Agreement for the provision of Marketing Services  
Revision June 2025

Marketing Services Register

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Parties

#### The Purchaser specified in the Purchase Order (Purchaser)

#### The Service Provider specified in the Purchase Order (Service Provider)

Background

1. The Marketing Services Register has been established to streamline the Victorian Government’s purchasing of marketing services. It simplifies the procurement process for the Victorian Government when engaging with suppliers for marketing services and reduces the administration costs involved in tendering to the mutual benefit of both parties.
2. The Purchaser appoints the Service Provider to provide the Services on and subject to the terms of this Contract.

# Agreed Terms

## Interpretation

### Definitions

In this Contract:

**Agreement** means this Contract and includes the schedules and any annexures or documents incorporated by reference, which arises between the Purchaser and the Service Provider when both parties sign a Purchase Order in accordance with **clause 7**.

**Artificial Intelligence (AI)** means a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.

**Auditor-General** means:

* + - 1. the office of the Auditor-General established under the *Constitution Act 1975* (Vic);
      2. the Auditor-General’s office established under the *Audit Act 1994* (Vic); and
      3. any other person or entity that may from time to time perform the functions of the Auditor-General or the Auditor-General’s office.

**Authorised Representative** means, in respect of a Purchaser, a person who the Purchaser nominates in writing as having authority to bind that Purchaser.

**Background Intellectual Property** means the Intellectual Property of a party which was either created:

1. before the Commencement Date; or
2. independently of this Agreement,

and all improvements to such Intellectual Property by the party.

**Business Day** means a day which is not a Saturday, Sunday or public holiday (being a public holiday appointed as such under the Public Holidays Act 1993 (Vic)) in Melbourne.

**Code of Practice** means a code of practice as described in, and approved under the *Privacy and Data Protection Act 2014* (Vic).

**Commencement Date** means the date for commencement of the Services recorded in the Purchase Order.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about, or in any way related to, a party, including any information designated by the party as confidential, which is disclosed, made available, communicated or delivered to the other party in connection with this Agreement (including information in the Register, the terms of this Agreement and copies of any of the above information, data or material), but excludes information:

1. which is in or which subsequently becomes generally available in the public domain other than as a result of a breach of this Agreement;
2. which the receiving party can demonstrate was in its possession prior to the date of this Agreement;
3. which the receiving party can demonstrate was independently developed by the receiving party;
4. which is lawfully obtained by the receiving party from another person entitled to disclose such information; or
5. which is required to be disclosed by Law or court order.

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

* + - 1. any relationship with a person or entity;
      2. the employment of any individuals or the sub-contracting of entities;
      3. the holding of any office;
      4. the possession of any property, including intangible property, and including any beneficial rights; or
      5. engaging in any hobby, profession, business, trade or calling,

whether in the past, the present or which may occur in the future, of a pecuniary or non-pecuniary nature, which is likely to, could be perceived to, or has the potential to, whether directly or indirectly, restrict or adversely affect the ability of the Service Provider or any Service Provider Personnel to perform the Service Provider’s obligations under this Agreement in an objective, independent and diligent manner and in the best interests of the Purchaser, and that state of affairs, activity or interest has not been approved in writing by the Purchaser.

**Contract** means this agreement containing the Standard Marketing Services Terms.

**Contracts Publishing System** means the system of the Victorian Government for publication of details of contracts entered into by Victorian Government departments, including any amended or successor system.

**Control** means:

1. in relation to a corporation:
   1. the ability to control, directly or indirectly, the composition of the board of the corporation;
   2. the ability to exercise or control the exercise of the rights to vote in relation to more than 50% of the voting shares or other form of voting equity in the corporation;
   3. the ability to dispose or exercise control over the disposal of more than 50% of the shares or other form of equity in the corporation; or
   4. the capacity to determine, directly or indirectly, the outcome of decisions about the financial and operating policies of the corporation within the meaning of section 50AA of the Corporations Act;
2. in relation to an association or a partnership, firm or other body whether incorporated or unincorporated (entity), the capacity to determine, directly or indirectly, the financial and operating policies of the entity or how the affairs of the entity are to be conducted and managed; and
3. in relation to an individual, the ability to control or exercise influence over the decision-making of that individual (that ability being deemed to exist where the person alleged to have control over the individual is a spouse, parent or child of the individual).

**Data** means all data, information, text, drawings, statistics, analysis and other materials embodied in any form which is:

1. supplied by or on behalf of the Purchaser in connection with this Agreement (**Input Data**); or
2. generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data, the Services or the deliverables.

**eProcurement Platform** means the electronic procurement system for use in conjunction with the marketing Services Register, as listed from time to time on the Website.

**Expiry Date** means the date of expiry recorded in the Purchase Order.

**Fair Jobs Code (FJC)** means the Fair Jobs Code issued by the State of Victoria available at buyingfor.vic.gov.au/fair-jobs-code.

**Fees** means a fixed or capped fee payable to the Service Provider for the provision of specified Services under this Agreement.

**Generative AI** means AI that is capable of generating text, images, videos, sounds or other data using generative models, in response to user prompts.

**Health Privacy Principles** means the health privacy principles set out in the *Health Records Act 2001* (Vic).

**IBAC** means the commission established under the *Independent Broad-based Anti- corruption Commission Act 2011* (Vic) and includes any other organisation that may, from time to time, perform the functions of the commission.

**Information Privacy Principles** means the information privacy principles set out in the

*Privacy and Data Protection Act 2014* (Vic).

**Intellectual Property Rights** means all intellectual property rights at any time recognized by law, including all present and future copyright and neighbouring rights, all proprietary 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 proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

**Key Personnel** means the key personnel specified in the Purchase Order.

**Laws** means:

1. any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State of Victoria or local or other government in force in the State of Victoria, irrespective of where enacted; and
2. lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self- regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

**Licence** means a non-exclusive, world-wide, everlasting, irrevocable, royalty-free licence to the Purchaser to exercise all rights in relation to the Intellectual Property it applies to as if the licensee were the owner, including the right to sub-license. A Licence does not include the right to transfer or assign the Intellectual Property, or to seek or enforce remedies for infringements of the Intellectual Property against a third party.

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

**Marketing Services Register** or **Register** means the State's electronic register to facilitate the procurement of marketing services.

**Moral Right** has the meaning given to that term in the *Copyright Act 1968* (Cth) and includes a right of a similar nature that is conferrable by statute, and that exists or comes into existence anywhere in the world.

**Personnel** includes, in relation to each party:

* + - 1. an officer, employee, agent, third party contractor or subcontractor of that party; or
      2. an officer, employee, agent, contractor or subcontractor of any person referred to in paragraph (a), whether directly or indirectly through any number of such persons.

**Purchase Order** means an order for Services submitted by the Purchaser to the Service Provider in accordance with **clause 7** that is in or substantially in the form set out in **Schedule 5**.

**Probity Breach** means any of the following (in the course of performing, or in relation to, the Service Provider’s listing on the Register, this Agreement or any Purchase Order), each of which will be interpreted without limiting the other:

* + - 1. a breach by the Service Provider or any Service Provider Personnel of the Supplier Code of Conduct; or
      2. the Service Provider or any of the Service Provider Personnel, or any Related Body Corporate of the Service Provider or any Service Provider Related Body Corporate 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:

* + - 1. a Conflict of Interest;
      2. the Service Provider or any of the Service Provider Personnel, or any Related Body Corporate of the Service Provider or any Service Provider Related Body Corporate Personnel, committing a Relevant Breach of Law or breach of Professional Standard, or being the subject of a Relevant Investigation or a Relevant Finding (whether or not in the course of performing, or in relation to, the Service Provider’s listing on the Register, this Agreement or any Purchase Order);
      3. a breach by the Service Provider or any Service Provider Personnel, or any Related Body Corporate of the Service Provider or any Service Provider Related Body Corporate Personnel, of the Supplier Code of Conduct (whether or not in the course of performing, or in relation to, the Service Provider’s listing on the Register, this Agreement or any Purchase Order);
      4. any event or circumstance occurring before or after the date of this Agreement (whether or not in the course of performing, or in relation to, the Service Provider’s listing on the Register, this Agreement or any Purchase Order) which:
         1. has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Service Provider or the Service Provider’s Personnel, or the fitness of the Service Provider or any Service Provider Personnel to perform the Services; or
         2. involves a failure of the Service Provider or any Service Provider 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 the State; and
      5. any matter relating to the Service Provider, any Service Provider Personnel, any Related Body Corporate of the Service Provider or any Service Provider Related Body Corporate Personnel (whether or not in the course of performing, or in relation to, the Service Provider’s listing on the Register, this Agreement or any Purchase Order), that does or may adversely affect the Purchaser's reputation,

and paragraphs (a) to (e) above will be interpreted without limiting each other.

**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 Intellectual Property** means all Intellectual Property (excluding Background Intellectual Property) developed, created, discovered, brought into existence or otherwise acquired (other than from the Purchaser) by the Service Provider, under this Agreement.

**Protective Data Security Standards** means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by the Purchaser to ensure compliance with those standards.

**Purchaser Policies** mean those policies, standards and procedures of the Purchaser as:

* + - 1. specified in the Purchase Order (other than the FJC, LJF or SPF); and
      2. otherwise notified to the Service Provider from time to time in accordance with clause 3.2.

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Service Provider for the provision of specified Services in the Purchase Order.

**Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).

**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 the course of performing or in relation to the Services or this Agreement) which would, in the Purchaser's 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:

* + - 1. that the entity or individual has engaged in fraudulent, corrupt, unethical or dishonest conduct, has misused Confidential Information, has committed a Relevant Breach of Law or a breach of a Professional Standard (whether or not in the course of performing or in relation to the Services or this Agreement), or from which that could reasonably be perceived; or
      2. 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:

* + - 1. an investigation (including an internal investigation); or
      2. a threatened prosecution, civil penalty or disciplinary proceeding,

in relation to that entity or individual which involves an allegation of fraud, corrupt, unethical or dishonest conduct, misuse of Confidential Information or misconduct or unprofessional conduct in relation to the practice of the entity or individual’s occupation or profession.

**Relevant Perception** means, in relation to an entity or an individual, an adverse perception of the professional capacity, capability, fitness or reputation of that entity or that individual to perform services or discharge obligations of the Service Provider under or in connection with this Agreement.

**Request for Quote** means a request from the Purchaser for the provision of Services, which is submitted through the eProcurement Platform, in the form of a request for quote, request for tender or any other form and specifies the type or types of services being requested in the form set out on the Website.

**Services** means the marketing services (or any of them) specified in the Purchase Order.

**Service Levels** means the service levels the Service Provider must comply with in performing its obligations under this Agreement (which may be specified in the Request for Quote, Supplier Proposal, Purchase Order and/or Supplier Proposal).

**Service Provider Related Body Corporate Personnel** includes any person who is:

* + - 1. an officer, employee, agent, third party contractor or subcontractor of any Related Body Corporate of the Service Provider; or
      2. an officer, employee, agent, contractor or subcontractor of any person referred to in paragraph (a), whether directly or indirectly through any number of such persons.

**Social Procurement Framework (SPF)** means Victoria's Social Procurement Framework published 1 April 2018 by the Victorian Government, as amended from time to time (accessible at https://www.buyingfor.vic.gov.au/social-procurement-framework).

**Special Conditions** means any special conditions recorded in the Purchase Order.

**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).

**Supplier Proposal** means the response to a Request for Quote, which is issued by the Service Provider through the eProcurement Platform setting out a quote and a detailed methodology/proposal for delivering the Services, and includes any documentation attached to or incorporated by reference in the Supplier Proposal in the form set out in **Schedule 6**.

**Standard Marketing Services Terms** means the terms and conditions contained in **clauses 1 to 29** of this Agreement, applying to the provision of Services through the Marketing Services Register.

**Staff Costs** means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers’ compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

**Supplier Rules of Use** means the rules of use relating to the Marketing Services Register and available at the Website.

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

**Term** means the term of this Agreement determined in accordance with **clause 2**. **Victorian Public Entity** means:

1. each Victorian Government department (as defined in section 3 of the *Financial Management Act 1994* (Vic));
2. 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);
3. an Administrative Office as defined in the *Public Administration Act 2004* (Vic);
4. a "Council" as defined in the *Local Government Act 2020 (*Vic);
5. 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
6. an entity which receives any funding from any of the entities listed in paragraphs (a) to (d) of this definition or any entity under the control of any of the entities listed in paragraphs (a) to (d) of this definition.

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

**Website** means the world wide website maintained by the Department of Government Services and located at universal resource locator <http://www.buyingfor.vic.gov.au/>as amended from time to time.

### Interpretation

Unless expressed to the contrary, in this Agreement:

* + - 1. words in the singular include the plural and vice versa;
      2. any gender includes the other genders;
      3. if a word or phrase is defined its other grammatical forms have corresponding meanings;
      4. “includes” means includes without limitation;
      5. no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
      6. a reference to:
         1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
         2. a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
         3. any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
         4. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
         5. “$”, “dollars” or “AUD” is a reference to the lawful currency of the Commonwealth of Australia;
         6. a party or parties is a reference to the Purchaser and the Service Provider (as the case requires).
      7. if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

### Headings

Headings do not affect the interpretation of this Agreement.

## Term

### Term of the Agreement

1. This Agreement will commence on the Commencement Date and will expire on the Expiry Date.
2. This Agreement will remain in force for the duration of the period stated in the Purchase Order, subject to:
   * + - 1. earlier termination or expiry in accordance with the provisions of this Agreement; or
         2. extension in accordance with the procedure (if any) specified in the Purchase Order.

## Agreement subject to policy

### Purchaser Policies

Without limiting any other provision of this Agreement, the Service Provider must, and must ensure that its Personnel, comply with the Purchaser Policies (as amended from time to time in accordance with clause 3.2), to the extent that:

1. such policies are applicable to the Service Provider in its capacity as a supplier to the Purchaser; and
2. copies of such policies (as amended from time to time) have been provided to, or made reasonably accessible to the Service Provider.

### Changes to Purchaser Policies

1. The Service Provider agrees that:
   * + - 1. the Purchaser may, from time to time, notify the Service Provider in writing of:

any changes to existing Purchaser Policies, including any deletions of, or additions to, the policies, standards or procedures that apply to the Purchaser; or

any new policies with which the Purchaser requires the Service Provider to comply; and

* + - * 1. the Service Provider must comply with:

any changes to the existing Purchaser Policies; and

any new policies,

notified under this paragraph (a) by no later than 20 Business Days from the date of such notification.

1. Despite paragraph (a)(ii), if the Purchaser (acting reasonably) notifies the Service Provider that a change to an existing Purchaser Policy or a new policy must be implemented urgently, then the Service Provider must comply with that change on and from the date directed by the Purchaser.
2. If, after the Service Provider submits a Supplier Proposal in accordance with clause 7, there is a change (or proposed change) to the Purchaser Policies which will require the Service Provider to materially vary the manner of its performance of, or the nature or extent of, the Services, and the Service Provider demonstrates to the reasonable satisfaction of the Purchaser that the change:

will materially increase the costs to the Service Provider in supplying the Services; and/or

has a material impact on the schedule for the provision of the Services,

and is such that the Service Provider is not able to prevent or mitigate those material additional costs or impact on the schedule for the provision of the Services through taking reasonable steps, then the Service Provider will be entitled to submit a request to vary the Agreement or Purchase Order before that change to the Purchaser Policies is due to take effect (or, if the change has already taken effect, as soon as reasonably practicable after receiving notice of such change) with respect to the process and cost of compliance with that change. The Purchaser must not unreasonably refuse such a variation request.

1. The parties acknowledge and agree that:

this clause 3.2 does not limit the Service Provider’s other obligations under this Agreement;

except to the extent that the Purchaser expressly agrees otherwise, the amount of any variation to Rates under any agreed variation that arises from the operation of this clause 3.2 will be calculated in accordance with the pricing principles in clause 11; and

without limiting other provisions in this clause 3.2, if the Purchaser rejects a variation request that arises from the operation of this clause 3.2, the Service Provider must continue to comply with the Purchaser Policies, as unchanged, and the Purchaser will be free to address the change (or proposed change) to the Purchaser Policies, or related variation (or proposed variation) to the manner of performance or nature or extent of the Services the subject of that variation however it chooses, for example, by not requiring the Service Provider to comply, or by engaging a third party to perform additional work required to achieve compliance.

## Liability and interdependence

The Service Provider acknowledges that, notwithstanding anything else in this Agreement, the Purchaser is solely responsible for the acts or omissions of the Purchaser, including any liability for moneys owing to the Service Provider. For the avoidance of doubt, the Service Provider may only enforce this Agreement against the Purchaser.

## Performance of Services

### Status of Service Provider

The Service Provider warrants that there is no legal impediment to its provision of the Services on the terms set out in this Agreement.

### Scope of Services

The Service Provider must provide the Services set out in the Purchase Order.

### Purchaser Requirements

The Service Provider must:

* + - 1. ensure that the Services comply with the Service Levels as specified in the Purchase Order; and
      2. comply with reasonable directions given by the Purchaser in discharging its obligations under this Agreement.

### Compliance with Service Levels

In the event that the Purchase Order identifies Service Levels to be met by the Service Provider, the Service Provider acknowledges that:

* + - 1. a failure to comply with the Service Levels is a breach of this Agreement;
      2. the Purchaser's remedy will be determined by reference to these Standard Marketing Services Terms.

### Quality of Service

The Service Provider must:

* + - 1. provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
      2. ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
      3. act in good faith and in the best interests of the Purchaser;
      4. keep the Purchaser informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the Purchaser; and
      5. fully comply with its obligations and duties under this Agreement.

### Preparation of Project Plan

If requested in the Request for Quote, the Service Provider must prepare a project plan (including relevant milestones) and submit it to the Purchaser for approval by the date specified in the Purchase Order.

### Approval of Project Plan

If the Service Provider is required to submit a project plan, the Purchaser must review it promptly. The Service Provider must accommodate any requests for alteration reasonably made by the Purchaser in order to satisfy the requirements of this Agreement.

### Inability to provide Services

If, at any time during the Term, the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify the Purchaser of that fact.

### Service Provider to provide equipment

The Service Provider must provide, at its cost, any and all equipment (including computer hardware and software and any ancillary support) necessary for the performance of the Services. Without limiting the foregoing, the Service Provider must provide the equipment specified in the Purchase Order.

### Time of the essence

Time will be of the essence in the performance of this Agreement.

## Personnel

### Provision of Personnel

The parties will each utilise such Personnel as are necessary to enable them to fulfil their respective obligations under this Agreement. Each party must ensure that the Personnel which it utilises pursuant to this clause has the requisite skills and experience.

### Entry onto Purchaser's Premises

The Service Provider must:

* + - 1. provide or procure the provision of such information as can be lawfully provided and which is reasonably requested by the Purchaser concerning the Personnel it proposes to bring onto the Purchaser's premises for the purposes of this Agreement;
      2. provide suitable replacement Personnel should the Purchaser, on reasonable grounds, deny access to or request removal of any Personnel; and
      3. ensure its Personnel, when on the Purchaser's premises or when accessing the Purchaser's facilities and information, comply as necessary with the reasonable requirements and directions of the Purchaser with regard to conduct, behaviour, safety and security (including submitting to security checks as required and complying with any obligation imposed on the Purchaser by law).

### Key Personnel

1. If Key Personnel are required to perform the Services, as indicated in the Purchase Order, then the Services must be performed by the persons specified in the Purchase Order. The Service Provider must provide the Key Personnel to provide the relevant Services and may not remove or replace any Key Personnel.
2. If, notwithstanding **clause 6.3(a),** any of the Key Personnel are unable to provide the Services, the Service Provider must promptly notify the Purchaser and propose a suitably qualified and experienced substitute (**Replacement Staff**).
3. Any Replacement Staff proposed in accordance with **clause 6.3(b)** must be approved by the Purchaser in writing and will not be Key Personnel until the Purchaser provides such approval.
4. The Purchaser may not unreasonably withhold its approval of Replacement Staff under **clause 6.3(c)** but the Purchaser may give its approval subject to such conditions as the Purchaser reasonably considers necessary to protect the Purchaser’s interests under this Agreement.

## Formation of the Agreement

1. The Agreement is formed once the parties complete and sign the Purchase Order following the exchange between the Purchaser and the Service Provider of the Request for Quote and the Supplier Proposal.
2. The parties will be bound by this Agreement on and from the Commencement Date stated in the Purchase Order.
3. The Agreement will consist of:
   1. the Standard Marketing Services Terms;
   2. the Schedules to the Standard Marketing Services Terms;
   3. the Purchase Order;
   4. the Supplier Proposal;
   5. the Request for Quote; and
   6. any other document that is expressly incorporated by reference by the documents referred to in **paragraphs (i) to (v) above**.
4. Where there is inconsistency between the terms of two or more documents referred to in **clause 7(c)**, the terms of the document in highest on the list will prevail.
5. The Supplier Proposal must be issued through the eProcurement Platform.

## Performance Management and Monitoring

The parties agree that:

1. the Purchaser may conduct performance reviews to evaluate, monitor or review the Service Provider’s performance and compliance with this Agreement as reasonable;
2. the parties will conduct periodic contract management meetings to discuss the Service Provider’s performance, the frequency, location and required participants of which may be set out in the Purchase Order; and
3. the Service Provider must participate and cooperate in good faith in any such performance reviews and/or contract management meetings.

## Access to records

### Service Provider to retain records

The Service Provider must, for a period of seven (7) years after the Term, keep true and particular accounts and records of:

* + - 1. all Services supplied under this Agreement; and
      2. all associated records including:
         1. records of purchase of Services by the Service Provider; and
         2. all supporting materials used to generate and substantiate invoices submitted in respect of Services supplied under this Agreement.

Without limitation to the foregoing, the Service Provider must comply with, and must follow any reasonable directions by the Purchaser which are relevant to, any applicable Commonwealth, State or Territory legislation relating to archival requirements.

### Right to access and audit

* + - 1. The Purchaser or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the accounts and records of the Service Provider relating to the provision of Services, and of all other matters relevant to the calculation of the Rates and/or Fees. Such representatives will be entitled (at the expense of the Purchaser) to take copies of or extracts from any such records.
      2. The right of access and audit granted under to **clause 9.2(a)** may be exercised by the Purchaser at any time during the Term or in the seven (7) year period following the expiry of the Term.
      3. For the avoidance of doubt, each party will bear its own costs of conducting or participating in an audit under **clause 9.2(a)**.

## Fees and Rates

### Fees and Rates

The Fees and/or Rates payable in respect of this Agreement are specified in the Purchase Order.

### Invoicing

* + - 1. The Service Provider must submit to the Purchaser a tax invoice or tax invoices in respect of the Services provided under this Agreement:
         1. as soon as practicable after the completion of the Services; or
         2. as otherwise provided for in the relevant Purchase Order.
      2. A tax invoice submitted for payment pursuant to **clause 10.2** must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Services and Services Tax) Act 1999* (Cth) in addition to the following:
         1. Purchaser Order reference number;
         2. the Service Provider’s name;
         3. the Service Provider’s ABN;
         4. the Purchaser’s ABN and address;
         5. the date of issue of the tax invoice;
         6. details of the Rates or Fees and expenses including the items to which they relate;
         7. the total amount payable (including GST);
         8. the GST amount shown separately; and
         9. any other information specified in the Purchase Order.
      3. All invoices must be sent to the person(s) (if any) specified in the relevant Purchase Order, to the address specified in the Purchase Order.

### Payment of invoice

* + - 1. Subject to the remainder of this **clause 10.3**, the Purchaser will pay the invoiced amount to the Service Provider within thirty (30) days of receipt of the invoice. Payment may be made by electronic funds transfer or any other manner agreed by the parties from time to time.
      2. The Purchaser’s obligation to pay the Service Provider the Fees and/or Rates specified in an invoice is subject to performance of the Services in the relevant period in accordance with the Agreement.
      3. An invoice will not be paid until such time as the invoice is certified for payment by the Authorised Representative of the Purchaser. An invoice will not be certified for payment unless the Authorised Representative of the Purchaser is satisfied that it is correctly calculated with respect to the Services that are the subject of this Agreement and the Service Provider is entitled to claim payment.
      4. If the Authorised Representative of the Purchaser disputes the invoiced amount (whether in whole or in part) for any reason, the Purchaser must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount the Purchaser believes is due for payment. If the Purchaser and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with **clause 21**.
      5. Payment of an invoice is **not** to be taken as:
         1. evidence or an admission that the Services have been provided in accordance with the Service Levels and otherwise in accordance with this Agreement, including the Purchase Order;
         2. evidence of the value of the Services supplied; or
         3. an admission of liability,

but must be taken only as payment on account.

* + - 1. In the event of a dispute as to whether an amount is payable pursuant to an invoice (whether under **clause 10.3**) or otherwise), the Purchaser may withhold the disputed portion pending resolution of the dispute but must pay the undisputed portion within thirty (30) days.

### Fair payment

* + - 1. This clause 10.4 only applies if the total value of this Agreement is less than $3 million.
      2. If clause 10.4 applies, the reference in clause 10.3(a) to 30 days is taken to be 10 Business Days.
      3. A Purchaser will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act* 1983 (Vic).
      4. For the purposes of **clause 10.4(c)**, **overdue amount** means an amount (or part thereof) that:
         1. is not, or is no longer, disputed in accordance with this Agreement;
         2. is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act* 1999 (Cth)) properly rendered by the Service Provider in accordance with this Agreement; and
         3. has been outstanding for more than 10 Business Days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

### Expenses

Expenses or other disbursements may only be charged by the Service Provider in accordance with the Purchase Order.

## Competitive pricing

### Competitive pricing principles

The Purchaser and the Service Provider agree that it is their common intention that the Rates and Fees will be (and will remain, for the Term) commercially competitive in terms of:

* + - 1. the prices offered by the Service Provider to other customers whose orders for services are comparable to the orders for Services under this Agreement; and
      2. prices, and terms and conditions, offered by other service providers in the market for services which are the same as or equivalent to the Services.

### Most favoured pricing

The Service Provider must ensure at all times during the Term that the Rates and Fees are no less favourable than any rates and fees at which the Service Provider provides or offers to provide services that are equivalent or similar to the Services to any other customer of the Service Provider whose:

* + - 1. orders of services are of a comparable volume to those placed by the Purchaser under this Agreement; and
      2. agreement with the Service Provider is comparable to the terms and conditions in this Agreement.

## Failure to perform

1. Without limiting any other clause of this Agreement, or any other remedy the Purchaser may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of this Agreement (including, without limitation any requirements stated in the Purchase Order) and the applicable Service Levels, the Purchaser:
   1. will not be required to pay for those Services until they are provided in accordance with the requirements of the Agreement and applicable Service Levels; and
   2. may, by notice in writing to the Service Provider, require the Service Provider to:

remedy any default (if the default is capable of being remedied) at the Service Provider’s own expense; or

re-perform the Services (if the Services are capable of being re-performed by the Service Provider),

in each case within the time specified in the notice (which must be reasonable having regard to the nature of the Services).

1. If the remedied or re-performed Services are remedied or re-performed in accordance with the applicable Service Levels and otherwise to the reasonable satisfaction of the Purchaser, then the Purchaser will pay the applicable Rates or Fees for those remedied or re-performed Services (which the parties acknowledge may be less than the cost to the Service Provider of remedying or re-performing the Services).
2. If the default referred to in **clause 12(a)** is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, the Purchaser may either:
   1. remedy that default or re-perform the Services itself; or
   2. have the Services remedied or re-performed by a third party,

and in either case, the Service Provider must pay the reasonable costs incurred by the Purchaser in doing so.

## Liability

1. The Service Provider must indemnify the Purchaser and each of its officers, employees and agents (**Indemnified Party**) against any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:
   1. a breach of this Agreement by the Service Provider, including any failure to provide the Services in accordance with this Agreement;
   2. any warranty given by the Service Provider under this Agreement (including any warranty given in a Purchase Order) being incorrect or misleading in any way; or
   3. any negligent act or failure to act by the Service Provider or any of the Service Provider’s employees, agents, officers or sub-contractors,

except to the extent that any such loss, damage, claim, action or expense is caused or contributed to by the Purchaser, its employees or agents.

1. If any indemnity payment is made by the Service Provider under this **clause 13**, the Service Provider must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
2. If the Service Provider fails to meet any date for delivery of the Services as specified in a Purchase Order, the Service Provider must pay to the Purchaser any liquidated damages in accordance with the Purchase Order.
3. The Service Provider:
   1. agrees that the liquidated damages represent a reasonable and genuine pre-estimate of the minimum anticipated or actual loss or damage which would be incurred by the Purchaser as a result of the Service Provider not meeting the delivery date of the Services;
   2. acknowledges that the parties wish to avoid the difficulties of proof of damages, and to this end, agrees that the liquidated damages payable are reasonable and are not a penalty; and
   3. undertakes that it will not challenge or seek to set aside the liquidated damages on the basis that they are a penalty or are otherwise unenforceable.

## Warranties

The Service Provider warrants to the Purchaser that:

1. the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
2. the Service Provider has the accreditation or membership of professional or other bodies in relation to the provision of the Services as set out in the Supplier Proposal for the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during the Term;
3. it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services;
4. whilst on premises owned or controlled by the Purchaser, the Service Provider and its employees, agents and contractors will at all times comply with the Purchaser’s lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
5. where the Purchaser has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
6. the provision of the Services will not infringe any right of any third party (including, without limitation, any Intellectual Property Right) or any Laws;
7. in performing, or in connection with the performance of, the Services or in connection with any Data or Project Intellectual Property, it will only use Generative AI as specified in the Purchase Order; and
8. all representations made by the Service Provider in or in connection with Supplier Proposal were and remain accurate.

## Change in Control

1. The Service Provider must notify the Purchaser in writing of any change in Control of the Service Provider (or of the ultimate holding company of the Service Provider) within seven (7) days after that change occurs **(Notice)**.
2. The Purchaser may, upon receiving the Notice, in its absolute discretion by notice in writing to the Service Provider, terminate this Agreement, such termination to take effect at any time within the immediately succeeding twelve (12) months after the Purchaser receives the Notice.

## Insurance

### Service Provider to maintain insurance

* + - 1. The Service Provider must (and must ensure that any sub-contractors appointed by it under **clause 22**) obtain and maintain for the Term the following insurances:
         1. a broad form public liability insurance to the value of at least $500,000 per claim;
         2. professional indemnity insurance to the value of at least $250,000 per claim; and
         3. any other insurance required by law.
      2. The Service Provider must provide the Purchaser with evidence of the currency of any insurance it is required to obtain on request by the Purchaser at any time during the Term.
      3. Where any insurance the Service Provider is required to obtain and maintain expires during the Term **(Initial Insurance)**, the Service Provider must provide the Purchaser with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.
      4. Any insurance obtained pursuant to **clause 16.1** must be:
         1. taken out with an insurer acceptable to the Purchaser; and
         2. on terms (including any excess) which are acceptable to the Purchaser.

### Additional insurance amounts

The Service Provider acknowledges and agrees that if the Purchaser requested in the Request for Quote that the Service Provider maintain insurance above the insurance limits specified in clause 16.1(a), the insurance limits in the Request for Quote will apply to this Agreement.

### Absence of insurance

The Service Provider must immediately advise the Purchaser if at any time during the Term of this Agreement the Service Provider ceases to have the benefit of an insurance policy as required in **clause 16.1** or **clause 16.2**.

## Termination

### Termination of Agreement

The Purchaser may terminate this Agreement by notice in writing to the Service Provider (such termination to take effect at any nominated time within the immediately succeeding twelve (12) months) if:

* + - 1. the Service Provider consistently, persistently or repeatedly fails to provide the Services in accordance with the Service Levels or otherwise in accordance with the requirements of this Agreement;
      2. the Purchase Order or the Service Levels give the Purchaser the right to do so;
      3. the Service Provider fails to remedy, to the satisfaction of the Purchaser, any breach of this Agreement (which in the reasonable opinion of the Purchaser is able to be remedied) within fourteen (14) days after the date on which the Purchaser issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
      4. the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the Purchaser such breach cannot be remedied;
      5. the Service Provider or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;
      6. a Probity Breach occurs (regardless of whether it has been notified under **clause 23.2(a) or 23.2(b)**);
      7. during the Term there is a change in governmental policy that affects the Purchaser’s ability to perform its obligations under this Agreement or which, in the reasonable opinion of the Purchaser, has the effect of making the provision of Services under this Agreement unviable, inappropriate or otherwise unsuitable;
      8. the Service Provider commits any act or does anything that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Service Provider into disrepute and as a consequence the Purchaser believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the State; or
      9. the Service Provider:
         1. being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Purchaser, limits the capacity of the Service Provider to provide the Services or otherwise preclude or adversely affect the Service Provider’s ability to carry out its obligations and duties under this Agreement; or
         2. goes into liquidation or a receiver and manager or mortgagee’s or chargee’s agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

### Termination of Agreement without cause

The Purchaser may terminate this Agreement without cause by giving the Service Provider not less than fourteen (14) days’ notice in writing.

### Termination of Agreement by Service Provider

* + - 1. The Service Provider may terminate this Agreement immediately for cause if and only if:
  1. the Purchaser has not paid an amount properly due and payable in accordance with **clause 10**; and
  2. the Service Provider has complied with the following procedure:

the Service Provider has given the Purchaser written notice giving the Purchaser at least a further 30 days to pay the invoice and specifying that the Service Provider intends to terminate this Agreement if the Purchaser fails to pay that invoice; and

the Purchaser does not pay the amount by the expiry of the period in the notice referred to in **clause 17.3(a)(ii)(A)**.

* + - 1. The Service Provider agrees that the rights under **clause 17.3(a)** comprise its sole right to terminate this Agreement and waives any other termination rights which it may otherwise have under this Agreement or at Law.

### Consequences of termination or expiry

* + - 1. Where this Agreement is terminated by a Purchaser pursuant to **clause 17.1(g)** or **clause 17.2,** the Purchaser will pay to the Service Provider all amounts owing in respect of Services undertaken, and work in progress as at the date of termination, provided that such Services or work in progress have, in the reasonable opinion of the Purchaser, been performed in accordance with the Service Levels and the requirements of this Agreement (including, without limitation, any requirements stated in the Purchase Order).
      2. Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party to it prior to termination or expiry (as the case may be).

## Intellectual Property

1. The Background Intellectual Property of each party remains the property of that party.
2. The Service Provider will own all Project Intellectual Property, unless the Purchase Order states that the Project Intellectual Property is to be owned by the Purchaser.
3. If the Purchase Order specifies that ownership of the Project Intellectual Property vests in the Purchaser, the Service Provider assigns and agrees to assign to the Purchaser all right, title and interest in the Project Intellectual Property immediately upon creation. To avoid doubt, nothing in this clause 18(c) requires the Service Provider to assign its Background Intellectual Property.
4. The Purchaser grants, and the Service Provider accepts, a non-exclusive, non-transferable, royalty-free licence over:
   1. the Project Intellectual Property owned by the Purchaser; and
   2. the Purchaser’s Background Intellectual Property,

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

1. The Service Provider grants, and the Purchaser accepts, a Licence over:
   1. the Project Intellectual Property not owned by the Purchaser;
   2. the Service Provider’s Background Intellectual Property; and
   3. any Intellectual Property of a third party, if any, to the extent needed to allow the Purchaser to enjoy the full benefit of the Services and the Agreement.
2. At the request of the Purchaser, the Service Provider will provide the Purchaser with copies of all Licensed materials and Intellectual Property and in a way that allows the Purchaser to exercise the Purchaser’s rights under the Licence.
3. The Service Provider warrants that:
   1. if the Purchase Order specifies that ownership of the Project Intellectual Property vests in the Purchaser, it will be entitled to own and assign to the Purchaser any and all Project Intellectual Property in accordance with clause 18(c); and
   2. it has the right to grant the Licences referred to in clause 18(e).
4. The Service Provider will obtain all consents needed for any Licence or assignment, including in relation to any Moral Right so that the Purchaser may exercise all Licensed or ownership rights in the relevant material.
5. The Service Provider will properly manage the Project Intellectual Property to allow the Purchaser to enjoy the full benefit of the Services and this Agreement, which may include taking any necessary action to:
   1. register, maintain the registration of, protect, manage, exploit and (as appropriate) commercialise the Project Intellectual Property for the benefit of the Victorian public;
   2. maintain, improve, enhance and develop the Project Intellectual Property to the fullest extent reasonably necessary to maintain its usefulness and appropriateness to the Service Provider and the Purchaser for the delivery of the Services;
   3. use, reproduce, publish, adapt, disseminate, communicate to the public, broadcast, and perform the Project Intellectual Property for the benefit of the Victorian public; and
   4. comply with all applicable Departmental or other Victorian government policies in respect of the Project Intellectual Property.
6. The Service Provider will not accept co-funding, or involve any person in the delivery of the Services, on terms that would jeopardise or limit any Licence to be granted to the Purchaser without obtaining the Service Provider’s prior agreement and consent in writing.

## Accident compensation

The Service Provider must ensure that, in respect of its employees and contractors and any other persons engaged by the Service Provider to provide the Services, it:

1. complies with the provisions of the *Accident Compensation Act 1985* (Vic) and *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);
2. insures against its liability to pay compensation whether under legislation or otherwise; and
3. produces to the Purchaser on request any certificates or like documentation required by the *Accident Compensation Act 1985* (Vic) and *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

## Confidentiality and privacy

### Use of Confidential Information

* + - 1. The Service Provider must (and must ensure that its employees, agents, sub-contractors and advisers):
         1. use and reproduce the Purchaser’s Confidential Information only to perform the Service Provider’s obligations under this Agreement (including, without limitation, any obligations stated in the Purchase Order); and
         2. not disclose or otherwise make available the Purchaser’s Confidential Information other than to personnel who have a need to know the information to enable the Service Provider to perform the Service Provider’s obligations under this Agreement (including, without limitation, any obligations stated in the Purchase Order).
      2. All Purchaser Confidential Information will remain the property of the Purchaser and all copies or other records containing the Purchaser’s Confidential Information (or any part of it) must be returned by the Service Provider to the Purchaser on termination or expiry of this Agreement.
      3. The Purchaser will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this **clause 20** and without the need on the part of the Purchaser to prove any special damage.
      4. The Service Provider must, if requested in writing by the Purchaser, require any person to whom the Purchaser’s Confidential Information will be disclosed, to execute a deed of confidentiality in the form of **Schedule 7** at the cost of the Service Provider. Such deeds of confidentiality must be made available to the Purchaser at the request of the Purchaser.

### Disclosure of Service Provider’s information

* + - 1. Subject to **clause 20.2(b)**, the Purchaser must keep confidential all Confidential Information of or relating to the Service Provider that is provided to it, whether under this Agreement, the Supplier Proposal or in accordance with any requirements of the Supplier Rules of Use, by or on behalf of the Service Provider.
      2. The Service Provider consents to the Purchaser disclosing, publishing or otherwise making available information in relation to the Service Provider (and this Agreement and the provision of the Services):
         1. to its Personnel to enable it to perform its obligations and exercise its rights under this Agreement (provided that those Personnel are in turn subject to obligations to only use and/or disclose that Confidential Information in a manner consistent with this Agreement);
         2. as may be required to comply with the Contract Publishing System;
         3. to other Victorian Public Entities or Ministers of the State in connection with the use of the Services;
         4. to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Service Provider;
         5. to the Auditor-General;
         6. to the ombudsman appointed under the *Ombudsman Act 1973* (Vic);
         7. to comply with Victorian Government policy or any Law, including the *Freedom of Information Act 1982* (Vic);
         8. in accordance with clause **20.4**;
         9. to the IBAC;
         10. as set out in the ‘Use of Information’ clauses in Schedule 2 and (as applicable) Schedules 3 and 4;
         11. to otherwise satisfy any public disclosure obligations of the Purchaser; or
         12. otherwise in accordance with the prior written consent of the Service Provider.

### Privacy

* + - 1. The Service Provider acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Service Provider for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Purchaser in respect of that act or practice had it been directly done or engaged in by the Purchaser.
      2. The Service Provider acknowledges that the Purchaser is bound by the Protective Data Security Standards. The Service Provider will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Service Provider, on behalf of the State, under or in connection with the Agreement.

### Disclosure to Victorian Public Entities

Notwithstanding any other provision in this Agreement, the Service Provider consents to the Purchaser using and disclosing or otherwise making available information, including any Confidential Information of the Service Provider, to Victorian Public Entities for the purposes of or in connection with:

* + - 1. Parliamentary accountability;
      2. the management of a Probity Event or investigating whether a Probity Event has occurred; and
      3. considering the Service Provider's suitability in any future approach to market or procurement processes by the State or any Victorian Public Entity.

## Disputes

### Parties to meet

If any dispute arises under or in connection with this Agreement (**Dispute**) which Dispute is not able to be resolved by the parties within fourteen (14) days, the nominated senior executive officer (or equivalent) of each of the Purchaser and the Service Provider will promptly meet and discuss in good faith with a view to resolving such Dispute.

### Mediation

* + - 1. If any Dispute is unable to be resolved in accordance with **clause 21.1** within fourteen (14) days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation.
      2. The mediation will be conducted in accordance with the mediation guidelines of ACDC (**Guidelines**) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

### Arbitration or litigation

* + - 1. If the parties fail to settle any Dispute in accordance with **clause 21.2**, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.
      2. If the parties do not agree to refer the Dispute to arbitration in accordance with **clause 20.3(a)**, either party may submit the Dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.

### Performance during Dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement (including, without limitation, any obligations stated in the Purchase Order), pending the resolution of a Dispute under this **clause 21**.

### Interlocutory relief

Nothing in this **clause 21** is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such Dispute.

## Sub-contracting

1. Except as expressly provided in this Agreement, the Service Provider must not sub- contract to any third person any of its obligations under this Agreement without the prior written consent of the Purchaser, which consent may be given or withheld by the Purchaser in its absolute discretion.
2. The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement. The Service Provider will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Service Provider itself.

## Conflict of Interest and probity

### Service Provider Obligations - Probity

* + - 1. The Service Provider undertakes that it will (at no cost to the Purchaser):
         1. unless expressly approved by the Purchaser in writing, not hold any engagements or client relationships which could create an actual, potential or perceived conflict with the interests of the Purchaser;
         2. conduct business, ethically, honestly, transparently, safety and in compliance with the Purchaser's policies, and legal and regulatory obligations;
         3. comply with the Supplier Code of Conduct; and
         4. unless expressly approved by the Purchaser in writing, ensure that no Service Provider Personnel are or remain engaged in the provision of the Services if they are subject to a Relevant Investigation, a Relevant Finding or a Relevant Perception (and require those Service Provider Personnel to return or destroy all of the Purchaser's Confidential Information in their possession, custody or control).
      2. The Service Provider must at no cost to the Purchaser:
         1. monitor and assess its compliance and the compliance of the Service Provider Personnel with the Supplier Code of Conduct on a regular basis for the term of any Purchase Order;
         2. promptly provide any information requested by the Purchaser related to:

the compliance by the Service Provider and the Service Provider Personnel with the Supplier Code of Conduct; and

any policies, frameworks or systems established to monitor and assess the compliance by the Service Provider and the Service Provider Personnel with the Supplier Code of Conduct;

* + - * 1. ensure that the Service Provider Personnel engaged in the provision of Services provide to the Purchaser, on request by the Purchaser, a declaration (in the form required by the Purchaser from time to time) of:

their compliance with clauses **23.1(a)(i)** to **(iii)** (as though those requirements applied directly to them); and

whether or not they are the subject of a Relevant Investigation or Relevant Finding.

* + - 1. The Service Provider acknowledges that a failure to comply with any relevant Victorian Government policies (including the Supplier Code of Conduct) may be considered by prospective Purchasers in any future approach to market or their respective procurement processes.
      2. The Service Provider acknowledges and agrees that:
         1. the Purchaser may from time-to-time conduct an investigation into the character, integrity, honesty or other aspects of compliance with the Supplier Code of Conduct of the Service Provider or any of its Personnel (**Code Investigation**), which may include:

investigations into commercial structure and ownership, business and credit history, prior contract compliance or any criminal records or pending charges; and

interviews of any person or research into any activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation; and

* + - * 1. if the Purchaser requests in writing that the Service Provider or a Third Party nominated by the Service Provider carry out the Code Investigation, the Service Provider must carry out, or have carried out as requested, the investigation and provide a full report to the Purchaser; and
        2. the Service Provider must procure all relevant consent from people who will be the subject of a Code Investigation.

### Probity Events process

* + - 1. The Service Provider must notify the Purchaser as soon as reasonably practicable and in any event within 3 Business Days after becoming aware that a Probity Event has occurred or is likely to occur. The notice must describe the circumstances giving rise to the actual or likely occurrence of the Probity Event, when it occurred or is anticipated to occur and the Service Provider Personnel and Service Provider Related Body Corporate Personnel involved.
      2. Upon receipt of a notice under clause **23.2(a)** or otherwise if the Purchaser considers a Probity Event has occurred and notifies the Service Provider of that fact, at the Purchaser's option (and without limiting any other of its other rights or remedies of the Purchaser under this agreement or otherwise):
         1. the Purchaser and the Service Provider must meet within 5 Business Days after the Service Provider providing a notice under clause **23.2(a)** or receiving a notice under this clause **23.2(b)** (as the case may be) and endeavour to agree a course of action that will be taken by the Service Provider (and by when) to remedy the Probity Event and to ensure that it does not happen again; and
         2. the Service Provider must:

comply with any agreement made under clause **23.2(b)(i)**; and

provide such reports and other information about the Service Provider’s progress in implementing any agreement made under clause **23.2(b)(i)** as may reasonably be requested by the Purchaser from time to time.

* + - 1. If the parties are unable to agree a course of action under clause **23.2(b)** within 10 Business Days after the Service Provider providing a notice under clause **23.2(a)** or receiving a notice under clause **23.2(b)** (as the case may be), or the Service Provider fails to comply with clause **23.2(a)** or **23.2(b)**, then the Purchaser may (without limiting any other of its other rights or remedies under this Agreement or otherwise) give a notice to the Service Provider setting out the action the Purchaser reasonably requires the Service Provider to take to address the adverse effect of the Probity Event and to prevent the Probity Event from occurring again, and the Service Provider must comply with that notice. Such action may include:
         1. in relation to any of the Service Provider Personnel or Service Provider Related Body Corporate Personnel whose acts or omissions have caused or contributed to the Probity Event:

removing that person from any involvement with the Services or this Agreement; or

terminating (or where applicable requiring any Related Body Corporate of the Service Provider to terminate) any subcontract relating to those Service Provider Personnel or Service Provider Related Body Corporate Personnel whose acts or omissions have caused or contributed to the Probity Event,

within 10 Business Days after the Purchaser giving notice to the Service Provider requesting such action; or

* + - * 1. in relation to a person that has Control over the Service Provider (the **Controlling Entity**), where that Control has caused or contributed to the Probity Event, ensuring that:

action is taken with respect to that Controlling Entity, being action of the type described in clause **23.2(c)(i)** (as if that person was one of the Service Provider Personnel and the Service Provider was the Controlling Entity); or

failing resolution of the issue under clause **23.2(c)(ii)(A)**, the Controlling Entity ceases to have that Control within 20 Business Days after the Purchaser giving further notice requiring this to occur.

* + - 1. If:
         1. a Probity Event has been notified under clause **23.2(a)** or **23.2(b)** and the parties acting reasonably are unable to agree a course of action under clause **23.2(b)(i)** within 10 Business Days after the date that notice was delivered; or
         2. the Service Provider fails to comply with clause **23.1** or this clause **23.2** and:

if the breach is a failure to provide information or a confirmation where required, the Service Provider has first been given notice of the breach and a reasonable opportunity (not required to exceed 5 Business Days) to provide the missing information or confirmation; or

for other breaches of clause **23.1** or this clause **23.2**, the Service Provider has been given a reasonable opportunity (not required to exceed 5 Business Days) to make representations to the Purchaser in relation to the matter (which the Purchaser will be free to consider or disregard in its sole and absolute discretion),

that occurrence or failure will be deemed to be a material breach of this Agreement and the Purchaser may in its sole and absolute discretion (and without any liability to compensate the Service Provider or pay any amount to the Service Provider as a result of doing so) terminate this Agreement immediately by written notice to the Service Provider.

* + - * 1. If the Purchaser terminates this Agreement under clause **23.2(d)**, then notwithstanding any other clause of this Agreement:

the Service Provider must immediately cease all work under this Agreement;

the Purchaser will not be liable for any losses of the Service Provider (including but not limited to, losses of revenue and profits, goodwill, reputation, business opportunity or damage to credit rating) arising in connection with such termination; and

the Purchaser will not be liable to pay the Service Provider any fees or charges under this Agreement for any Services which are impacted by the Probity Event.

* + - * 1. Nothing in this clause **23.2** derogates from any other rights or entitlements of the Purchaser under this Agreement or at law, or any powers of the Purchaser or the State of Victoria under any applicable law.

### Suspension for Probity Events and Probity Breaches

* + - 1. Without limiting any provision of this Agreement, if:
         1. a Probity Event has been notified under clause **23.2(a)** or **23.2(b)** and the parties acting reasonably are unable to agree a course of action under clause **23.2(b)(i)** within 10 Business Days after the date that notice was delivered; or
         2. a Probity Breach has occurred,

then the Purchaser may suspend the performance of the Services in whole or in part by notice to the Service Provider until whichever of the following occurs first:

* + - * 1. a course of action is agreed in accordance with clause **23.2(b)(i)**;
        2. the Service Provider complies with any notice provided by the Purchaser under clause **23.2(c)**;
        3. the Purchase Order is terminated in accordance with this Agreement; or
        4. in the case of an anticipated Probity Event notified under clause **23.2(a)** or **23.2(b)**, it has been determined (or the Purchaser, acting reasonably, is satisfied) that neither the Probity Event or a Probity Breach has occurred.

### Reinstatement after suspension for Probity Breach

* + - 1. Where the Purchaser suspends the performance of Services under clause **23.3**, and it is subsequently determined (or the Purchaser, acting reasonably, is satisfied) that the relevant event or circumstance giving rise to the suspension did not amount to a Probity Event or a Probity Breach, then:
         1. the Purchaser must by written notice request the Service Provider to resume the performance of the Services; and
         2. the Service Provider must resume the performance of the Services as soon as reasonably practicable after receiving that notice.
      2. If the Service Provider resumes the Services in accordance with clause **23.4(a)**, the Service Provider will be entitled to, and the Purchaser must grant the Service Provider, such an extension of the time for the completion of the relevant Services as is reasonably necessary to overcome the impact of the suspension on the Service Provider's ability to perform the affected Services.

## Compliance with Law & Policy

* + - 1. The Service Provider must, in performing its obligations under this Agreement, comply with all Laws affecting or applicable to the provision of Services by the Service Provider.
      2. The Service Provider must also comply with:
         1. the provisions set out in **Schedule 1** and **Schedule 2**;
         2. **Schedule 3** relating to the Fair Jobs Code; and
         3. if specified in a Purchase Order, **Schedule 4** relating to the Local Jobs First.

## Access and safety

### Access to premises

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

### Obligations

When the Service Provider enters the premises of the Purchaser, the Service Provider must and must ensure that its employees, agents and contractors use all reasonable endeavours to:

* + - 1. protect people and property;
      2. prevent nuisance and unnecessary noise and disturbance; and
      3. act in a safe and lawful manner and comply with the safety standards and policies of the Purchaser (as notified to the Service Provider).

### No occupier’s liability

* + - 1. The Purchaser and its officers, employees, agents and invitees will not be responsible for any damage done to the Service Provider’s property or to that of any of the Service Provider’s officers, employees, agents or sub-contractors or for any personal injury sustained by any of the Service Provider’s employees, agents or

sub-contractors occurring on the Purchaser’s premises as a result of:

* + - * 1. the negligence or recklessness of such employee, agent or sub-contractor; or
        2. if such employee, agent or sub-contractor has failed to comply with the occupational health and safety and security policies of the Purchaser (as notified to the Service Provider).

The Service Provider unconditionally and irrevocably releases the Purchaser and its employees, agents and invitees from all such responsibility and agrees to indemnify each Purchaser, its officers, employees, agents and invitees (**Indemnified Party**) against any loss that the Indemnified Party may suffer as a result of any third party bringing an action against that Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party’s breach of this Agreement, wilful acts or omissions or negligence.

## GST

### Definitions

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

### Consideration is exclusive of GST

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

### Recipient to pay an additional amount

If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.

### Reimbursement

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

## Staff Costs

1. The Service Provider must indemnify and keep indemnified the Purchaser from and against all liability for the Staff Costs in any way relating to the Services.
2. If the Purchaser is or becomes liable to pay any Staff Costs, the Purchaser may deduct the amount of its liability for the Staff Costs from any amount due by the Purchaser to the Service Provider, whether under this Agreement or otherwise.

## Notices

### Giving a communication

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier, facsimile, or by electronic mail as follows:

* + - 1. to the Purchaser: at the address which is set out in the Purchase Order; and
      2. to the Service Provider: at the address which is set out in the Purchase Order.

### Change of Service Provider's address

* + - 1. If the Service Provider’s contact details change, it must notify the Purchaser.
      2. The Service Provider’s email address must at all times remain generic and must not be specific to an individual.

### Time of delivery

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

* + - 1. in the case of delivery in person or by courier, when delivered;
      2. in the case of delivery by post, two (2) Business Days after the date of posting;
      3. in the case of facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing: the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory; and
      4. in the case of electronic mail, if the receiving party has agreed to receipt in that form under this Agreement, and the message is correctly addressed to and successfully transmitted to that party’s electronic mail address (e-mail address), when acknowledgment of receipt is recorded on the sender’s computer.

### After hours communications

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

* + - 1. after 5.00 pm in the place of receipt; or
      2. on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

## General

### Legal costs

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

### Amendment

* + - 1. Any variation to the terms and conditions of this Agreement must be recorded in the Special Conditions in the Purchase Order and must be signed by the parties.
      2. A Purchase Order may only be varied or replaced by a document executed by the Purchaser and the Service Provider.

### Waiver and exercise of rights

* + - 1. A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
      2. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.

### Severability

* + - 1. The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.
      2. Notwithstanding **clause 29.4(a)**, any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

### Rights cumulative

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

### Governing law and jurisdiction

* + - 1. This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria.
      2. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### Entire understanding

* + - 1. This Agreement, together with the Request for Quote and Supplier Proposal, contains the entire understanding between the parties as to the subject matter of the Purchase Order.
      2. Except as otherwise provided in **clause 29.7(a)**:
         1. all previous and future negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
         2. no oral explanation or information provided either prior to or after the date of this Agreement by any party to another:

affects the meaning or interpretation of this Agreement; or

constitutes any collateral agreement, warranty or understanding between any of the parties.

### Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Purchaser on the one hand and the Service Provider on the other hand.

### Survival

**Clauses 9**, **13, 16, 18, 20** and **21** of this Agreement, and any other provisions expressly stated to survive termination or expiry of this Agreement, survive the termination or expiry of this Agreement and may be enforced at any time.

# Schedule 1

**Victorian Government Policies**

### Compliance with Supplier Code of Conduct

* + - 1. The Service Provider acknowledges: that the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
      2. it has read and agrees to comply with the Supplier Code of Conduct which can be found at: <http://www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>, as updated from time to time; and
      3. the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Service Provider, whether under this Agreement or at Law.

### VPSC Code of Conduct

If the Service Provider:

* + - 1. is required to supervise any employees, contractors, subcontractors or agents of the Purchaser;
      2. is performing functions and duties on behalf of the Purchaser at the Purchaser’s premises; and
      3. has access to resources and/or information which are not usually accessible by or available to the general public,

then the Service Provider and its Personnel must, throughout the Term, observe the VPSC Code of Conduct and such other relevant State Government policies as may be notified by the Purchaser to the Service Provider.

# Schedule 2

**Social Procurement Framework**

### Definitions

In this of Schedule 2:

**Agreed Social Procurement Commitment Proposal** means the agreed proposal between the Purchaser and the Service Provider establishing the Social Procurement Commitments set out as an attachment to the Purchase Order.

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

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

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

### Agreed Social Procurement Commitment Proposal

* + - 1. The Service Provider will, in performing its obligations under this Agreement:
         1. comply with the Agreed Social Procurement Commitment Proposal;
         2. perform all Social Procurement Commitments by the due date for performance as set out in the Agreed Social Procurement Commitment Proposal or otherwise agreed between the parties in writing.
      2. The Service Provider acknowledges and agrees that the Agreed Social Procurement Commitment Proposal (including the Social Procurement Commitments) applies during the term of this Agreement and any extensions to the term and until all obligations under clause 1.4 of this Schedule are fulfilled.
      3. The Service Provider’s failure to comply with clause 1.2 may constitute a breach of this Agreement.

### Reporting

* + - 1. The Service Provider will prepare and maintain records demonstrating its:
         1. compliance with the Agreed Social Procurement Commitment Proposal; and
         2. performance against the Social Procurement Commitments.
      2. The Service Provider will, during the term of this Agreement, provide a written report to the Purchaser demonstrating its progress toward performing the Social Procurement Commitments at least at the intervals specified in the Purchase Order and any other such times as requested by the Purchaser, acting reasonably.
      3. The Purchaser may request the Service Provider to meet to discuss the contents of the report and other issues concerning the progress towards the Social Procurement Commitments including any identified reporting deficiencies and timeframes for rectification.
      4. The reports provided in accordance with clause 1.3(b) will:
         1. be submitted by the Service Provider using the VMC or another method of reporting as set out in the Purchase Order;
         2. be in a form satisfactory to the Purchaser (acting reasonably);
         3. include all supporting information reasonably required by the Purchaser to verify the contents of the report.
      5. Within two months of the completion of the Services or the expiry or termination of this Agreement, whichever is earlier, the Service Provider will provide:
         1. a written final report to the Purchaser demonstrating its compliance with the Agreed Social Procurement Commitment Proposal and satisfactory performance of the Social Procurement Commitments; and
         2. a statutory declaration in the form set out in Annexure 1 to this Schedule 2 to confirm that the information contained in the final report is true and accurate. The Service Provider must ensure the statutory declaration is made by a director of the Service Provider or the Service Provider’s Chief Executive Officer or Chief Financial Officer.
      6. At the request of the Purchaser, the Service Provider will provide further information about, or explanation of, any:
         1. non-compliance with the Agreed Social Procurement Commitment Proposal; and
         2. failure to perform the Social Procurement Commitments by the due date for performance.
      7. The obligations set out in this clause 1.3 are in addition to, and do not derogate from, any other obligations set out in this Agreement.

### Verifying compliance

* + - 1. The Service Provider acknowledges and agrees that the Purchaser will have the right to inspect the Service Provider's records to verify its compliance with the Agreed Social Procurement Commitment Proposal.
      2. The Service Provider will:
         1. permit the Purchaser, or a duly authorised nominee of the Purchaser, from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Service Provider for the purposes of this clause 1.4;
         2. permit the Purchaser, or a duly authorised nominee of the Purchaser, from time to time to undertake a review of the Service Provider’s performance against the Social Procurement Commitments; and
         3. ensure that its employees, agents and subcontractors give all reasonable assistance to the Purchaser, or a duly authorised nominee of the Purchaser, to undertake such inspection, verification or review.
      3. The Service Provider acknowledges and agrees that the Purchaser, or a duly authorised nominee of the Purchaser, is authorised to obtain information from any relevant persons, firms or corporations, including third parties, in connection with the Service Provider’s performance against the Social Procurement Commitments.
      4. The obligations set out in this clause 1.4 are in addition to, and do not derogate from, any other obligations as set out in this Agreement.

### Use of information

The Service Provider acknowledges and agrees that the Purchaser will assess the Service Provider’s performance against the Social Procurement Commitments and this information may be:

* + - 1. provided by the Purchaser to other departments such as the departments responsible for the Social Procurement Framework;
      2. considered in the assessment or review of the Service Provider's eligibility to tender for future State contracts; and
      3. disclosed in accordance with this Agreement or as otherwise required by law.

### Subcontracting

* + - 1. The Service Provider will ensure that any subcontracts it enters into in relation to this Agreement contain clauses requiring its subcontractors to:
         1. comply with the Agreed Social Procurement Commitment Proposal to the extent that it applies to work performed under the subcontract as though the subcontractor was the Service Provider;
         2. provide any necessary information to the Service Provider and/or the Purchaser to ensure the Service Provider can comply with its obligations under this Schedule;
         3. permit the Purchaser to exercise its rights under clause 4 of this Schedule as though that clause referred to the subcontractor in place of the Service Provider.
      2. The obligations set out in this clause 1.6 are in addition to, and do not derogate from, any other obligations as set out in this Agreement.
      3. The Service Provider's failure to comply with this clause 1.6 may constitute a breach of this Agreement.

# Annexure 1

**Statutory declaration**

**Instructions for completing this declaration**

1. Please delete the text between square brackets and provide your own information.

2. All fields in square brackets are required fields

**Statutory Declaration**

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

1. I am a Director of [insert name of Service Provider] (**Service Provider**).
2. The contents of the report provided by the Service Provider to [insert Purchaser organisation name] (**Purchaser**) (in accordance with clause 1.3(e)(i) of Schedule 2 to the Agreement between the Service Provider and Purchaser dated [insert date of Purchase Order]) are true and correct.

**Applicant signature**

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

Signature of person making the declaration: [insert signature]

Declared at: [City, town or suburb] in the state of Victoria.

Date: [insert date]

**Witness signature**

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

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

Signature of authorised witness: [insert signature]

Date: [insert date]

Name: [insert name]

Capacity: [Insert capacity in which authorised person has authority to witness]

Address: [insert address]

**Certificate Identifying Exhibit**

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

Title of document: [insert title of document]

Date of document (dd/mm/yyyy): [insert date]

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

Name of person making the [insert name]  
statutory declaration

Signature of person making declaration: [insert signature]

Date: [insert date]

**Witness signature**

Name of witness: [insert name]

Address: [insert address]

Signature of statutory declaration [insert signature]  
witness:

Date (dd/mm/yyyy): [insert date]

|  |  |
| --- | --- |
| Qualification as a statutory declaration witness *(writing, typing or stamp)*: | [Insert capacity in which authorised person has authority to witness] |
|  |  |

# Schedule 3

**Fair Jobs Code**

### Definitions

In this of Schedule 3:

**Adverse Ruling** means a ruling (by any court, tribunal, board, commission or other entity with jurisdiction or legal authority to determine the matter) that the Service Provider has breached an applicable employment, industrial relations or workplace health and safety law.

**DJSIR** means the Department of Jobs, Skills, Industry and Regions (and its successor Government department) as the Department responsible for the FJC.

**Enforceable Undertaking** means a promise or agreement made by the Service Provider with a regulator, Court or other body (including the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria) in respect of a breach or alleged/suspected breach of an applicable employment, industrial relations or workplace health and safety law.

**FJC Guidelines** means Fair Jobs Code Guidelines, available at buyingfor.vic.gov.au/fair-jobs-code-departments-and-agencies.

**FJC Unit** means the Fair Jobs Code Unit, an administrative group within DJSIR with responsibilities in relation to the FJC.

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Pre-Assessment Certificate** means a certificate issued to the Service Provider by the FJC Unit prior to entering into this Agreement, or which is renewed during the term of this Agreement.

**Significant Subcontractor** means an entity engaged, or to be engaged, under a subcontract directly with a Service Provider, where the value of that subcontract is $1 million or more (exclusive of GST).

### Fair Jobs Code

* + - 1. The Service Provider warrants that at the time of entering this Agreement it holds a valid Pre-Assessment Certificate.
      2. In performing its obligations under this Agreement, the Service Provider acknowledges and agrees that it shall:
         1. continue to hold a valid Pre-Assessment Certificate; and
         2. comply with the FJC.
      3. If at any time during the term of this Agreement the Service Provider's Pre- Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach of this Schedule which will enable the Purchaser to exercise its rights under clause 1.8 of this Schedule.
      4. The Service Provider acknowledges and agrees that the obligations for holding and maintaining a Pre-Assessment Certificate apply during the term of this Agreement and any extensions to the term.

### Verification of Service Provider's compliance with the Fair Jobs Code

* + - 1. The Service Provider must, on request by the Purchaser, provide a copy of the Pre- Assessment Certificate or any related correspondence with the FJC Unit.
      2. If, during the term of this Agreement, the Service Provider’s Pre-Assessment Certificate expires the Service Provider must provide Notice to the Purchaser of the expiry within 10 Business Days.
      3. If the Service Provider fails to promptly take steps to renew an expired Pre-Assessment Certificate after notifying the Purchaser of the expiration, the expiration will constitute a breach of this Schedule which will enable the Purchaser to exercise its rights under clause 1.8 of this Schedule.

### Ongoing duty of disclosure and cooperation

* + - 1. If during the term of this Agreement, the Service Provider is the subject of an Adverse Ruling or Enforceable Undertaking, it must provide Notice to the Purchaser and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
      2. During the term of this Agreement the Service Provider must:
         1. cooperate with all reasonable requests from the Purchaser seeking evidence of the Service Provider's compliance with the FJC;
         2. permit the Purchaser, an accountant or auditor on behalf of the Purchaser, DJSIR or any other person authorised by the Purchaser or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Service Provider relating to compliance with the FJC under this Agreement; and
         3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Purchaser or DJSIR to undertake such audit or inspection.
      3. The Purchaser will bear all costs for any audit in accordance with clause 1.4(b)(ii) of this Schedule.
      4. The Service Provider acknowledges and agrees that the Purchaser, DJSIR, or their duly authorised representatives (including the FJC Unit), are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Service Provider’s compliance with the FJC.
      5. The obligations set out in this clause 1.4 are in addition to and do not derogate from any other obligation under this Agreement.
      6. A failure to comply with this clause 1.4 will constitute a breach of this Schedule which will enable the Purchaser to exercise its rights under clause 1.8 of this Schedule.

### Significant Subcontractor

* + - 1. The Service Provider warrants that any Significant Subcontractors engaged or proposed to be engaged to perform work under this Agreement hold a valid Pre-Assessment Certificate when they are engaged or proposed to be engaged.
      2. The Service Provider must ensure that any subcontracts entered into by the Service Provider with Significant Subcontractors in relation to work under this Agreement contain clauses requiring Significant Subcontractors to:
         1. comply with the FJC;
         2. hold a valid Pre-Assessment Certificate;
         3. notify the Service Provider if its Pre-Assessment Certificate is revoked, or if its Pre-Assessment Certificate expires without being replaced with a new Pre-Assessment Certificate; and
         4. comply with the ongoing duty of disclosure and cooperation set out in clause 1.4, as if references to the Service Provider were references to the Significant Subcontractor.
      3. The subcontracting obligations set out in this clause 1.5 are in addition to and do not derogate from any other obligations under this Agreement.
      4. The Service Provider's failure to comply with this clause 1.5 will constitute a breach of this Schedule which will enable the Purchaser to exercise its rights under clause 1.8 of this Schedule.

### Standing offer arrangements

* + - 1. If this Agreement is a standing offer arrangement under which goods and/or services may be procured from time to time by way of a separate purchase order, work order or other ordering arrangement (however described), and the Service Provider is in breach of clauses 1.2, 1.3 or 1.4 of this Schedule:
         1. all purchase order contracts entered into prior to the breach will continue unless and until terminated by the Agency; and
         2. no further purchase order contracts may be entered into until such time as the breach is remedied.

### Use of information

The Service Provider acknowledges and agrees that:

* + - 1. FJC Unit will assess the Service Provider’s compliance with the FJC.
      2. Information regarding the Service Provider’s compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
         1. will be reported by the Purchaser to the FJC Unit in compliance with the Purchaser’s obligations under the FJC; and
         2. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.
      3. Nothing in this provision removes the obligation for the Service Provider to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 1.4 above.

### Consequences of breach

* + - 1. Any breach of the provisions of this Schedule will enable the Purchaser, in its absolute discretion, to do any or all of the following:
         1. suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Purchaser and within a timeframe acceptable to the Purchaser;
         2. by written notice immediately terminate the Agreement; or
         3. exercise any rights that it has under this Agreement.

# Schedule 4

**Local Jobs First**

### Definitions

In this of Schedule 4:

**Apprentice** means a person (other than a Cadet or Trainee) who is employed to undertake training in a trade under a National Training Contract. The Local Jobs First Policy requires employers to employ apprentices under a National Training Contract registered with VRQA which combines structured training with paid employment related to a Local Jobs First applicable project.

**Cadet** means an employee engaged by an employer (other than an Apprentice or Trainee) who is concurrently enrolled at an Australian University undertaking a tertiary qualification. To be considered a Cadet for the purposes of a Local Jobs First applicable project, a Cadet's employment must be paid practical work experience connected to their tertiary qualification.

**Departmen**t has the meaning given in s 3(1) the *Local Jobs First Act 2003* (Vic).

**ICN** means Industry Capability Network (Victoria) Limited of Level 23, 370 Little Lonsdale Street, Melbourne VIC 3000 ACN 007 058 120.

**LIDP** means the Local Industry Development Plan submitted by the Service Provider at the time of the proposal and certified by Industry Capability Network (Victoria) by providing an acknowledgement letter.

**LIDP Commitments** means the obligations and undertakings of the Service Provider as detailed in its LIDP.

**LIDP Monitoring Table** means the table of milestones and LIDP Commitments contained in the LIDP.

**Local Content** has the meaning given in s 3(1) of the *Local Jobs First Act 2003* (Vic).

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

**Notice** means a notice given, delivered or served in accordance with this Agreement.

**Practical Completion** means:

* + - 1. when the Service Provider has completed the delivery of the Services to be provided under this Agreement (excluding administrative or regulatory obligations remaining to be fulfilled); or
      2. such other reporting dates for the purposes of clause 1.4(d) of this Schedule as notified by the Purchaser.

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

**Trainee** means an employee engaged by an employer (other than an Apprentice or Cadet) employed under a National Training Contract registered with VRQA that combines training with paid employment in an entry level role related to a Local Jobs First applicable project.

**Training Contract** has the meaning given in the Education and Training Reform Act 2006 (Vic).

**Victorian Management Centre (VMC)** means the cloud-based secure online platform that enables the registration of projects and associated tenders, the submission of LIDPs, collection, analysis and reporting of local content and jobs data, including, MPSG (if applicable) and, supply chain monitoring and reporting

**VRQA** means the Victorian Registration and Qualification Authority.

### Local Industry Development Plan

* + - 1. The Service Provider must, in performing its obligations under this Agreement:
         1. comply with the LIDP;
         2. perform all obligations required to be performed under the LIDP, including the LIDP Commitments, by the due date for performance; and
         3. comply with the Local Jobs First Policy.
      2. The Service Provider acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Agreement, any extensions to the term and until all of its Reporting obligations as set out in clause 1.4 of this Schedule are fulfilled.
      3. The Service Provider's failure to comply with this clause 1.2 will constitute a material breach of this Agreement.

### Revised LIDP

* + - 1. If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any of the LIDP Commitments, the Service Provider must prepare a revised LIDP in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**).
      2. When requested by the Purchaser, the Service Provider must provide the Revised LIDP.
      3. The Revised LIDP must be agreed by the parties before any variation to the Agreement can take effect unless the parties agree that a Revised LIDP is unnecessary.
      4. Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Agreement.

### Reporting

* + - 1. The Service Provider must prepare and maintain records demonstrating its compliance with the LIDP and performance of the LIDP Commitments.
      2. The Service Provider must use the Victorian Management Centre (VMC) for LJF monitoring and reporting.
      3. If the Agreement is for a project valued at $20 million or more, the Service Provider must provide a six-monthly report demonstrating its progress towards implementing the LIDP through reporting on the VMC.
      4. Prior to or at Practical Completion, the Service Provider must provide to the Purchaser:
         1. the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
         2. a Statutory Declaration in the form set out as part of the online LIDP to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Service Provider or the Service Provider's Chief Executive Officer or Chief Financial Officer.
      5. At the request of the Purchaser, the Service Provider must provide further information or explanation of any differences between expected and achieved LIDP outcomes.
      6. The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.

### Verification of Service Provider's compliance with LIDP Plan

* + - 1. The Service Provider agrees that each of the Purchaser and the Department will have the right to inspect its records in order to verify compliance with the LIDP.
      2. The Service Provider must:
         1. permit the Purchaser, an accountant or auditor on behalf of the Purchaser or the Department, or any other person authorised by the Purchaser or the Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Service Provider for the purposes of this Agreement;
         2. permit the Purchaser or the Department from time to time to undertake a review of the Service Provider's performance in accordance with the LIDP; and
         3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Purchaser or the Department to undertake such audit or inspection.
      3. The Service Provider acknowledges and agrees that the Purchaser, the Department, the Purchaser's and Department's duly authorised representatives and Industry Capability Network (Victoria) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Service Provider's compliance with the LIDP.
      4. The obligations set out in this clause 1.5 are in addition to and do not derogate from any other obligation under this Agreement.

### Use of information

The Service Provider acknowledges and agrees that:

* + - 1. Industry Capability Network (Victoria) will assess the Service Provider's performance against the LIDP; and
      2. the statistical information contained in the LIDP and the measures of the Service Provider's compliance with the LIDP as reported in the LIDP Monitoring Table will be:
         1. included in the Purchaser's report of operations under Part 7 of the *Financial Management Act 1994* (Vic) in respect of the Purchaser's compliance with the Local Jobs First Policy in the financial year to which the report of operations relates;
         2. provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the compliance and performance of the LIDP during that year; and
         3. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law.

### Subcontracting

* + - 1. The Service Provider must ensure that any subcontracts entered into by the Service Provider in relation to work under this Agreement contain clauses requiring subcontractors:
         1. to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to work performed under the subcontract,
         2. to provide necessary information that allows the Service Provider to comply with its reporting obligations under clause 1.4 of this Schedule, and
         3. to permit the Purchaser and the Department to exercise their inspection and verification rights under clause 1.5 of this Schedule.
      2. The subcontracting obligations set out in clause 1.7 of this Schedule are in addition to and do not derogate from any other obligations under this Agreement.
      3. The Service Provider's failure to comply with this clause 1.7 will constitute a material breach of this Agreement.

### Local Jobs First Commissioner

* + - 1. The Service Provider acknowledges that:
         1. it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003* (Vic);
         2. it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003* (Vic);
         3. its failure to comply with the compliance notice referred to in this clause 1.8(a) may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the *Local Jobs First Act 2003* (Vic); and
         4. the Local Jobs First Commissioner may:

monitor and report on compliance with the Local Jobs First Policy and LIDP; and

request the Purchaser to conduct an audit in relation to the Service Provider's compliance with the Local Jobs First Policy and the LIDP.

* + - 1. The Service Provider acknowledges that the Commissioner may recommend that the Purchaser take enforcement proceedings against the Service Provider if the Service Provider has failed to comply with the Local Jobs First Policy or the LIDP by:
         1. applying to a court to obtain an injunction; or
         2. taking action available under this Agreement.

# Schedule 5

### FORM OF PURCHASE ORDER FOR MARKETING SERVICES

This Purchase Order is subject to, and incorporates the terms and conditions of, ‘the Agreement for the provision of Marketing Services, Revision June 2025 (**Agreement**) published on the Website.

|  |  |
| --- | --- |
| **Commencement Date:** |  |
| **Expiry Date:** |  |
| **Purchaser:** |  |
| **Purchaser’s Address:** |  |
| **Service Provider (Company Name):** |  |
| **Service Provider's ABN:** |  |
| **Service Provider's Address:** |  |
| **Date:** |  |
| **Departmental/Agency Identifier (eg File Number):** |  |
| **Service Provider Identifier (eg File Number):** |  |
| **Purchaser Purchase Order No:** |  |

***Terms used and not defined in this Purchase Order shall have the meaning given to them by the Standard Marketing Services Terms.***

***For the avoidance of doubt, the Standard Marketing Services Terms apply to this Purchase Order. However, Purchasers should review the key items below with reference to the Standard Marketing Services Terms, in order to identify any additional requirements which may be specific to the engagement. If any additional terms and conditions are required as part of the Agreement, they should be described below. Prompts have been provided for some of the major items below, however, the Purchaser must ensure that all relevant items are completed where additional terms and conditions are required to those contained in the Standard Marketing Services Terms.***

* **Duration of Purchase Order and Extension Arrangements** (*clause 2 of Standard Marketing Services Terms*)
* **Scope of Services** (*clause 5.2 of Standard Marketing Services Terms*)

*Please insert final scope as agreed.*

* **Service Levels** (*clause 5.4 of Standard Marketing Services Terms*)

*Please insert project specific service levels.*

* **Preparation of Project Plan and Project Plan to be Approved-By Date** (*clause 5.6 of Standard Marketing Services Terms*)

*Please insert Project Plan (including relevant milestones) as agreed.*



**Service Provider supplied equipment** (*clause 5.9 of Standard Marketing Services Terms*)



**Access to Purchaser’s Premises** (*clause 6.2 of Standard Marketing Services Terms*)



**Key Personnel** (*clause 6.3 of Standard Marketing Services Terms*)

* **Fees & Rates** (*clause 10.1 of Standard Marketing Services Terms*) *Please insert the agreed Fees and Rates.*
* **Invoice Requirements** (*clause 10.2 and 10.3 of Standard Marketing Services Terms*) *Please insert any additional invoice requirements relevant to your internal processes.*



**Expenses** (*clause 10.5 of Standard Marketing Services Terms*)



**Warranties** (*clause 14 of Standard Marketing Services Terms*)



**Additional Insurance Requirements** (*clause 16.2 of Standard Marketing Services Terms*)

* **Intellectual Property** (*clause 18 of Standard Marketing Services Terms*)

*Purchaser to identify the Project Intellectual Property, if any, to be owned by the Purchaser, such as logos, trade marks and training materials.*

* **Notice details** (*clause 28 of Standard Marketing Services Terms*)

Purchaser:

Service Provider:

* **Contract Management Meetings** (*clause 8 of Standard Marketing Services Terms*)

*Insert frequency, location and attendees for meetings.*



**Purchaser Policies** *(clause 3 of Standard Marketing Services Terms)*

* **Warranty of Generative AI usage** (*clause 14(g) of Standard Marketing Services Terms*)

Generative AI is only to be used as described below, and subject to completion of a Privacy Impact Assessment.

[For guidance on permitted use of Generative AI, please consult the [Administrative Guideline for the safe and responsible use of Generative Artificial Intelligence in the Victorian Public Sector](https://www.vic.gov.au/guidance-safe-responsible-use-gen-ai-vps) and your Department or Agency’s policies on Artificial Intelligence usage.]

|  |  |
| --- | --- |
| **Generative AI tool** | **Description of permitted use** |
| ***[insert]*** | ***[insert]*** |

* **Social Procurement Framework (SPF)** (*clause 24(b)(i) and Schedule 2 of Standard Marketing Services Terms*)

*Progress reports under clause 1.3(b), Schedule 2 of Standard Marketing Services Terms are to be provided to the Purchaser every [Drafting note: insert frequency]*

*Are these reports to be submitted by the Service Provider using the VMC (as defined in clause 1.1, Schedule 2 of the Standard Marketing Services Terms)?*

*☐ Yes OR ☐ No*

*If VMC will not be used, then the method of reporting by the Service Provider will be [Drafting note: insert alternative reporting method].*

* **Local Jobs First (LJF)** (*clause 24(b)(iii) and Schedule 4 of Standard Marketing Services Terms*)

*In performing its obligations under this Agreement, is the Service Provider required to comply with Schedule 4 (Local Jobs First) to the Standard Marketing Services Terms?*

*☐ Yes OR ☐ No*



**Special Conditions**

* **Attachments to Purchase Order**

*Please attach (a) final version of the applicable Supplier Proposal and (b) the Agreed Social Procurement Commitment Proposal.*

**Executed** as an agreement.

##### Insert Purchaser's execution clause

##### Where the Service Provider is a company incorporated in Australia:

**Executed** by **[#]** )

)

...........................................................

Company Secretary/Director

...........................................................

Name of Company Secretary/Director (print)

...........................................................

Director

...........................................................

Name of Director (print)

##### Where the Service Provider is an individual:

**Signed** by [***Insert***] in the presence of: )

)

...............................................................

...............................................................

Witness

...............................................................

Name of Witness (print)

# Schedule 6

Form of Supplier Proposal

*This Supplier Proposal is pursuant to and subject to the Standard Marketing Services Terms and terms of the Purchase Order.*

#### Organisational details

*Formal Name: Trading Name: Address:*

*ABN:*

1. **Contact details**

*Name: Position: Phone Number: Email:*

1. **Personnel and experience:** *The names of any personnel who would be assigned to the project, and briefly their roles and responsibilities, qualifications, and other professional experience relevant to the conduct of this study*
2. **Services:** *A description of the Services to be provided.*
3. **Service Levels:** *A description of the Service levels to be met by the Service Provider in delivering the Services.*
4. **Pricing:** *Please indicate your proposed competitive pricing for this project, detailing project fees, estimated hours and other expenses etc. (Note: you may not exceed the ceiling rates shown in your profile). Pricing must be inclusive of GST.*

*7.* **Conflicts of Interest:** *Declaration of any conflict of interest and how any conflict of interest may be managed.*

1. **Insurance Details:** *Please detail your insurance requirements including policy number, insurer, sum insured and expiry.*
2. **Other:** *Any other relevant information.*

# 

# Schedule 7

# Deed of Confidentiality

DEED OF CONFIDENTIALITY made day of 20 . BY *[insert name]* of *[insert address]* (the 'Covenantor')

IN FAVOUR OF *[insert Purchaser name]* (Purchaser)

Introduction

1. [*Insert name and ABN of Service Provider*] (the 'Service Provider') entered into an agreement with the Purchaser for the provision of marketing services, effective [*Insert date of contract]* ('the Agreement').
2. The Covenantor is an employee, agent or subcontractor of the Service Provider and provides services under or in connection with the Agreement.
3. The Information to which the Covenantor will have access for the performance of Services under the Agreement is confidential.
4. The Purchaser will allow the Covenantor access to this Information provided that its confidentiality can be maintained strictly and the Covenantor has entered into this Deed in order to acknowledge the conditions under which access to the Information will be granted.

This Deed now witnesses as follows:

* 1. In this Deed, unless the context otherwise requires or the contrary intention appears:
     1. The singular includes the plural and vice versa and words importing a gender include other genders.
     2. Terms importing natural persons include partnerships and bodies corporate.
     3. Other grammatical forms of defined words or phrases have corresponding meanings.
     4. Where a party comprises two or more persons, the provisions of this Deed that bind that party shall bind those persons jointly and severally.
     5. “Services” means all the services which the Covenantor will be involved in providing, whether directly or indirectly, in accordance with the Agreement.
     6. “Information” means all information or data however held, stored or recorded including drawings, plans, specifications, calculations, reports, models, concepts, source codes, files, computerised data, photographic recordings, audio or audio visual recordings and any information or data made available to the Covenantor for the purposes of the Covenantor’s participation in providing the Services.
     7. A reference to a party in this Deed or any other document or agreement includes its successors and permitted assigns.
  2. The Covenantor must treat as secret and confidential all Information to which the Covenantor has access or which is disclosed to the Covenantor during the course of carrying out the Services.
  3. The Covenantor must only use the Information for the purposes of carrying out the Services and must not allow any other person access to the Information.
  4. The Covenantor must not copy or reproduce the Information (in whole or in part) without the approval of the Purchaser and must take all necessary precautions to prevent unauthorised access to or copying of the Information by any other person.
  5. The Purchaser is entitled (in addition to any entitlements to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Covenantor of this Deed and without the need on the part of the Purchaser to prove any special damage.
  6. This Deed is governed by the law of Victoria and the Covenantor submits to the exclusive jurisdiction of the courts of Victoria.
  7. This Deed may only be varied by the written agreement of the Covenantor and the Purchaser.

Executed as a Deed on the date set out at the commencement of this Deed. SIGNED SEALED and DELIVERED )

by )

in the presence of: )

Witness