant to the performance of Your obligations. You must promptly participate in any audit and cooperate with Us or Our nominee.

### 27.2 Notification of audits

Except where notice is not practicable or appropriate in Our reasonable opinion, We must give You reasonable notice of an audit and, if possible, an indication of which documents (or classes of documents) the auditor may require.

## 27.3 We should not audit more than once a year

We may conduct no more than one audit in every 12-month period from the Commencement Date unless a further audit is required in relation to security or compliance with Laws, or an audit discloses any non-compliance with the Contract by You or any error or inaccuracy in the way You calculated the Fees or any other amounts billed to Us (collectively, "**Non-Compliance**").

## 27.4 You must fix issues found in audits

You must promptly take, at no additional cost to Us, corrective action to fix any Non-Compliance. If an audit identifies an error, Non-Compliance or inaccuracy in the way You calculated the Fees or any other amounts billed to Us, You must promptly repay to Us any overpayment We have made on demand.

## 27.5 You must still work even if an audit is happening

Participation in audits does not reduce Your responsibility to perform Your other obligations under the Contract.

## 27.6 Costs for Audits

Each party must bear its own costs associated with any audits.

# 28. Suspension

## 28.1 Suspension by Us for Convenience

We may suspend all or part of the Contract without cause at any time by giving notice to You. If We provide such notice:

- 28.1.1 You must immediately stop work on the suspended Services and take all reasonable steps to mitigate further costs being incurred;
- 28.1.2 We must grant You a reasonable extension of time (as determined by Us) for any applicable Milestones and Milestone Dates;
- 28.1.3 unless the suspension is based on an Adverse Event, investigation or clarification regarding a Probity Event or Probity Breach, Your material breach of a term of the Contract, or Your wrongful act or omission, We must pay for:
  - (a) work performed by You that complies with the Contract up to the date of suspension;
  - (b) reasonable unavoidable internal costs (such as internal staffing costs) incurred by You for the sole purpose of performing the suspended Services, provided You have taken all action reasonably practicable to mitigate such costs and have substantiated such costs to Our reasonable satisfaction; and

- (c) reasonable unavoidable costs incurred by You to third parties, if those costs are incurred by You for the sole purpose of performing the suspended Services, provided you have taken all action reasonably practicable to mitigate such costs and have substantiated such costs to Our reasonable satisfaction.

28.1.4 We will not be required to pay any loss of prospective profits, any loss of opportunity, or any Consequential Loss.

## 28.2 When suspension for a Probity Event is applicable

If notice has been provided under clause 15.2 advising of a Probity Event, or a Probity Breach has occurred, We may suspend the performance of the Services in whole or in part by notice to You until:

- 28.2.1 a course of action is agreed in accordance with clause 15.3.1;
- 28.2.2 You comply with any notice provided by Us under clause 15.4;
- 28.2.3 the Ordering Document is terminated in accordance with this Contract; or
- 28.2.4 it has been determined (or We, acting reasonably, are satisfied) that a Probity Event or Probity Breach has not occurred,

whichever occurs first.

## 28.3 Recommencing the Services

You must recommence performance of the Services within a reasonable period of time after We give You notice to do so.

## 28.4 Re-instatement following suspension for a Probity Event

Notwithstanding clause 28.2, where We purport to suspend the performance of Services under clause 28.2, and it is subsequently determined (or We, acting reasonably, are satisfied) that the relevant event or circumstance giving rise to the suspension did not amount to a Probity Event, then:

- 28.4.1 We must by written notice request You to resume the performance of the Services;
- 28.4.2 You must resume the performance of the Services as soon as reasonably practicable after receiving that notice; and
- 28.4.3 You will be entitled to, and We must grant You, such an extension of time for the completion of the relevant Services or provision of the relevant Deliverables (as applicable) as is reasonably necessary to overcome the impact of the suspension on Your ability to perform the affected Services.

## 29. Termination

### 29.1 Termination by Us for Convenience

We may terminate all or part of the Contract without cause at any time by giving one month's notice to You. If We provide such notice:

- 29.1.1 You must immediately stop work on the terminated Services and take all reasonable steps to mitigate further costs being incurred;
- 29.1.2 We must pay for:
  - (a) work performed by You that complies with the Contract up to the date of termination; and
  - (b) reasonable unavoidable costs incurred by You to third parties, if those costs are incurred by You for the sole purpose of performing the terminated Services, provided you have taken all action reasonably practicable to mitigate such costs and have substantiated such costs to Our reasonable satisfaction; and
- 29.1.3 We will not be required to pay any loss of prospective profits, any loss of opportunity, or Consequential Loss.

### 29.2 Termination by Us for Your Default

- 29.2.1 We may terminate all or part of the Contract immediately by notice to You if any of the following occur:
  - (a) You are subject to an Adverse Event;
  - (b) a Probity Event (including a Probity Breach);
  - (c) You are removed or suspended from the Register;
  - (d) You are in material breach of a term, including any warranty in clause 5.1, of the Contract that can't be remedied; or
  - (e) You don't remedy a material breach of a term, including any warranty in clause 5.1, of the Contract that is capable of remedy within 10 Business Days of receiving notice from Us of the breach.
- 29.2.2 If We terminate all or part of the Contract under this clause 29.2, we do so without any liability (including compensation) to You.

### 29.3 Termination by Us for change in Control

You must notify Us of any proposed or impending change in Control that You become aware of. If You undergo a change in Control, We may immediately terminate the Contract by providing notice.

## 29.4 Termination by You

If We do not pay an undisputed amount 10 Business Days after the Due Date then You may issue a demand to Us for payment. If We do not pay within five Business Days' of receiving the demand, You may terminate the Contract on 30 days' written notice to Us, if the undisputed amount is not paid in that time. To the maximum extent permitted by Law, the rights in this clause 29.4 are Your only rights to terminate the Contract.

## 30. General

### 30.1 Victorian Law applies to the Contract

The Contract is governed by and is to be construed in accordance with the laws applicable in Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria and waives any right to object to any proceedings being brought in those courts.

### 30.2 Consent is at a party's absolute discretion

A party may give or withhold an approval or consent in that party's absolute discretion. Consent must be provided in writing.

### 30.3 Your obligations keep running

Unless We terminate the Contract, You will not be released from any of Your obligations under the Contract as a result of or due to Our exercise of any of Our rights under the Contract or otherwise at Law.

### 30.4 You are not to assign or novate

You must not assign or novate any of Your rights or obligations under the Contract without Our prior written consent.

### 30.5 Certain clauses keep applying after the Contract ends

Each indemnity given under the Contract, and the following clauses, will 27 termination or expiry of the Contract: 12 (Tax), 16 (Dispute Resolution), 17 (Notices), 18 (Intellectual Property Rights), 19 (Our Data), 20 (Confidentiality), 21 (Privacy), 24 (Liability), 25 (Insurance), 26 (Records), 27 (Audit), 28 (Termination), and 30 (General) of these terms and conditions, and any other provision which by its nature is intended to survive expiry or termination of the Contract.

### 30.6 Provisions are severable if illegal or unenforceable

Each provision of the Contract is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as severed from the Contract in the relevant jurisdiction, but the rest of the Contract will not be affected and will remain in full force and effect.

## 30.7 Variations must be in writing and signed

No Variation will be of any force or effect unless it is in writing and signed by both parties to the Contract.

## 30.8 Waivers must be in writing

A waiver of any right, power or remedy under the Contract must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Contract does not amount to a waiver.

## 30.9 Multiple copies of this contract can form one agreement

Subject to applicable laws, the parties may execute the Contract and any document entered into under it, electronically or physically, and in one or more counterparts. Each counterpart constitutes an original version of the Contract, and taken together constitute one agreement.

## 30.10 Click-wrap and similar terms are not applicable

Notwithstanding the manner in which a document under the Contract is submitted or accepted, the terms of the Contract will apply and any click-wrap, 'pop-up' or other like terms and conditions of Yours appearing in the course of submittal, acceptance or use of the Services will have no force or effect.

## 30.11 Services provided before the Commencement Date

If work started before the Contract was signed, the Contract applies. Except as otherwise agreed between the parties in writing:

- 30.11.1 the terms of the Contract apply to all of the work performed by You in connection with the Services even if that work was performed prior to the Commencement Date; and
- 30.11.2 any payment made to You by Us in connection with the Contract or the Services prior to the Commencement Date will be treated as a payment under the Contract and will discharge (in part or whole, as applicable) Our obligation to pay the Fees.

## 30.12 Parties pay own expenses

Except as otherwise expressly provided in the Contract, each party must pay its own costs and expenses in connection with the negotiation, preparation and execution of the Contract.

## 30.13 You must not use Our name or logo

You must not use Our name or any of Our logos, trade marks or branding, without Our prior written consent.

## 30.14 Parties don't form additional legal relationships

Except as expressly provided in the Contract, no party is an agent, representative, trustee, employee or partner of any other party by virtue of the Contract and no party may represent itself as such in any circumstances.

## 30.15 Rights are cumulative

Except where expressly stated to the contrary in the Contract, the rights of a party under the Contract are cumulative and are in addition to any other rights available to that party whether those rights are provided for under this Contract, any other document or by Laws.

# 31. Definitions and Interpretation

## 31.1 Definitions

In the Contract, unless the context requires otherwise:

**"Acceptance"** means We issue an Acceptance Certificate;

**"Acceptance Certificate"** means a notice issued by Us to You saying that:

- (a) the Acceptance Criteria have been met for a Service, Deliverable or Document, or will be met subject to certain conditions being complied with; and
- (b) that the Service, Deliverable or Document has no Defects;

**"Acceptance Criteria"** means, for a Service, Deliverable or Document, that it complies with the Requirements, has no Defects and meets any additional specifications, requirements or criteria set out in the Contract;

**"Acceptance Testing"** in respect of a Service or Deliverable, means conducting verifications and tests to confirm that the Acceptance Criteria have been met, and **"Acceptance Tests"** has a corresponding meaning;

**"Additional Conditions"** means any terms or conditions stated in the Ordering Document that are additional, complementary and not contradictory to the terms and conditions set out in clauses 1 to 31 of the Contract or the Schedules. To avoid doubt any proposed terms or conditions that are contradictory to the terms and conditions set out in clauses 1 to 31 of the Contract or the Schedules will be of no force and effect;

**"Adverse Event"** in respect of You, means:

- (a) You, or any party having or exercising control (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth)) over You, becomes an externally-administered body corporate for the purposes of the *Corporations Act 2001* (Cth) or an external insolvency administrator is appointed to any such party under the provisions of any companies or securities legislation of another jurisdiction;

- (b) a controller (as that term is defined in the *Corporations Act 2001* (Cth)) or mortgagee in possession is appointed to Your assets, or any party having or exercising control over You, or such appointment is reasonably likely;
- (c) You, or any party having or exercising control (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth)) over You fails to comply with a statutory demand in the manner specified in section 459F of the *Corporations Act 2001* (Cth), and has not made an application to set aside such demand under section 459G of the *Corporations Act 2001* (Cth);
- (d) You, or any party having or exercising control (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth)) over You enters into a composition or arrangement with Your creditors, or any class of Your creditors, with respect to the payment of amounts due to such creditors;
- (e) You are unable to pay Your debts as and when they fall due; or
- (f) a Probity Event; or
- (g) any circumstances that have the same effect as the events referred to in paragraphs (a) to (f);

**"Business Day"** means a day (not including a Saturday or Sunday) that is not a public holiday in Melbourne, Victoria;

**"Business Hours"** means between 9:00am and 5:00pm on a Business Day;

**"Cloud Infrastructure"** means hardware, software, networks, facilities, Personnel, methodologies and other resources used to provide Cloud Services;

**"Cloud Services"** means services provided by You to Us over the internet, which may include infrastructure as a service, software as a service, platform as a service or network as a service, as specified in the Requirements, together with the services described in Schedule 2;

**"Code of Conduct for Victorian Public Sector Employees"** means the Code of Conduct for Victorian Public Sector Employees published by or on behalf of the State of Victoria, as amended from time to time;

**"Commencement Date"** has the meaning given in clause 3.1;

**"Completion Date"** means the date set out in the Ordering Document, or the end date of any extension notified in accordance with clause 2.2;

**"Conditional Acceptance"** means where We have conditionally accepted a Deliverable, Service or Document in accordance with clause 9.3.2;

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

- (a) any relationship with a person or entity;
- (b) the employment of any individuals or the sub-contracting of any obligations to any third parties;
- (c) the holding of any office;

- (d) the possession of any property, including intangible property, and including any beneficial rights; or
- (e) 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 this Contract or any Ordering Document in an objective, independent and diligent manner and in Our best interests, and that state of affairs, activity or interest has not been approved in writing by Us.

**"Confidential Information"** means in relation to a party any technical, scientific, commercial, financial or other information about or relating to that party or its business, affairs or operations, which is by its nature confidential or is designated by that party as confidential, and which is disclosed, made available, communicated or delivered to the Recipient, but does not include information which:

- (a) is in or which subsequently enters the public domain other than as a result of a breach of the Contract or any other confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession at the time of first disclosure to it under the Contract;
- (c) the Recipient can demonstrate was independently developed by it and is not a Deliverable; or
- (d) is lawfully obtained by the Recipient from another person entitled to disclose such information;

**"Consequential Loss"** means, a loss of profit, loss of or damage to goodwill, reputation or credit rating, loss of anticipated revenue, savings or future business opportunity, and loss which cannot reasonably be considered to arise naturally, and in the ordinary course of things, from the act or omission giving rise to the liability;

**"Contract"** means the contract formed pursuant to clause 3;

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

**"Cure Period"** has the meaning given in clause 8.6.1;

**"Defect"** means an aspect of a Service or Deliverable that does not comply with the Contract (including any Requirements), does not comply with applicable Laws, is incomplete or (in the case of a physical Deliverable) lost or damaged, or is not fit for its intended purposes (as set out in the Requirements);

**"Delay"** has the meaning given in clause 8.1;

**"Deliverable"** means any Material that is or is required to be delivered or made available to Us by You under the Contract;

**"Developed Software"** means software developed by You in accordance with the Contract or in the course of performing the Services;

**"Dispute Notice"** has the meaning given in clause 16.2;

**"DGS"** means the Department of Government Services;

**"Document"** means any report, plan or other documentation whether in draft or final form;

**"Due Date"** has the meaning given to it in clause 11.4;

**"Fees"** means the fees payable to You for the completion of the Deliverables and Services, as set out in the Ordering Document;

**"Force Majeure Event"** means an event such as natural catastrophes or acts of God, acts of war or terrorism, military or civil disturbances, strikes or similar work stoppages or similar occurrences beyond the reasonable control of the affected party;

**"Gen-AI"** means a machine-based system or collection of systems that generate predictive outputs such as content, forecasts, recommendations or decisions for a given set of human-defined objectives or parameters without explicit programming and which:

- (a) are able to perform tasks normally requiring human intelligence, such as visual perception, speech recognition, decision-making and translation between languages; and
- (b) have the capacity to learn or adapt to new inputs or stimuli;

**"Good Industry Practice"** means a standard of service or deliverable, in terms of quality, productivity, performance, cost and timeliness of delivery, that, when considered collectively, is equal to or better than the commonly accepted best practice being provided at the relevant time by a supplier of like or similar deliverables or services to the Deliverables and Services in Australia;

**"Government Authority"** means any Victorian Public Entity, government or any governmental or semi-governmental entity, agency, commission, statutory corporation or body (including those constituted or formed under any Laws), Minister, Auditor General or Ombudsman (including an equivalent office holder with jurisdiction over Us), Commissioner (as appointed under the *Privacy and Data Protection Act 2014* (Vic) and *Freedom of Information Act 1982* (Vic)), local government authority, administrative or judicial body or tribunal or stock exchange;

**"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

**"Handle"** means collect, hold, use, disclose, process, store, transfer, access, or correction of Personal Information;

**"Hardware"** means the physical information and communication technologies equipment, including all components and parts, specified in the Requirements, that must be acquired or maintained under the Contract;

**"Incident"** means any event which is not part of the standard operation of, or which is a disruption to the performance or operation of, the Solution or the performance of a

Service, including those which cause or arise from, or may have been caused or arisen from:

- (a) an interruption to or a reduction in the quality of the Solution or that Service; or
- (b) a Defect in a Service or the Solution;

**"Install"** means the installation and set-up of the Hardware, Licensed Software, Solution or Third Party Software (as applicable) in Our Environment in accordance with the relevant Schedule, and **"Installation"** has a corresponding meaning;

**"Intellectual Property Rights"** includes all present and future copyright, all rights in relation to inventions (including patents), registered and unregistered trademarks, confidential information (including trade secrets and know how), registered designs, circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**"IP Claim"** means a third party claim or allegation that Our receipt or use of any of the Deliverables or Services infringes the Intellectual Property Rights, Moral Rights or other proprietary right of any third party;

**"Laws"** includes statutory laws, ordinances, regulations, by laws and lawful requirements or directions made under or arising from or through those items, and any conditions of a licence, permit or the like issued under a statute or other law;

**"Licensed Material"** has the meaning given to it in clause 18.2;

**"Licensed Software"** means the software stated in the Requirements that You must provide to Us (or provide us access to) as required by the terms of this Contract and Updates or New Releases of that software that may be provided to Us from time to time, but does not include any Third Party Software;

**"Materials"** means all forms of property, materials, Documents, information and items in whatever form, and includes equipment, Hardware, computer software (including development tools and object libraries), concepts, approaches, tools, methodologies, processes, know-how, data, and manuals;

**"Milestone"** means a task, outcome or point in the performance of any Services specified as such in the Contract;

**"Milestone Date"** means each date specified in the Contract, as the date by which a Milestone must be achieved (as extended from time to time under clause 8.4 or 8.5 or varied by agreement in writing);

**"Moral Rights"** means moral rights granted to creators under and in accordance with the *Copyright Act 1968* (Cth) and any similar rights existing under foreign laws;

**"NPC"** has the meaning given in clause 7.3;

**"New Release"** means software which has been produced primarily to extend, alter or improve any part of the Licensed Software by providing additional functionality or performance enhancement (whether or not Defects in that Licensed Software are also corrected) while still retaining the original designated purpose of that part of the Licensed Software (including any such software released by You under a new product

code or name). A New Release does not include any software that is generally licensed by You to Your customers as a different product;

**"Non-Compliance"** has the meaning given in clause 27.3;

**"Open Source Software"** means software available under a licence which:

- (a) meets the criteria of the "Open Source Definition" published by the Open Source Initiative at <http://www.opensource.org>, and includes the forms of creative commons licences published as the Creative Commons Legal Code for Australia at <http://www.creativecommons.org>; or
- (b) contains any term or condition which mandates the re-licensing or redistribution to the public (whether free of charge or for a fee) of any software code, in any circumstance;

**"Ordering Document"** means an executed ordering document specifying the Contract variables, Fees and payment, applicable Policies, Codes and Standards, Requirements, and Project Plan, including all attachments and annexures;

**"Our Confidential Information"** means Confidential Information of Us and includes:

- (a) information related to Us that is developed by You for the purposes of the Contract; and
- (b) Our Data;

**"Our Data"** means all data created, generated, placed in, stored in, accessed or retrieved by using, the Deliverables or receiving the Services and includes Our Personal Information;

**"Our Environment"** means the combination of hardware, software, systems and network infrastructure and services used by Us from time to time;

**"Our Personal Information"** means any Personal Information which is Handled by You or on Your behalf for Us in connection with the Contract;

**"Our Users"** means any Personnel of Ours or any other person that We authorise to use the Deliverables or Services;

**"Permitted Recipient"** has the meaning given to it in clause 20.1;

**"Personal Information"** has the meaning given in the *Privacy and Data Protection Act 2014* (Vic) (and includes reference to any Health Information as that term is defined under the *Health Records Act 2001* (Vic));

**"Personnel"** of a party means

- (a) directors, officers, employees, agents, third party contractors and subcontractors; and
- (b) 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;

**"Policies, Codes and Standards"** means the codes, standards and guidelines specified in the Ordering Document and any Victorian Government codes, standards and guidelines relating to the performance of the Services or quality of the Deliverables, or as otherwise notified by Us to You from time to time;

**"Pre-Existing Intellectual Property"** means in respect of a party any and all Intellectual Property Rights owned by or licensed to that party which existed prior to the commencement of the provision of the Services;

**"Privacy Laws"** means the *Privacy and Data Protection Act 2014 (Vic)*, the *Health Records Act 2001 (Vic)* and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under either act, as amended from time to time;

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

- (a) a breach by You or Your Personnel of the Supplier Code of Conduct; or
- (b) You or Your Personnel, or any Related Body Corporate or its Personnel, committing a Relevant Breach of Law or breach of Professional Standard, or being the subject of a Relevant Investigation or a Relevant Finding;

**"Probity Event"** means:

- (a) a Conflict of Interest;
- (b) a breach by You or any of Your Personnel, or any Related Body Corporate or its Personnel, of the Supplier Code of Conduct (whether or not relating to the Services and Deliverables);
- (c) any event or circumstance that has either before or after the date of this Contract (whether or not relating to the Services and Deliverables) that:
  - (i) has (or may have) a material adverse impact on, or the perception of, the character, integrity or honesty of You or any of Your Personnel to perform the Services and Deliverables; or
  - (ii) involves a failure by You or any of Your Personnel to comply with reasonable standards of ethical behaviour, or the standards of conduct that a reasonable person would otherwise expect of a contractor to Us;
- (d) You or any of Your Personnel, or any Related Body Corporate or its Personnel, committing a Relevant Breach of Law or breach of Professional Standards, or being the subject of a Relevant Investigation or a Relevant Finding (whether or not relating to the Services and Deliverables);
- (e) any matter relating to You or your Personnel or shareholders that adversely affects Our reputation or brings Us into disrepute;

**"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)).

**"Project Plan"** means the project plan set out in the Ordering Document or otherwise prepared in accordance with the Contract;

**"Protective Data Security Standards"** means the standards issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) from time to time;

**"Qualifying Relief Event"** means a failure by Us or Third Party Suppliers (excluding You or Third Party Software Suppliers) to comply with Our obligations under the Contract, or a Force Majeure Event;

**"Recipient"** means a party to which Confidential Information is disclosed, made available, communicated or delivered;

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

**"Related Body Corporate"** has the meaning given to it in the *Corporations Act 2001* (Cth), and **"Related Bodies Corporate"** has a corresponding meaning;

**"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 Breach of Law"** means in relation to an entity or individual, a breach of any law, equitable or legal duty (other than a Professional Standard) (whether or not in relation to the Services and / or Deliverables or the Contract) which would, in Our opinion acting reasonably, cause a reasonable person with knowledge of the breach to have a Relevant Perception in respect of an entity or individual;

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

- (a) that the entity or individual has engaged in fraudulent, corrupt, unethical or dishonest conduct, have misused confidential information, has committed a Relevant Breach of Law, or a breach of Professional Standards (whether or not in the course of performing or in relation to this Contract or an Ordering Document), or from which that could be reasonably perceived; or
- (b) which a reasonable person would consider creates a Relevant Perception in relation to the entity or individual;

**"Relevant Investigation"** means, in relation to an entity or individual, an investigation or threatened prosecution, civil penalty or disciplinary proceeding, in relation to that entity or individual which involves an allegation of fraudulent, 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 entity or individual, an adverse perception of the professional capacity, capability, fitness or reputation of that entity or individual to perform services or discharge Your obligations under or in connection with this Contract;

**"Relevant Staff"** means Your Personnel who undertake advisory or other professional services work of any kind for a Victorian Public Entity or any other employees who handle confidential information for public sector clients.

**"Representative"** means Our representative or Your representative (as applicable) who is nominated in the Ordering Document or as advised in writing from time to time, to act on behalf of a party;

**"Requirements"** means the functional, technical, operational and performance specifications and other characteristics, requirements, outcomes or Additional Conditions for Deliverables and Services listed in the Contract (including those set out in the Ordering Document), and (to the extent consistent with those things) any published or publicly available specifications for any Software (including User Documentation) or other Deliverables or Services;

**"Resolve"** means:

- (a) in relation to a Service Request, to complete the Service Request; and
- (b) in relation to an Incident, to either:
  - (i) to the extent that the Incident is not a Defect, demonstrate to Our reasonable satisfaction that that is the case (including by providing a root cause analysis of the Incident); or
  - (ii) to the extent that the Incident is (or is caused by) a Defect, permanently fix the Defect (not by providing a Workaround);

**"Schedule"** means a schedule to the Contract.

**"Scheduled Downtime"** means a planned period when a Deliverable or Service is not available to enable You to update, upgrade, maintain or improve that Deliverable or Service;

**"Security Incident"** means in relation to the Contract any actual, suspected or likely;

- (a) breach of clauses 20 or 22;
- (b) unauthorised (either at law or contractually) or unlawful use of, loss of, access to, alteration of, or disclosure of, Our Data or Personal Information in Your or Your Personnel's possession or control;
- (c) any attack that shuts down or substantially degrades the Deliverables and Services, such that the Deliverables and Services (as applicable) aren't able to be used by Us in the manner intended to be used;
- (d) introduction of a Virus into Our Environment or Our Data in the course of You providing the Services; or
- (e) any similar events relating to Our Data or Personal Information that may trigger contractual or legal reporting obligations to a Government Authority, at law or under any of the Policies, Codes and Standards;

**"Security Checks"** has the meaning given to it under clause 7.3.2;

**"Security Program"** has the meaning given to it in clause 22.1;

**"Service Levels"** means the service levels specified in the Requirements;

**"Service Level Data"** means all data relating to Your compliance with the Service Levels;

**"Service Request"** has the meaning given to it in clause 4 of Schedule 5.

**"Services"** means the services required to be provided by You including:

- (a) each service, task, activity or responsibility that You are required to perform under the Contract;
- (b) the provision of the Deliverables; and
- (c) all other services, tasks and activities that are incidental and necessary for the proper performance of the activities described in paragraphs (a) and (b);

**"Severity 1 Defect"** has the meaning provided in the Requirements (or if not provided, a Defect that involves a complete loss of one or more major functional areas within any part of the Solution, Services or Deliverables, and for which no Workaround exists);

**"Severity 2 Defect"** has the meaning provided in the Requirements (or if not provided, a Defect that involves a material degradation of one or more major functional areas within any part of the Solution, Services or Deliverables);

**"Software"** means Developed Software, Licensed Software and/or Third Party Software, as the context requires;

**"Solution"** means the fully integrated and implemented Deliverables (including any Software);

**"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);

**"Term"** means the term of the Contract as determined in accordance with clause 2;

**"Third Party Products"** means any software, hardware, deliverables or services supplied to Us by a Third Party Supplier or Third Party Software Supplier and includes Third Party Software;

**"Third Party Software"** means the commercially available "off the shelf" software applications, components, plug-ins, products, programs (excluding Open Source Software) specified in the Requirements in which Intellectual Property Rights are owned by a third party and are procured under the Contract by You for Us or are otherwise used in the provision of the Deliverables or Services;

**"Third Party Software Supplier"** means a supplier of Third Party Software;

**"Third Party Supplier"** means any third party which supplies deliverables or services to Us at any time, and excludes a Third Party Software Supplier;

**"Updates"** means software which has been produced primarily to overcome Defects in, or to improve the operation of, any part of the Licensed Software without significantly altering the Requirements (including any such software released by You under a new product code or name);

**"User Documentation"** means any documentation (such as user manuals, operating manuals, technical manuals, published specifications, security configurations or other documentation) that is reasonably required in order for Us or Our Users to use, maintain, secure, operate or otherwise obtain the benefit of any Deliverable or Service, and any additional documentation specified in the Requirements;

**"Variation"** means a variation of the Contract under clause 30.7;

**"Victorian Government Fair Payments Policy"** means the Victorian Government Fair Payments Policy issued by the Victorian Government for Victorian Government Departments and applicable agencies (as amended from time to time);

**"Victorian Public Entity"** means:

- (a) each Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic));
- (b) 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);
- (c) an Administrative Office as defined in the *Public Administration Act 2004* (Vic);
- (d) a "Council" as defined in the *Local Government Act 2020* (Vic);
- (e) 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
- (f) an entity which receives any funding from any of the entities listed in paragraphs (a) to (e) or any entity under the control of any of the entities listed in paragraphs (a) to (e);

**"Virus"** means a computer program, code, device, product or component that is designed to prevent, disable inhibit, destroy, harm or impair the performance of computer software or a computer system or to permit unauthorised access to a computer system or data stored within any computer system, but does not include any code, mechanism or device that is included in software by You for the purpose of managing the licensed use of software;

**"Warranty Period"** means, in relation to the applicable Deliverable a period of 90 Business Days following Acceptance of that Deliverable, or such other period as may be specified for that Deliverable in the Requirements;

**"We"** and **"Us"** means the purchaser specified in the Ordering Document and **"Our"** has a corresponding meaning;

**"Workaround"** means a method agreed by You and Us of avoiding or mitigating the impact of a Defect, either through a temporary correction of the Defect or access to an alternative service or functionality acceptable to Us;

**"You"** means the supplier specified in the Ordering Document and **"Your"** has a corresponding meaning;

**"Your Confidential Information"** means Confidential Information of You, but excludes Our Confidential Information; and

**"Your Pre-Existing Intellectual Property"** means Pre-Existing Intellectual Property owned by or licensed to You.

## 31.2 Interpretation

In the interpretation of the Contract, the following provisions apply unless the context otherwise requires:

- 31.2.1 words in the singular include the plural and vice versa;
- 31.2.2 "includes" and "including" is without limitation;
- 31.2.3 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 31.2.4 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it;
- 31.2.5 the obligations of You, if more than one person, under this Contract are joint and several and each person constituting You acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Contract, of the other as if those acts or omissions were its own;
- 31.2.6 the rights of You, if more than one person, under this Contract, including the right to payment, jointly benefit each person constituting You (and not severally or jointly and severally);
- 31.2.7 headings are for convenience only and do not affect interpretation;
- 31.2.8 a reference in the Contract to "dollars" or "\$" means Australian dollars and all amounts payable under the Contract are payable in Australian dollars;
- 31.2.9 a reference to a person includes a natural person, partnership, joint venture, body corporate, association, Government Authority or other entity; and
- 31.2.10 in each Schedule:
  - (a) the rules of interpretation set out in this clause 31.2 apply;
  - (b) a reference to a clause is a reference to a clause in that Schedule;
  - (c) a reference to the Short Form Contract is a reference to this Contract; and
  - (d) references to the Long Form Contract are included for convenience only and do not affect interpretation.