Agreement for the supply of Goods

(Sole Entity Multiple Purchase)

[Instructions for use of this document: wherever brackets [ ] appear within this document complete instruction or delete if not applicable – including these instructions. Note that all contractual variables are contained in the Schedules.]

[Organisation name]

Version 1.3

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# 

# Parties

Date: [insert date]

[Organisation name]

of [Insert address of Organisation] (**Organisation**)

and

[Supplier name]

Australian Business Number: [insert]

of [Insert registered address] (**Supplier**)

# Background

1. The Supplier wishes to supply the Goods to the Organisation.
2. The Organisation has agreed to engage the Supplier to make a standing offer to supply the Goods in accordance with this Agreement.
3. The Parties agree to work together throughout the Term in accordance with the terms of this Agreement to continuously improve the supply of Goods under this Agreement for the benefit of both Parties.

# Agreed Terms and Conditions

# Interpreting this Agreement

1. Definitions and Interpretation
   1. Definitions

In this Agreement:

**ADC** has the meaning given to that term in clause 18.2(a).

**Agreement** means this agreement for the supply of the Goods, including the Schedules and any annexures to the Schedule or items incorporated by reference.

**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.

**Change in Control Notice** has the meaning given to that term in clause 17(a).

**Code of Practice** means a code of practice as described in, and approved under, the PDP Act.

**Commencement Date** means the date from which the Supplier’s standing offer to provide the Goods will commence, as specified in Item 1 of Schedule 1.

**Commissioners** means the Privacy and Data Protection Deputy Commissioner appointed under the PDP Act and the Information Commissioner and the Public Access Deputy Commissioner appointed under the *Freedom of Information Act 1982* (Vic).

**Completion Date** for a Purchase Order Contract, means the date the Supplier is required to complete the delivery of all Goods required under the Purchase Order Contract as specified in Item 1 of Schedule 1 or as otherwise specified in a Purchase Order.

**Confidential Information** means any technical, scientific, commercial, financial or other information of, about or in any way related to, the Organisation, including any information designated by the Organisation as confidential, which is disclosed, made available, communicated or delivered to the Supplier in connection with this Agreement, but excludes information which:

* + 1. is in or which subsequently enters the public domain (and confidential information will not be deemed to be in the public domain merely because it relates to other information which may be in the public domain), other than as a result of a breach of an obligation of confidentiality;
    2. the Supplier can demonstrate was in its possession before the date of this Agreement;
    3. the Supplier can demonstrate was developed by it independently of any disclosures previously made by the Organisation; or
    4. is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with the Organisation or otherwise prohibited from disclosing the information to the Supplier.

**Contract Publishing System** means the system of the Victorian Government for publication of details of contracts entered into by some Victorian Public Entities, including any replacement or amended system.

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

**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 Organisation in connection with this Agreement (**Input Data**); or
    2. generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or in the course of delivering the Goods.

**Delivery Point** means the location or address to which the Goods are to be delivered as specified in Item 3 of Schedule 1, or as otherwise specified in the relevant Purchase Order.

**Dispute** has the meaning given to that term in clause 18.1(a).

**Dispute Notice** has the meaning given to that term in clause 18.1(a).

**Expiry Date** means the date set out in Item 1 of Schedule 1.

**Goods** means the goods offered by the Supplier pursuant to this Agreement as specified in Item 1 of Schedule 2, and in relation to a Purchase Order Contract means the specific Goods to be supplied as set out in the relevant Purchase Order.

**Guidelines** has the meaning given to that term in clause 18.2(a).

**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.

**Indemnified Party** has the meaning given to that term in clause 24(a).

**Index** has the meaning given to that term in clause 11.6(a).

**Information Privacy Principles** has the meaning given in the PDP Act.

**Initial Insurance** has the meaning given to that term in clause 26(d).

**Insolvency Event** means, in relation to the Supplier, any of the following:

* + 1. anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due, including:
       1. execution or distress being levied against any income or assets of the Supplier;
       2. a meeting of the Supplier's creditors being called or held;
       3. a security becoming enforceable or being enforced in relation to any of the Supplier's assets or undertakings;
       4. a step being taken to make the Supplier bankrupt or to wind the Supplier up;
       5. the appointment to the Supplier of a controller or administrator as defined in section 9 of the *Corporations Act 2001* (Cth);
       6. the Supplier entering into any type of agreement, composition or arrangement with, or assignment for the benefit of, all or any class of its creditors; or
       7. the Supplier being made subject to a deed of company arrangement,
    2. a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
    3. the Supplier ceasing, or indicating that it is about to cease, carrying on business.

**Intellectual Property Rights** means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, 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.

**Invitation** means the documents published by the Organisation inviting the market place to submit offers to supply the Goods pursuant to this Agreement.

**IPR Claim** has the meaning given to that term in clause 24(e).

**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.

**Local Jobs First (LJF)** means the Local Jobs First Policy comprising the Victorian Industry Participation Policy (VIPP) and Major Projects Skills Guarantee (MPSG) made pursuant to sections 4 & 5 of the *Local Jobs First Act 2003* (Vic).

**Losses** has the meaning given to that term in clause 24(a).

**Mediation** has the meaning given to that term in clause 18.1(c).

**Milestone** means a milestone specified in Item 2 of Schedule 2 or a Purchase Order (as relevant).

**Milestone Date**, for a Milestone, means the date specified in Item 2 of Schedule 2Schedule 2 or a Purchase Order (as relevant) by which the Supplier must perform the Milestone.

**Model Litigant Guidelines** means the guidelines regarding the conduct of litigation by the State, as updated from time to time.

**Moral Rights** 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.

**Non-conforming Goods** has the meaning given to that term in clause 5.6(a).

**Offer** means the documentation and any supporting materials lodged by the Supplier in response to the Invitation containing an offer to supply Goods in the form finally accepted by the Organisation.

**PDP Act** means the *Privacy and Data Protection Act 2014* (Vic).

**Personal Information** has the meaning given to that term in the PDP Act and also includes, for the purposes of this Agreement, health information, as that term is defined in the *Health Records Act 2001* (Vic).

**Personnel** of a party includes the officers, employees, agents, contractors and sub-contractors of that party.

**Privacy Obligations** has the meaning given to that term in clause 23.7(a).

**Protective Data Security Standard** means any standard issued under Part 4 of the PDP Act.

**Public Sector Employee** has the same meaning as in the *Public Administration Act 2004* (Vic).

**Purchase Order** means an order for Goods submitted by the Organisation to the Supplier that is in, or substantially in, the form set out in Annexure A.

**Purchase Order Contract** means a contract for the supply of Goods which is formed between the Organisation and the Supplier in accordance with clause 3.3.

**Purchase Price** means the sum calculated by multiplying the Unit Price for the applicable Goods by the number of units delivered under a Purchase Order Contract.

**Reimbursable Expense** has the meaning given to that term in clause 11.4.

**Representative** means, in respect of each party, the person(s) specified in Item 7 of Schedule 1 or any replacement person(s) appointed in accordance with clause 13.1.

**Responsibility Chart** has the meaning given to it by clause 13.2.

**Service Credit** means the amount by which the sums paid by the Organisation will be reduced for a failure by the Supplier to meet a Service Level Requirement, as calculated in accordance with Schedule 3.

**Service Level Requirements** means the minimum levels at which the Supplier must supply the Goods as specified in Schedule 3, as amended from time to time in accordance with clause 13.3.

**Specifications** means the specifications to which the Goods must comply, including any relevant performance requirements, technical constraints and quality standards, as set out in Schedule 5.

**Start Date** means the date on which the supply of Goods is to start under a Purchase Order, as specified in the relevant Purchase Order.

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

**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).

**Tax Invoice** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Term** means the duration of this Agreement, calculated in accordance with clause 28.

**Time for Delivery** means the date and time specified in Item 3 of Schedule 1 (or such other date or time specified in a Purchase Order) by or on which the Goods must be delivered by the Supplier.

**Unit Price** means the price per item of the Goods, as specified in Item 4 of Schedule 2.

**Victorian Public Entity** means:

* + 1. a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
    2. 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. a Council as defined in the *Local Government Act 1989* (Vic); or
    4. an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c).

**Victorian Public Sector Commission (VPSC) Code of Conduct** means the Code of Conduct for Public Sector Employees 2015 (as amended or replaced from time to time), issued by the Victorian Public Sector Commission pursuant to section 61 of the *Public Administration Act 2004* (Vic), unless the work or activities undertaken are of a kind usually undertaken by directors of Victorian Public Entities or the Organisation 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 as 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).

**Warranty Period** means the period (if any) set out in Item 12 of Schedule 1, commencing on the date of acceptance of the Goods.

* 1. Interpretation

Unless expressed to the contrary, in this Agreement:

* + 1. words in the singular include the plural and vice versa;
    2. any gender includes the other genders;
    3. if a word or phrase is defined its other grammatical forms have corresponding meanings;
    4. 'includes' and 'including' are not words of limitation;
    5. no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
    6. the obligations of the Supplier, if more than one person, under this Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of this Agreement, of the other as if those acts or omissions were its own;
    7. the rights of the Supplier, if more than one person, under this Agreement, including the right to payment, jointly benefit each person constituting the Supplier;
    8. 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; and
    9. a reference to:
       1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
       2. a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
       3. any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
       4. ‘$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia and all amounts payable under this Agreement are payable in Australian dollars; and
       5. a party or parties is a reference to the Organisation and the Supplier (as the case requires).
  1. Headings

Headings do not affect the interpretation of this Agreement.

# Requesting the Goods

1. Standing offer to supply the Goods

The Supplier makes a standing offer to supply the Goods to the Organisation until this Agreement expires or is validly terminated.

1. Ordering Goods
   1. The Organisation may issue a request for Goods

At any time during the Term, the Organisation's Representative may issue to the Supplier a request for the supply of Goods by submitting a Purchase Order in the form or substantially in the form set out in Annexure A, or such other form as notified by the Organisation from time to time.

* 1. Purchase Order

A Purchase Order submitted pursuant to clause 3.1 must specify:

* + 1. the identity of the Organisation, the Organisation's Representative and the order number;
    2. the Supplier’s details;
    3. the specific Goods to be provided to the Organisation (which may be some or all of the Goods described in Item 1 of Schedule 2), including the quantity of each item required;
    4. the Purchase Price;
    5. the Start Date and Completion Date;
    6. any applicable Milestone(s) and Milestone Date(s) relevant to the supply or delivery of the Goods;
    7. the Time for Delivery (where the required delivery time is not otherwise specified in the Specifications);
    8. the Delivery Point (if different to the Delivery Point specified in Item 3 of Schedule 1);
    9. any invoicing and/or notice requirements that are required in addition to, or instead of, the invoicing and/or notice requirements set out in IItem 5 of Schedule 1; and
    10. whether liquidated damages, under clause 6.2, are to apply to failures to supply the Goods by the required dates.
  1. Formation of a Purchase Order Contract
     1. A Purchase Order Contract is formed, and the Purchase Order will become binding on the Supplier and the Organisation, upon receipt of the Purchase Order by the Supplier.
     2. The Supplier must promptly in writing confirm to the Organisation its receipt of a Purchase Order and the formation of the Purchase Order Contract.
  2. Terms incorporated into a Purchase Order Contract

A Purchase Order Contract incorporates all of the terms of this Agreement (other than clauses 2, 3.1, 3.2, 3.3, 3.4, 28.1 and 28.2 and any corresponding Items in the Schedules) with such necessary changes as should be made to reflect the formation of the relevant Purchase Order Contract under this Agreement.

* 1. Inconsistency

Where there is any inconsistency between the provisions of this Agreement and any Purchase Order Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.

# Supplying the Goods

1. Title in and risk to Goods

Title in the Goods will pass to the Organisation upon acceptance of the Goods. Risk in the Goods will pass to the Organisation when the Goods are delivered to the Delivery Point.

1. Supply and delivery of Goods
   1. Supplier’s obligations
      1. The Supplier must start supplying the Goods under a Purchase Order Contract on the Start Date.
      2. The Supplier must:
         1. supply the Goods to the Organisation in accordance with this Agreement and any reasonable directions given by the Organisation;
         2. deliver the Goods to the Delivery Point at the Time for Delivery; and
         3. meet each Milestone by its Milestone Date.
      3. The Supplier must supply the Goods required under a Purchase Order Contract until the earliest to occur of:
         1. the date that the Supplier delivers those Goods (whether or not this occurs on, before, or after the applicable Completion Date); and
         2. the date that the Purchase Order Contract is terminated.
   2. Delivery of Goods

Acceptance of the Goods by the Organisation will not be taken to have occurred until the Goods have been delivered and either:

* + 1. the Goods are accepted in accordance with clause 5.5(a); or
    2. the Goods are deemed to be accepted in accordance with clause 5.5(b).
  1. Unloading of Goods
     1. Where the Goods to be delivered can be manually unloaded at the Delivery Point in accordance with applicable Laws (including all relevant occupational health and safety codes), the Supplier is responsible for unloading the Goods and the Unit Price will include the cost of unloading the Goods.
     2. Where the Goods are unable to be manually unloaded in accordance with clause 5.3(a), general arrangements for unloading the Goods must be agreed by the parties (and each party will bear their respective costs, if any, in relation to such arrangements).
  2. Testing of Goods
     1. Before accepting the Goods, the Organisation may test or examine the Goods to determine whether they meet or exceed the standards required under this Agreement (including the Specifications).
     2. The Organisation may test the Goods by the means specified in Item 3 Schedule 2 or by other appropriate means, including selection of samples for testing and analysis.
     3. Where Goods have been sold by sample, the Goods must reasonably comply with such sample.
     4. The Organisation may undertake such reasonable further tests at its own cost and, where the Goods fail such further tests, the Supplier must pay the cost of such tests as incurred by the Organisation.
  3. Acceptance of Goods
     1. If the Goods meet or exceed the standards required under this Agreement (including the Specifications), the Organisation must promptly accept the Goods by giving written notice of acceptance to the Supplier. Acceptance of the Goods occurs on the date the notice is issued by the Organisation.
     2. If the Organisation does not give written notification of acceptance or rejection of the Goods within 20 Business Days of delivery, acceptance of the Goods will be deemed to have occurred on the date of delivery.
  4. Rejection of Non-conforming Goods
     1. Without limiting any other clause of this Agreement or any other remedy that the Organisation may have, if the Goods:
        1. do not meet or exceed the standards required or warranties given under this Agreement;
        2. do not conform with the Purchase Order Contract, any applicable Specification or sample; or
        3. are damaged, unfit for purpose or not of merchantable quality,

(**Non-conforming Goods**), the Organisation may reject the Goods by giving written notice (including any reasons for rejection) to the Supplier within 20 Business Days of delivery. The Organisation is not obliged to pay for any rejected Non-conforming Goods.

* + 1. If, at any time during the Warranty Period following acceptance of the Goods, the Organisation becomes aware that (some or all of) the Goods are Non-conforming Goods (other than where the Goods are Non-conforming Goods as a result of usual wear-and-tear or due to the actions of the Organisation), the Organisation may reject those Goods (even if they were previously accepted by the Organisation) by giving written notice to the Supplier.
    2. The Supplier must, at its own cost, promptly collect and remove any Non-conforming Goods as soon as practicable following notification under clauses 5.6(a) or 5.6(b) and, at the election of the Organisation, either:
       1. replace the Non-conforming Goods with Goods that do meet the relevant standards and Specifications; or
       2. refund the Organisation all money paid in respect of the Non-conforming Goods.
    3. If the Supplier fails to collect and remove the rejected Goods within a reasonable time, the Organisation may return the Goods to the Supplier at the Supplier’s expense or, following further notification, destroy the Goods or otherwise dispose of the Goods in its discretion.
  1. Manufacturer’s warranty

The Supplier must take all necessary action to obtain for the Organisation the benefit of any manufacturer’s warranties applicable to the Goods.

* 1. Co-operation with third parties

Where the Organisation engages a third party to provide goods or services which are related to or otherwise necessary for the Organisation to accept or use the Goods, the Supplier agrees to provide all reasonable assistance and cooperation as required by that third party to ensure that the Organisation receives the third party’s goods or services, and the Goods, in a seamless and efficient manner.

1. Delays and failure to perform
   1. Late delivery
      1. If the Supplier is aware of any delay or possible delay in the supply and delivery of the Goods in accordance with this Agreement, including any failure to supply the Goods by the Time for Delivery or meet a Milestone by a Milestone Date as specified in Item 3 Schedule 1 and Item 2 Schedule 2, or as otherwise specified in the Purchase Order Contract, the Supplier:
         1. must advise the Organisation immediately upon becoming aware of such delay or possible delay (**Notice of Delay**); and
         2. may make an application in writing to the Organisation's Representative requesting an extension of time.
      2. The Notice of Delay must set out, in reasonable detail:
         1. the circumstances giving rise to such (possible) delay, including the cause of the (possible) delay;
         2. the likely length of such (possible) delay;
         3. the steps the Supplier intends to take to overcome or minimise the (possible) delay; and
         4. such other information as the Organisation’s Representative may reasonably request.
      3. The Organisation's Representative may agree to extend the Time for Delivery or Milestone Date if, in the reasonable opinion of the Organisation's Representative, the circumstances giving rise to the delay are legitimate and warrant an extension of time.
      4. The Organisation's Representative will promptly notify the Supplier in writing of any revised Time for Delivery or Milestone Date agreed by the Organisation under clause 6.1(c).
      5. If the Supplier fails to deliver the Goods by the Time for Delivery or Milestone Date (or any revised Time for Delivery or Milestone Date agreed pursuant to clause 6.1(c)), such failure or delay will constitute a breach by the Supplier of this Agreement and the Organisation may (without limiting any other rights available to it):
         1. if applicable, require the Supplier to pay to the Organisation liquidated damages in accordance with clause 6.2; or
         2. terminate this Agreement or the relevant Purchase Order Contract.

* 1. Liquidated damages payable for failing to meet required dates
     1. If liquidated damages apply to Purchase Order Contracts formed under this Agreement, as indicated by Item 2 of Schedule 1, and the Supplier fails to deliver the Goods by the Time for Delivery or applicable Milestone Date (or any revised Time for Delivery or Milestone Date agreed pursuant to clause 6.1(c)), the Organisation may recover from the Supplier (or deduct from money owed to the Supplier) liquidated damages.
     2. Liquidated damages will be payable at the rate specified in Item 2 of Schedule 1 or the relevant Purchase Order Contract for each day after the Time for Delivery by which the delivery of the Goods remains outstanding. The Supplier will not be required to pay liquidated damages to the extent that a delay is caused by the Organisation.
     3. The parties agree that any such liquidated damages constitute a genuine and reasonable pre-estimate of the loss that would be incurred by the Organisation arising from such failure by the Supplier, and are not the Organisation’s sole remedy in relation to the circumstances giving rise to the liquidated damages.

1. Variations
   * 1. Either party may, at any time, give written notice to the other party proposing a variation to the types of Goods offered under this Agreement, or to the Service Level Requirements. Within five Business Days of giving or receiving such notice, the Supplier must provide a written proposal (**Proposal**) setting out:
        1. the Unit Price that would apply with respect to the supply of the varied or additional Goods or Service Level Requirements. Any increase to the Unit Price for a particular Good proposed by the Supplier must represent the increase in the total cost to the Supplier of supplying the varied Good or complying with the varied Service Level Requirements (as applicable);
        2. whether or not it is intended that the variation applies to current Purchase Order Contracts, if any; and
        3. any other impacts that the change will have on the Supplier’s ability to perform its obligations under this Agreement.
     2. The Organisation may accept a Proposal by notifying the Supplier in writing. In the absence of such acceptance, the Goods must be supplied in accordance with this Agreement without any variation. Unless the Organisation specifies otherwise in its notice to the Supplier, the variations contained in the Proposal will apply only to Purchase Order Contracts formed following notification to the Supplier of the Organisation’s acceptance of that Proposal.
2. Access and safety
   1. Access to premises

If the Supplier requires access to the premises of the Organisation in connection with the supply or delivery of the Goods, the Organisation will, subject to its usual security requirements, permit the Supplier reasonable access to the premises at such times as may be reasonably necessary to enable the Supplier to supply or deliver the Goods.

* 1. Obligations

When the Supplier enters the premises of the Organisation, the Supplier must (and must ensure that its Personnel will):

* + 1. protect people and property;
    2. prevent nuisance and unnecessary noise and disturbance;
    3. act in a safe and lawful manner and comply with the safety standards and policies of the Organisation (as notified to the Supplier);
    4. comply with any lawful directions of the Organisation or its Personnel; and
    5. comply with the *Occupational Health and Safety Act 2004* (Vic) and any applicable regulations made under that Act.

1. Specifications
   1. The Specifications
      1. The Goods must comply in all respects with the Specifications.
      2. Without limiting anything else in the Specifications, the Goods must:
         1. utilise the latest available technology; and
         2. comprise the most recent models or versions of the relevant Goods that are available at the time of supply.
   2. Variation of Specifications
      1. The Organisation may, at any time, give written notice to the Supplier proposing a variation to the Specifications (including any resulting extension of the Time for Delivery, Completion Date or a Milestone Date).
      2. The Supplier must, if it reasonably considers that a proposed variation will result in an increase in costs in supplying the Goods, or affect any Completion Date and/or Milestone Date(s) under any current Purchase Order Contracts, within five Business Days of receiving a notice under clause 9.2(a), provide to the Organisation a written proposal for a variation of the Unit Price that would apply with respect to the supply of the Goods under the varied Specifications (based on the value for money proposition reflected in the Unit Prices), and if applicable, the Completion Date and/or Milestone Date(s).
      3. The Organisation may, by giving written notice to the Supplier, accept such proposal in full or with conditions, or reject the proposal, within five Business Days of its receipt from the Supplier. If the Organisation rejects the proposal, the parties may negotiate to finalise any aspects of the Supplier’s proposal. In the absence of acceptance by the Organisation of a proposal, the Goods must be supplied in accordance with this Agreement without such variation.

# Pricing and payments

1. Price for the Goods
   * 1. The Unit Price for each of the Goods as set out in Schedule 2 is fixed and are inclusive of all taxes (excluding GST). The Unit Price may only be changed as expressly authorised under this Agreement.
     2. Except as expressly provided otherwise in this Agreement, or any Purchase Order Contract, the Unit Price for the Goods includes all packaging, transport, insurance, loading, unloading, storage and other costs and expenses of the Supplier, up to the Delivery Point of the Goods, including unloading of the Goods at the Delivery Point.
     3. Where a price review mechanism is set out in Item 4 of Schedule 1:
        1. the parties will adopt that price review mechanism in accordance with the requirements in Item 4 of Schedule 1; and
        2. any revised Unit Prices resulting from the operation of the price review mechanism in Item 4 of Schedule 1 will take effect from the review dates set out in Item 4 of Schedule 1.
2. GST and other taxes
   1. Definitions

Terms used in this clause 11 have the same meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**).

* 1. 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.

* 1. GST Gross Up

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 party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid Tax Invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with this Agreement.

* 1. 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.

* 1. Adjustment Event

If an adjustment arises in relation to a taxable supply made under this Agreement, the Supplier must recalculate the amount payable on account of GST under clause 11.3 to take account of the adjustment event. The Supplier must issue an adjustment note to the Organisation within 28 days of becoming aware of the adjustment event. A corresponding payment to reflect the adjustment must be made by the Supplier to the Organisation, or by the Organisation to the Supplier, as the case may be.

* 1. CPI Reviews

The Supplier agrees that if:

* + 1. the parties agree to review the Unit Prices and/or the Purchase Price pursuant to clause 11 by reference to a specific index or indices (**Index**); and
    2. such Index is increased as a result of any change to either (or both) the GST rate or the GST base,

the impact of that GST related increase on the Index will be excluded for the purposes of calculating any consideration or other adjustments under this Agreement. If requested by the Organisation, the parties must use their best endeavours to agree either a replacement Index, or an adjustment to the published Index, for the purposes of excluding the impact of the GST related increase on the Index. If the parties cannot agree within 10 Business Days on either a replacement Index, or an adjustment to the published Index, the Dispute will be resolved in accordance with clause 18.

* 1. Other taxes

Subject to the other provisions of this Agreement, the Unit Price and the Purchase Price include all taxes (other than GST), duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this Agreement.

1. Invoicing and payment
   1. Invoicing
      1. The Supplier must submit Tax Invoices to the Organisation in respect of the Goods as soon as practical after acceptance of the Goods by the Organisation, or at the time(s) and to the address specified in Item 5 of Schedule 1, or as otherwise set out in the relevant Purchase Order.
      2. A Tax Invoice submitted for payment pursuant to clause 12.1(a) must contain each of the matters specified in Item 5 of Schedule 1 as well as all information required in a tax invoice for the purposes of the GST Act.
   2. Payment of invoices
      1. Subject to the remainder of this clause 12.2, the Organisation will pay each undisputed invoice which meets the requirements in clause 12.1 to the Supplier, less any amount required by Law, within 30 days of receipt of the invoice, in the manner specified in Item 6 of Schedule 1.
      2. An invoice will not be paid until such time as the invoice is certified for payment by the Organisation's Representative. An invoice will not be certified for payment unless the Organisation's Representative is satisfied that it is correctly calculated with respect to the Goods that are the subject of the relevant invoice.
      3. If the Organisation's Representative disputes the invoiced amount (whether in whole or in part) for any reason, the Organisation must pay the undisputed amount of such invoice (if any), and notify the Supplier of the amount the Organisation believes is due for payment. If the Organisation and the Supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 18. If requested, the Supplier will withdraw the disputed Tax Invoice and issue a replacement Tax Invoice for the undisputed amount.
      4. Payment of an invoice is not to be taken as:
         1. evidence or an admission that the Goods have been supplied in accordance with the Specifications, the Service Level Requirements or otherwise in accordance with this Agreement;
         2. evidence of the value of the Goods supplied;
         3. an admission that the Goods were satisfactorily supplied;
         4. an admission of liability; or
         5. acceptance or approval of the Supplier’s performance,

but must be taken only as payment on account.

* 1. Fair Payments Policy
     1. This clause 12.3 applies only if the total aggregate Purchase Price payable under this Agreement is less than $3 million.
     2. If this clause 12.3 applies, the reference in clause 12.2 to 30 days is taken to be a reference to 10 Business Days.
     3. If this clause 12.3 applies, the Organisation will, on demand by the Supplier, 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 12.3(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 properly rendered by the Supplier in accordance with this Agreement;
        3. in respect of any overdue amount payable before 1 April 2021, has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be; and
        4. in respect of any overdue amount payable on or after 1 April 2021, 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.

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# Governance and relationship management

1. Contract management
   1. Parties’ Representatives
      1. For the purposes of ensuring a productive and efficient relationship between the Organisation and the Supplier under this Agreement, the Organisation and Supplier each agree to nominate the relevant person(s) specified in Item 7 of Schedule 1 as its Representative in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
      2. The Supplier will have regard to all requirements of the Organisation’s Representative and will comply with all reasonable directions of the Organisation’s Representative.
      3. Either party may nominate a replacement Representative by providing the other party with written notice. The appointment of the replacement Representative will be effective from the date on which such notice is given.
   2. Responsibility Chart

If required by Item 6 of Schedule 2, the Supplier must prepare a chart identifying the key tasks and obligations under this Agreement, and the party responsible for completing or otherwise performing the relevant task or obligation (**Responsibility Chart**).

* 1. Service Level Requirements
     1. The Supplier must meet or exceed the Service Level Requirements when supplying the Goods.
     2. The Supplier’s performance against the Service Level Requirements must be tracked, monitored and reported on by the Supplier to the Organisation in accordance with Schedule 3.
     3. Where the Supplier fails to meet any of the Service Level Requirements, the Supplier must, at no additional cost to the Organisation, promptly:
        1. notify the Organisation of the failure in writing; and
        2. arrange all additional resources reasonably necessary to supply the Goods in accordance with the Service Level Requirements as soon as reasonably practicable.
     4. Without limiting clause 13.3(c), if there is any failure by the Supplier to meet a Service Level Requirement, Service Credits will be payable by the Supplier if specified in Schedule 3. If applicable, the parties agree that the Service Credits are a genuine pre-estimate of the loss likely to be suffered by the Organisation as a result of the Supplier’s actions, including the diminution in value of the Goods resulting from the failure and do not constitute a penalty.
  2. Progress report

The Supplier must provide to the Organisation's Representative:

* + 1. a progress report in respect of the Supplier's performance under this Agreement or each Purchase Order Contract, such report to be provided at the times, in the format and containing the matters specified in Item 8 of Schedule 1; and
    2. all other data or information that the Organisation's Representative may request to enable it to adequately assess the performance of the Supplier.
  1. Contract management review

The parties’ Representative must meet at the time and in the manner specified in Item 9 of Schedule 1 to discuss contract management issues and to review the Supplier’s performance under this Agreement and the Purchase Order Contracts, including a review of the Supplier’s compliance with the Service Level Requirements.

1. Sub-contracting
   * 1. The Supplier must not sub-contract to any person any of its obligations under this Agreement without the prior written consent of the Organisation, which consent may be given (conditionally or unconditionally) or withheld by the Organisation in its absolute discretion.
     2. If requested by the Organisation, the Supplier must provide reasonable details of the following when requesting the Organisation’s approval for a proposed sub-contractor under clause 14(a):
        1. the purposes for which the proposed sub-contractor will be employed, including the scope of any Goods to be provided by the proposed sub-contractor;
        2. the proposed sub-contractor's capabilities in supplying goods of a similar nature;
        3. the proposed sub-contractor’s financial standing; and
        4. a copy of the proposed sub-contract (provided that commercially sensitive payment or security terms, and pricing information, may be omitted).
     3. The Supplier must ensure that any sub-contractor engaged by it complies with all obligations imposed on the Supplier by this Agreement.
     4. The Supplier 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 Supplier itself.
     5. No sub-contractor of the Supplier will itself be entitled to sub-contract or assign its obligations.
2. Compliance with Law and Policy
   1. General Law and Policy

The Supplier must, in performing its obligations under this Agreement and any Purchase Order Contract, comply with:

* + 1. all Laws affecting or applicable to the supply of the Goods by the Supplier under this Agreement, including any Laws specified in Item 13 of Schedule 1; and
    2. the State's policies and procedures as notified to the Supplier in writing from time to time.
  1. Victorian Public Sector Commission Code of Conduct

Where, in the course of supplying or delivering the Goods, the Supplier, or its Personnel:

* + 1. supervise or work with Public Sector Employees;
    2. undertake work that is of a similar nature to the work undertaken by Public Sector Employees at premises or a location generally regarded as a public sector workplace; or
    3. use or have access to public sector resources or information that are not normally accessible or available to the public,

the Supplier must (and must ensure that its Personnel) comply with the VPSC Code of Conduct.

* 1. Supplier Code of Conduct

The Supplier acknowledges that:

* + 1. the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State’s minimum expectations regarding the conduct of its suppliers;
    2. it has read the Supplier Code of Conduct; and
    3. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under this Agreement or at Law.
  1. Employment policy
     1. The Supplier and any Personnel engaged in the supply of Goods must not:
        1. engage in unethical work practices; or
        2. engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
     2. Where a federal industrial award may apply to the capacity in which an employee is engaged by the Supplier, or by a sub-contractor, in the supply of the Goods, the Supplier must:
        1. where applicable, comply with the better off overall test under section 193 of the *Fair Work Act 2009* (Cth) in relation to any enterprise agreement it is bound by; or
        2. otherwise ensure that the conditions on which that employee is engaged are no less beneficial to the employee than the rates and conditions under that award.
  2. Local Jobs First Policy (LJF)

If the LJFpolicy applies to this Agreement (as indicated by Item 14 of Schedule 1), then the terms and conditions set out in Schedule 4 are incorporated into and form part of this Agreement.

* 1. No unlawful inducements
     1. The Supplier will not, and will ensure that its Personnel will not, directly or indirectly, offer, promise, agree to pay, give, accept, or solicit anything of value (including to or from any third party) in order to secure any reward or improper benefit other than payment for the performance of their obligations under this Agreement.
     2. The Organisation may terminate this Agreement immediately on notice to the Supplier if the Supplier or any of its Personnel is found to have engaged in any conduct under clause 15.6(a) and recover the amount of any loss resulting from such termination as a debt due from the Supplier.

1. Conflict of Interest
   * 1. The Supplier warrants to the Organisation that it does not, and will ensure that its Personnel do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interests under this Agreement.
     2. The Supplier must promptly inform the Organisation of any matter which may give rise to an actual or potential conflict of interest and comply with any reasonable directions given by the Organisation in terms of dealing with that conflict.
     3. The Supplier acknowledges and agrees that failure to comply with this clause 16 will constitute a breach of a fundamental term of this Agreement.
2. Change in Control
   * 1. The Supplier must notify the Organisation in writing of any change in Control of the Supplier (or of the ultimate holding company of the Supplier) within five Business Days after that change occurs (**Change in Control Notice**).
     2. The Organisation may upon receiving a Change in Control Notice, in its absolute discretion, terminate this Agreement and any Purchase Order Contract on written notice to the Supplier.
     3. Termination under clause 17(b) will take effect from the Organisation's nominated date, provided the nominated date is no later than 12 months after the Organisation received the Change in Control Notice.
3. Disputes
   1. Parties to meet
      1. If any dispute arises under or in connection with this Agreement or a Purchase order Contract (**Dispute**), either party may at any time give written notice to the other (**Dispute Notice**) requesting that a meeting take place to seek to resolve the Dispute.
      2. The parties’ Representatives must, within five Business Days of the date of service of a Dispute Notice, meet to discuss the Dispute in good faith with a view to resolving the Dispute.
      3. If the Dispute has not been resolved within:
         1. 10 Business Days from the date of service of a Dispute Notice or such later date as the parties may agree, it will escalate to the nominated senior executive officer (or equivalent) of each of the Organisation and the Supplier, who will promptly meet and discuss the Dispute in good faith with a view to resolving the Dispute; and
         2. 15 Business Days of the date of service of a Dispute Notice or such later date as the parties may agree, the Dispute is referred to mediation (**Mediation**) in accordance with clause 18.2.
   2. Mediation
      1. Subject to clause 18.2, the Mediation will be conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines (**Guidelines**). The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of those Guidelines (as amended from time to time) are incorporated into this Agreement.
      2. The mediator will be selected by mutual agreement. If the parties have not reached agreement on a mediator within three Business Days of the date that the Dispute was referred to Mediation (or such other time frame agreed between the parties), the mediator will be selected in the manner specified in the Guidelines.
      3. Each party must bear its own costs in relation to the Mediation and the costs of the mediator will be shared equally by the parties.
      4. Any breach of the Guidelines will constitute a breach of this Agreement.
   3. Arbitration or litigation
      1. If the parties fail to settle the Dispute at the Mediation in accordance with clause 18.2, the parties may agree to submit the Dispute for determination at 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. The parties acknowledge that any determination made at arbitration will be final and binding.
      2. If the parties do not agree to refer the Dispute to arbitration in accordance with clause 18.3(a), either party may submit the Dispute for resolution to the non-exclusive jurisdiction of the Courts of Victoria, Australia.
   4. Performance during Dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this clause 18.

* 1. Interlocutory relief

Nothing in this clause 18 restricts or limits the right of either party to obtain urgent interlocutory or injunctive relief, or to immediately terminate this Agreement where this Agreement provides such a right.

1. Notices
   1. Giving a communication

A notice, demand, certification, process or other communication relating to this Agreement (or a Purchase Order Contract) must be in writing in the English language, and may be sent by pre-paid post, pre-paid courier, document exchange or (only if an email address is included in Item 15 of Schedule 1 or as specified in a Purchase Order Contract) by email as follows:

* + 1. to the Organisation: to the relevant address which is set out in Item 15 of Schedule 1 (or as specified in the Purchase Order Contract); and
    2. to the Supplier: to the relevant address which is set out in Item 15 of Schedule 1 (or as specified in the Purchase Order Contract).
  1. Time of delivery

A notice or document will be 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 within Australia, five Business Days after the date of posting or, if sent via a next day delivery service, on the next Business Day following the date of posting;
    3. in the case of delivery by post to or from an address outside Australia, eight Business Days after the date of posting;
    4. in the case of delivery by document exchange, two Business Days after being placed into the document exchange; and
    5. in the case of email, when the message is correctly addressed to and successfully transmitted to that party’s email address, and acknowledgment of receipt is recorded on the sender’s computer.
  1. After hours communications

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

* + 1. after 5.00pm 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 9.00am on the next day which is not a Saturday, Sunday or public holiday in that place.

# Information and intellectual property

1. Access to records
   1. Supplier to retain records

The Supplier must, during the Term and for a period of seven years after the delivery of all Goods under this Agreement, keep true and particular accounts and records of all Goods supplied under this Agreement (and any Purchase Order contract) and all associated records, including all supporting materials used to generate and substantiate Tax Invoices submitted in respect of the Goods supplied under this Agreement.

* 1. Right to access and audit
     1. The Organisation or its authorised representatives may, during ordinary business hours, inspect and/or audit the accounts and records of the Supplier relating to the Supplier’s compliance with its obligations under this Agreement, including calculation of the Unit Prices and/or Purchase Price. The Organisation or its authorised representatives will be entitled to take copies of or extracts from any such records.
     2. The Supplier must participate promptly and cooperatively in any audits conducted by the Organisation or its authorised representative.
     3. Except in those circumstances in which the Organisation determines that notice is not practicable or appropriate, the Organisation must give the Supplier reasonable notice of an audit and, where reasonably practicable, an indication of which documents or class of documents the auditor may require access to.
     4. If the outcome of an audit does not require any corrective action, each party must bear its own costs associated with any audits. If the audit identifies any error, non-compliance or inaccuracy requiring remedial action (other than a trivial or insignificant error, non-compliance or inaccuracy), the Organisation’s costs in respect of the audit will, if notified by the Organisation to the Supplier, be payable by the Supplier as a debt due to the Organisation.
     5. The Supplier must promptly take corrective action in order to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Supplier has, under this Agreement:
        1. supplied any Goods; or
        2. calculated any Purchase Price or any other amounts or fees billed to the Organisation.

1. Intellectual Property Rights
   1. Licence by the Supplier to the Organisation

The Supplier irrevocably and unconditionally grants to the Organisation a non-exclusive, perpetual, royalty-free, transferable licence (including the right to sub-license) to use any Intellectual Property Rights in relation to any Goods supplied to the extent necessary to allow the Organisation the full use and enjoyment of those Goods and the Supplier must, upon request by the Organisation, do all things as may be necessary (including executing any documents) to give full effect to this clause 21.1.

* 1. No assignment

Nothing in this clause affects any assignment of Intellectual Property Rights in any Goods or other items supplied under this Agreement unless the parties expressly agree in writing to the contrary.

1. Data
   * 1. Data will remain (and, if necessary, will become) the property of the Organisation. The Supplier will assign to the Organisation from the date of creation all Intellectual Property Rights in any Data created by or on behalf of the Supplier.
     2. The Supplier must only use the Data to the extent necessary to perform its obligations under this Agreement or any Purchase Order Contract.
2. Confidentiality, privacy and data protection
   1. Use of Confidential Information
      1. The Supplier must keep the Confidential Information confidential and secure and must (and must ensure that its Personnel and advisers will):
         1. use and reproduce Confidential Information only to the extent necessary to perform its obligations under this Agreement; and
         2. not disclose or otherwise make available Confidential Information other than to its Personnel who have a need to know the information to enable the Supplier to perform its obligations under this Agreement.
      2. The Supplier acknowledges that the Organisation 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 Supplier of this clause 23.1 and without the need on the part of the Organisation to prove any special damage or to comply with the requirements of clause 18.
      3. The Supplier will not make any public announcement in relation to this Agreement without the prior written consent of the Organisation.
      4. On request by the Organisation, the Supplier must ensure that all of its Personnel involved in supplying the Goods who may have access to the Organisation's Confidential Information execute a deed of confidentiality in a form acceptable to the Organisation prior to commencing the supply of any Goods under or in connection with this Agreement.
   2. Exceptions to the Supplier’s obligations of confidentiality

Notwithstanding clause 23.1, the Supplier may disclose the Confidential Information:

* + 1. to its legal advisors, auditors and other advisors who require this information to provide advice to the Supplier in relation to this Agreement or a Purchase Order Contract; or
    2. subject to clause 23.4, if required to do so by Law, court order, a House of Parliament, or Committee of a House of Parliament.
  1. Prevention of use or disclosure of Confidential Information

The Supplier must immediately notify the Organisation in writing of any actual, threatened or suspected unauthorised use or disclosure of any Confidential Information, and must include in its notification:

* + 1. the nature of the Confidential Information; and
    2. the person to whom the Confidential Information has been (or may be) disclosed or is being used by.
  1. Disclosure by Supplier required by Law
     1. Subject to the Supplier first complying with clauses 23.4(b)(iii), 23.4(b)(iv) and 23.4(b)(v), the Supplier may disclose Confidential Information that is required to be disclosed under clause 23.4(b)(i) or 23.4(b)(ii).
     2. In the event that the Supplier:
        1. is required by Law, court order, a House of Parliament, or a Committee of a House of Parliament to disclose all or any part of the Confidential Information; or
        2. anticipates or has cause to anticipate that it may be required by Law, court order, a House of Parliament, or a Committee of a House of Parliament,

the Supplier must, as soon as possible and to the extent permitted by the relevant requirement:

* + - 1. notify the Organisation of such actual or anticipated requirement(s);
      2. cooperate fully with the Organisation to try to lawfully avoid or limit the scope of that disclosure, if the Organisation so requests; and
      3. take such steps as the Organisation reasonably requires to permit the Organisation to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means.
    1. If required by the Organisation, and if the Supplier is required to disclose Confidential Information to a Court, the Supplier must notify the Court of the obligations the Supplier owes to the Organisation in respect of the Confidential Information and use its reasonable endeavours to have the relevant Confidential Information disclosed only on a confidential basis and any proceedings be held in private (as appropriate).
  1. Supplier’s consent to disclosure of information

The Supplier consents to the Organisation publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods):

* + 1. as may be required in order to comply with the requirements of the Contract Publishing System;
    2. to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Goods;
    3. to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
    4. to the office of the Auditor General appointed under section 94A of the *Constitution Act 1975* (Vic) (**Auditor-General**) or the ombudsman appointed under the *Ombudsman Act 1973* (Vic) (**Ombudsman**);
    5. to comply with the Law, including the *Freedom of Information Act 1982* (Vic); or
    6. to the IBAC.
  1. Return of Confidential Information by the Supplier
     1. All Confidential Information will remain the property of the Organisation and all copies or other records containing Confidential Information (or any part of it) must, except to the extent necessary to comply with:
        1. clause 20;
        2. any requirements of Law; or
        3. any reasonable requirements of professional indemnity insurance,

upon request or upon termination or expiry of this Agreement, be returned by the Supplier to the Organisation, or at the election of the Organisation, destroyed.

* + 1. Upon the occurrence of any of the events specified in clause 23.6(a), the Supplier must not make any further use of, exploit or deal with in any way the relevant Confidential Information unless expressly permitted to do so by clause 23.
    2. The Supplier must not refuse to comply with, or delay the performance of, its obligations under clauses 23.6(a) and 23.6(b) whether on the basis of any alleged lien, set off, proprietary or quasi proprietary right or any other claim or demand against the Organisation or any other person.
    3. Despite clause 23.6(a), the Supplier may retain copies of information (including Confidential Information) that it is required to retain for its legitimate internal audit or quality assurance purposes, but any information so retained will be retained and held subject in all respects to the terms of this Agreement.
  1. Privacy
     1. The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Supplier for the purposes of this Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Organisation in respect of that act or practice had it been directly done or engaged in by the Organisation.
     2. The Supplier agrees that it will:
        1. assist the Organisation to comply with its obligations under the Privacy Obligations, to the extent possible;
        2. immediately notify the Organisation upon becoming aware of any breach of the Privacy Obligations and comply with all directions of the Organisation in respect of the breach;
        3. provide the Organisation with such co-operation as the Organisation requires in relation to resolving any complaint concerning privacy; and
        4. provide access to or amendment of any record as directed by the Organisation.
     3. The Supplier also agrees to comply with any directions made by the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner relevant to this Agreement.
     4. Without limiting clauses 23.7(a) to 23.7(c), in relation to any Personal Information obtained by the Supplier in connection with this Agreement, the Supplier must:
        1. not collect, use, disclose, store, transfer or handle the information except in accordance with the Privacy Obligations;
        2. not, without the prior consent of the Organisation, disclose the information to a person who is outside Victoria;
        3. take all reasonable steps to ensure that the information is protected from misuse, interference or loss, and from unauthorised access, modification or disclosure;
        4. take all reasonable steps to destroy or permanently de-identify information that is no longer needed for the purposes of this Agreement;
        5. co-operate with any reasonable request or direction the Organisation makes which relates to the protection of the information or the exercise of the functions of any of the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner;
        6. ensure that access to the information is limited to those of its Personnel who are required to access that information for the purposes of this Agreement; and
        7. comply with any reasonable direction of the Organisation in relation to a complaint concerning privacy received by either party.
  2. Data protection

The Supplier acknowledges that the Organisation is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that contravenes a Protective Data Security Standard or would give rise to contravention of a Protective Data Security Standard by the Organisation in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the Organisation, under or in connection with this Agreement.

# Liability

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

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

* + 1. The Supplier’s liability to indemnify the Organisation under clause 24(a) is reduced to the extent that any wilful, unlawful or negligent act or omission by the Organisation or its Personnel contributed to their liability, loss, damage, cost, expense or compensation.
    2. To the extent that the indemnity in this clause 24 refers to persons other than the Organisation, the Organisation holds this clause on trust for those other persons.
    3. If any indemnity payment is made by the Supplier under this clause 24, the Supplier 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.
    4. The Organisation may, in its absolute discretion, permit the Supplier, at the Supplier's expense, to handle all negotiations for settlement and, as permitted by Law, to control and direct any litigation that may occur following a claim that receipt and use of the Goods violates the Intellectual Property Rights, Moral Rights or any other rights of a third party (**IPR Claim**).
    5. If the Organisation requests the Supplier to defend an IPR Claim in accordance with clause 24(e):
       1. the Supplier must comply at all times with any Government policy relevant to the conduct of the IPR Claim (including the Model Litigant Guidelines) and with any conditions imposed and directions given by the Organisation;
       2. the Supplier may not settle or compromise the IPR Claim conducted by it without the Organisation’s consent;
       3. the Organisation may, at any time, give notice to the Supplier that the Organisation wishes to conduct the IPR Claim (including associated settlement discussions) and the Supplier will permit the Organisation to do so; and
       4. the Supplier must comply at all times with any instructions provided by the Organisation in relation to the day to day conduct and management of the IPR Claim.

# Representations and warranties

1. Warranties

The Supplier represents and warrants to the Organisation that:

* + 1. it has the right to enter into this Agreement and supply the Goods to the Organisation;
    2. the Supplier has the right to sell and transfer full and unencumbered title to and property in the Goods to the Organisation;
    3. it is entitled to use and deal with any Intellectual Property Rights, and obtained all necessary consents to use and deal with any Moral Rights, which may be used by it in connection with the Goods and to grant the Organisation the licences contemplated by this Agreement;
    4. the execution, delivery and performance of this Agreement by it does not contravene any contractual, legal or other obligation that applies to it;
    5. it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement;
    6. it holds all licences, permits, consents and authorisations required under any Law in relation to the supply of the Goods;
    7. the receipt of the Goods by the Organisation will not infringe the Intellectual Property Rights or other rights of any person or any Laws;
    8. the Goods:
       1. (except as otherwise provided in the Specifications) are new;
       2. are fit for the purpose stated in the Specifications (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used);
       3. conform to the description, model number and the sample (if any) provided by the Supplier;
       4. conform in all other respects with the requirements of this Agreement (including the Specifications);
       5. are free from defects (including defects in installation);
       6. are of merchantable quality and comply with all applicable Laws and standards; and
       7. have been manufactured, constructed or assembled at the location and in the facility disclosed by the Supplier in the Offer (or as otherwise advised to the Organisation) as the place of manufacture, construction or assembly of the Goods;
    9. all representations made by the Supplier in, or in connection with, the Offer were and remain accurate and the Supplier has and will maintain at all relevant times the quality assurance arrangements set out in the Offer;
    10. the Supplier will not vary the Specifications, design, shape, configuration or characteristics of the Goods without first obtaining the written consent of the Organisation; and
    11. if Item 10 of Schedule 1 that the Supplier is entering into this Agreement on behalf of a trust:
        1. it is a validly appointed trustee of the Trust;
        2. there has not been any contravention of or non-compliance with any of the terms of the Trust Deed;
        3. it has the right to be indemnified out of, and a lien over, the assets of the Trust except where the Supplier is fraudulent, negligent or in breach of trust;
        4. this Agreement does not conflict with the operation or terms of the Trust or the Trust Deed;
        5. this Agreement constitutes valid and enforceable obligations of the Trust;
        6. it has full and valid power and authority under the Trust to enter into this Agreement and to carry out the transactions contemplated by this Agreement (including all proper authorisations and consents);
        7. it enters into this Agreement and the transactions evidenced by it for the proper administration of the Trust and for the benefit of all of the beneficiaries of the Trust; and
        8. it is the sole trustee of the Trust,

and the terms **Trust** and **Trust Deed** have the meaning given to them Item 10 of Schedule 1.

1. Insurance
   * 1. The Supplier must (and must ensure that any sub-contractors appointed by it) obtain and maintain for the Term, and if requested by the Organisation, for a period of up to seven years after the supply of Goods, the insurances specified in Item 11 of Schedule 1 in respect of any claim related to this Agreement, including product liability insurance to the value specified in the Purchase Order Contract or, if no value is specified, to the value sufficient to cover any loss or costs that may be incurred and, if applicable, public liability insurance.
     2. Any product liability insurance must be maintained for the longer of any warranty period and three years from the acceptance of the Goods under a Purchase Order Contract.
     3. The Supplier must, within 10 Business Days of a request by the Organisation, provide evidence of the currency of any insurance it is required to obtain under this Agreement.
     4. Where any insurance the Supplier is required to obtain and maintain is due to expire (**Initial Insurance**), the Supplier must, on request by the Organisation, provide the Organisation with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance (**Replacement Insurance**).
     5. If this clause applies, as indicated by Item 11 of Schedule 1, any insurance or Replacement Insurance obtained pursuant to clauses 26(a) or 26(d) must be:
        1. taken out with an insurer acceptable to the Organisation; and
        2. on terms (including any excess) which are acceptable to the Organisation.
2. Accident compensation

The Supplier must ensure that, in respect of its Personnel and any other persons engaged by the Supplier to supply the Goods, it:

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

# Term and termination

1. Term
   1. Initial Term

This Agreement begins on the Commencement Date and continues until the Expiry Date, unless extended in accordance with clause 28.2 or terminated earlier in accordance with its terms.

* 1. Extension
     1. This Agreement may be extended beyond the Expiry Date, as agreed by the parties in writing, for the period or periods specified in Item 1 of Schedule 1.
     2. Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this clause 28.2).

1. Termination
   1. Termination for cause

The Organisation may terminate this Agreement and any or all Purchase order Contracts with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:

* + 1. fails to supply the Goods in accordance with the Service Level Requirements or otherwise in accordance with the requirements of this Agreement;
    2. breaches any provision of this Agreement or a Purchase Order Contract and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
    3. breaches any provision of this Agreement or a Purchase Order Contract that is not capable of remedy;
    4. or any of its Personnel involved in the supply of the Goods is guilty of fraud, dishonesty or any other serious misconduct;
    5. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
    6. suffers from an Insolvency Event.
  1. Termination without cause
     1. The Organisation may terminate this Agreement or a Purchase Order Contract without cause on notice to the Supplier (such termination to take effect upon receipt of the notice or such later date as specified in the notice).
     2. If a Purchase Order Contract is terminated pursuant to clause 29.2(a), the Organisation will pay the Supplier:
        1. for the Goods delivered in accordance with the Purchase Order Contract up to the date of the termination; and
        2. the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit,

and the Organisation has no other liability to the Supplier in relation to that termination of that Purchase Order Contract.

* + 1. When the Organisation issues a notice under clause 29.2(a), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of this Agreement or the relevant Purchase Order Contract.
  1. Grounds for termination by the Supplier
     1. The Supplier may terminate a Purchase Order Contract by giving at least 20 Business Days written notice to the Organisation if the Organisation fails to pay amounts due under that Purchase Order Contract which have the following characteristics:
        1. are the subject of Tax Invoices complying with this Agreement;
        2. are due and payable in accordance with this Agreement;
        3. are not the subject of a good faith dispute;
        4. are overdue for a period of at least 60 Business Days; and
        5. are amounts for which a demand has been made, provided that the demand clearly states that the amount has been overdue for a period of at least 60 Business Days and that the Supplier will have the right to terminate this Agreement on 20 Business Days' notice after the expiration of five Business Days following service of the demand if the demand is not met within that five Business Day period.
     2. Clause 29.3(a) constitutes the Supplier’s sole and exclusive right to terminate a Purchase order Contract, and the Supplier has no right to terminate this Agreement.
  2. Consequences of termination or expiry
     1. Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
     2. On termination or expiration of this Agreement, the Supplier must immediately cease using all materials (whether in written or electronic form) that contain or encapsulate any Data or Confidential Information and, at the election of the Organisation:
        1. delete or destroy the materials, as applicable; or
        2. return the materials to the Organisation in the format in which they were first provided by the Organisation and, in addition, if required by the Organisation, in a non-proprietary and open access file format (such as .txt, .csv, .rft, etc) as specified by the Organisation,

at additional cost to the Organisation.

* 1. Survival

Clauses 1, 3.4, 4, 5.6, 6, 10, 11, 12, 14(c), 14(d), 15, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29 and 30 of this Agreement survive the termination or expiry of this Agreement or the completion of the supply of Goods and may be enforced at any time.

# Other miscellaneous terms

1. General
   1. 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.

* 1. Amendment

This Agreement may only be varied or replaced by a written document executed by the parties.

* 1. Waiver and exercise of rights
     1. A waiver of any right, power or remedy under this Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.
     2. 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.
     3. 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.
  2. Severability

Any provision of this Agreement or a Purchase Order Contract which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

* 1. 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.

* 1. Set off

The Organisation may set off against any sum owing to the Supplier under this Agreement, or any Purchase order Contract, any amount then owing by the Supplier to the Organisation.

* 1. Time of the essence

Time is of the essence in relation to the supply of the Goods under this Agreement and all Purchase Order Contracts.

* 1. Governing law and jurisdiction
     1. This Agreement is governed by and is to be construed in accordance with the Laws.
     2. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
  2. Assignment or transfer of rights and obligations
     1. Subject to clause 30.9(c), a party may not assign any right under this Agreement without the prior written consent of the other party.
     2. The Supplier will be responsible for acts and omissions of any assignee.
     3. The Organisation may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate this Agreement to any other Victorian Public Entity in the event of any State government restructure or other re-organisation or change in policy.
     4. Each party agrees to execute any documents necessary to document the exercise of a permitted right of assignment, transfer or novation under this Agreement.
  3. Counterparts

This Agreement or any Purchase Order Contract may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

* 1. Entire understanding and order of precedence
     1. This Agreement is comprised of the following items:
        1. clauses 1 to 30 (inclusive);
        2. the Schedules to this Agreement;
        3. the Invitation (if specified in Item 16 of Schedule 1);
        4. the Offer (if specified in Item 16 of Schedule 1); and
        5. any other documents or representations specified in Item 16 of Schedule 1.
     2. In the event and to the extent of any inconsistency between the items listed in clause 30.11(a), the provisions of the earlier mentioned item will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.
     3. In the event of a conflict between the terms of this Agreement and the terms of the United Nations Convention on Contracts for the International Sale of Goods (adopted in Vienna, Austria on 11 April 1980), the terms of this Agreement will prevail.
     4. Each Purchase Order Contract is comprised of the following items:
        1. the terms of this Agreement incorporated into the Purchase Order Contract as specified in clause 3.4;
        2. the Purchase Order; and
        3. any other documents or representations specified in the Purchase Order.
     5. In the event and to the extent of any inconsistency between the items listed in clause 30.11(d), the provisions of the earlier mentioned document will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the item lower in the order of precedence without otherwise diminishing the enforceability of the remaining provisions of that item.
     6. This Agreement, and each Purchase Order Contract formed under this Agreement, contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.
     7. Except as otherwise provided in clause 30.11(a):
        1. all previous 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 by any party to another:
           1. affects the meaning or interpretation of this Agreement or a Purchase Order Contract; or
           2. constitutes any collateral agreement, warranty or understanding between any of the parties.
  2. Relationship of parties
     1. This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.
     2. The parties agree that the Supplier is engaged as an independent contractor and not as an employee of the Organisation.

1. **- Contract variables**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Commencement and expiry (Clause 28)** | Commencement Date: | | | |  | |
| Expiry Date: | | | |  | |
| Extension period(s): | | | |  | |
|  | **Liquidated Damages**  **(Clause 6.2)** | Liquidated damages are applicable  [Insert details of any liquidated damages payable by the Supplier for failure to meet an agreed date for performance, including:   * The relevant date(s) when liquidated damages apply; and * The rate of liquidated damages payable by the Supplier per day.]   Liquidated damages are not applicable | | | | | |
|  | **Delivery (Clause 5)** | Delivery Point: | | | [Insert the address and location for delivery of the Goods (together with any necessary / helpful details to facilitate delivery.] | | |
| Time for Delivery: | | | [Insert details regarding time for delivery, for example within three Business Days of receipt of a Purchase Order, during ordinary business hours.] | | |
|  | **Price review**  **(Clause 10)** | A price review mechanism is applicable  **Review mechanism:**  [Insert appropriate review mechanism (e.g. increase or decrease in Unit Price of Goods by reference to relevant industry specific index), including whether the of price increase / decrease is set or subject to agreement.] | | | | | |
| **Review dates:** | | | | | |
| [Insert timing for revised prices to take effect (e.g. anniversary of commencement / six-monthly).]  A price review mechanism is not applicable | | | | | |
|  | **Invoicing  (Clause 12.1)** | **Invoice requirements:** | | | | | |
| [Invoice requirements to be inserted, including and information that must be contained within the invoice. If invoices are not to be submitted following acceptance of the Goods, state when the Supplier must invoice the Organisation and/or specify any particular payment milestones which apply.] | | | | | |
| **Address for invoice:**  All invoices must be sent to the following address: | | | | | |
| [Address to which invoices must be submitted to be inserted.] | | | | | |
|  | **Payment  (Clause 12.2)** | Payment for Goods is to be made in accordance with and of the following methods: | | | | | |
| [Insert appropriate method of payment (e.g. corporate transaction card, electronic transfer of funds).] | | | | | |
|  | **Parties’ Representatives  (Clause 13.1)** | **Organisation’s Representative:** | | | | | |
| Name: | | |  | | |
| Title: | | |  | | |
| Telephone: | | |  | | |
| Mobile: | | |  | | |
| Email: | | | [Delete this row if email notices not permitted.] | | |
| **Supplier’s Representative:** | | | | | |
| Name: | | |  | | |
| Title: | | |  | | |
| Telephone: | | |  | | |
| Mobile: | | |  | | |
| Email: | | | [Delete this row if email notices not permitted.] | | |
|  | **Progress report (Clause 13.4)** | Progress reports are required  [Insert requirements for progress reports, including the content of the reports, any formatting requirements and how often reports are to be submitted (eg per week / month / quarter).]  Progress reports are not required | | | | | |
|  | **Contract management review  (Clause 13.5)** | Contract management meetings are required  [Insert requirements for management meetings, including frequency, location, and whether required for Purchase Order Contracts as well as this Agreement.]  Contract management meetings are not required | | | | | |
|  | **Trust (Clause 25(k))** | The Supplier is entering into this Agreement as a trustee  [Tick above if the Supplier is entering into this Agreement as the trustee of a Trust. If this box is ticked, the definitions below must be completed.]  If ticked, the Supplier is entering into this Agreement on behalf of the Trust and the warranties in clause 25(k) are incorporated into this Agreement, where:  Trust means [specify]  **Trust Deed** means [specify]  The Supplier is not entering into this Agreement as a trustee | | | | | |
|  | **Insurance (Clause 26)** | Tick one or more of the boxes below to specify the types and amount of insurance that the Supplier is required to obtain and maintain during the Term: | | | | | |
|  | **Type of coverage** | | | | **Amount (AUD)** |
|  | Public liability insurance | | | | [insert] per event / in the aggregate] |
|  | Product liability insurance | | | | [insert] per event / in the aggregate] |
|  | Professional indemnity insurance | | | | [insert] per event / in the aggregate] |
|  | Other (please specify): | | | | [insert] per event / in the aggregate] |
| Please specify below details of any conditions attaching to such insurance coverage (e.g. run-off insurance) | | | | | |
| [Insert, if applicable.]  Clause 26(e) is applicable to this Agreement  [Tick above if the Organisation requires a right of approval over the terms of the Supplier’s insurance policies and the identity of the Supplier’s insurer.]  Clause 26(e) is not applicable to this Agreement | | | | | |
|  | **Warranty Period** | [Specify if any warranty period applies.] | | | | | |
|  | **Applicable Laws**  **(Clause 15.1)** | The Supplier must comply with all Laws, including any which may be listed here for information purposes due to their particular relevance to the Goods:  [Specify any Laws of particular relevance with which the Supplier must comply as part of this Agreement, for example, Working with Children laws.] | | | | | |
|  | **Local Jobs First (LJF)**  **(Clause 15.5)** | LJF is applicable to this Agreement  [Tick above if LJF applies, eg, if the value of the procurement is more than $1m (regional) or $3m (metro / state-wide).]  If ticked, the LJF is applicable to this Agreement and the provisions of Schedule 4 are incorporated into this Agreement.  LJF is not applicable to this Agreement | | | | | |
|  | **Notice particulars  (Clause 19)** | **Organisation:** | | | | | |
| Addressee: | |  | | | |
| Address: | |  | | | |
| Email: | |  | | | |
| **Supplier:** | | | | | |
| Addressee: | |  | | | |
| Address: | |  | | | |
| Email: | |  | | | |
|  | **Additional Items (Clause 30.11)** | Additional items form part of this Agreement  [Insert details of any additional items (including the Invitation and the Offer) that forms part of this Agreement.]  No additional items form part of this Agreement | | | | | |

1. **- Goods and Unit Price**

|  |  |  |
| --- | --- | --- |
|  | **Goods** | [Detail the required Goods with a full description of any manuals, spare parts, drawings etc. that are to be supplied, as described in the Invitation, the Offer and any other items or representations as listed in Item 16 of Schedule 1.] |
|  | **Milestones** | [Describe applicable Milestones, and Milestone Dates by which those Milestones must be achieved.] |
|  | **Testing** | [Insert any relevant provisions relating to testing (if applicable).] |
|  | **Price** | Unit Price: (GST exclusive)  [Detail information relating to the pricing for the Goods. The prices should include the GST exclusive price, the GST payable and the total cost for the Goods.] |
|  | **Responsibility Chart** | Responsibility Chart required  No responsibility Chart required  If a Responsibility Chart is required, the following provisions apply:   1. The Supplier must submit the draft Responsibility Chart to the Organisation for acceptance within 20 Business Days of the Commencement Date (or such other period agreed between the parties in writing). 2. Following the Organisation's receipt of the draft Responsibility Chart from the Supplier, the Organisation shall notify the Supplier in writing whether it:    * + 1. accepts the Responsibility Chart; or        2. rejects the Responsibility Chart, in which case the Organisation may specify the reasons for its rejection and request amendments to the Responsibility Chart which must be made before the Organisation will accept it. 3. Within five Business Days of the Organisation rejecting the draft Responsibility Chart under clause (b)(ii), the Supplier must submit a revised draft of the Responsibility Chart, incorporating the Organisation's requested modifications (if any), to the Organisation. 4. The Organisation will respond to revised Responsibility Chart submitted by the Supplier under clause (c) in accordance with clause (b) and the process will continue until the Responsibility Chart is accepted by the Organisation pursuant to clause (b)(i). 5. To assist with the management and successful implementation of the tasks and obligations contained in this Agreement, the parties agree to regularly review the Responsibility Chart throughout the Term. 6. If the Supplier is required to, or otherwise wishes to, update the Responsibility Chart following its acceptance by the Organisation, the Supplier must submit its proposed amendments to the Responsibility Chart to the Organisation and the process in clause (b) will apply.   Until a proposed amendment to the Responsibility Chart is accepted in writing by the Organisation, the original Responsibility Chart will remain in effect. |

1. **- Service Level Requirements**

In supplying the Goods and otherwise performing its obligations under the Agreement, the Supplier must comply with the following Service Level Requirements:

[Insert Service Level Requirements, together with applicable measurement periods and categories (including performance scorecard measures, customer satisfaction surveys, etc.). See the Guidance Notes for further information on the Service Level Requirements.]

Optional:

If the Supplier fails to meet a Service Level Requirement, Service Credits will be payable as follows:

[If applicable, insert details of any reduction in the fees that will apply if the Supplier fails to meet a Service Level Requirement.]

1. **– Local Jobs First Policy (LJF)**

[If the LJF policy applies to this procurement, refer to the LJF 'Model RFT and Contract Clauses' document available at https://localjobsfirst.vic.gov.au/about-us/key-documentsfor the appropriate content for this Schedule. Any attachments as set out in the LJF ‘Model RFT and Contract Clauses’ document should immediately follow the Schedule ahead of the Signing page.]

1. **- Specifications**

**Executed as an Agreement**

|  |  |  |
| --- | --- | --- |
| Signed by **[name],** a duly authorised officer of **[Organisation name]** in the presence of: |  |  |
|  |  |  |
| Signature of Witness |  | Name of Witness (print) |
|  |
| Date |

Where the Supplier is a company incorporated in Australia with more than one director:

|  |  |  |
| --- | --- | --- |
| Executed by Error! No text of specified style in document.ACN **[insert ACN]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001* (Cth): |  |  |
|  |  |  |
| Signature of Company Secretary/Director |  | Signature of Director |
|  |  |  |
| Name of Company Secretary/Director (print) |  | Name of Director (print) |
|  |
| Date |

Where the Supplier is a company incorporated in Australia with a sole director:

|  |  |  |
| --- | --- | --- |
| Executed by Error! No text of specified style in document. ACN **[insert ACN]** acting by the following person or, if the seal is affixed, witnessed by the following person in accordance with s127 of the *Corporations Act 2001* (Cth): |  |  |
|  |  |  |
| Signature of Sole Director and Company Secretary |  | Signature of Witness |
|  |  |  |
| Name of Sole Director and Company Secretary (print) |  | Name of Witness (print) |
|  |
| Date |

Where the Supplier is an individual:

|  |  |  |
| --- | --- | --- |
| Signed byError! No text of specified style in document. in the presence of: |  |  |
|  |  |  |
| Signature of Witness |  | Name of Witness (print) |
|  |
| Date |

Where the Supplier is a corporate trustee:

|  |  |  |
| --- | --- | --- |
| Executed byError! No text of specified style in document.ACN **[insert ACN]** as a trustee of **[insert name of trust]** acting by the following persons or, if the seal is affixed, witnessed by the following persons in accordance with s127 of the *Corporations Act 2001* (Cth): |  |  |
|  |  |  |
| Signature of Company Secretary/Director |  | Signature of Director |
|  |  |  |
| Name of Company Secretary/Director (print) |  | Name of Director (print) |
|  |
| Date |

# Annexure A – Form of Purchase Order

[The Form of Purchase Order below is included as an example only, and can be adapted or replaced as required]

**PURCHASE ORDER**

issued by

[Organisation Name](**Organisation**)

to

[Supplier name](**Supplier**)

under the agreement for the supply of goods dated [insert date of Agreement] (**Agreement)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Purchase Order number** | [Insert Purchase Order number] | | |
|  | **Date of Purchase Order** | [Insert date] | | |
|  | **Start Date** | [Insert date for start of supply of Goods.] | | |
|  | **Completion Date** | [Insert date for completion of delivery of all Goods.] | | |
|  | **Goods** | [Describe which Goods from Item 1 of Schedule 2 are to be provided.] | | |
|  | **Number of Units** | [Insert number of units to be delivered.] | | |
|  | **Delivery** | [Describe the Delivery Point(s) and any Time(s) for Delivery required.] | | |
|  | **Milestones** | [Describe the applicable Milestones and Milestone Dates by which those Milestones must be achieved, if any.] | | |
|  | **Warranty** | [Incorporate warranty period provided in Item 12 of Schedule 1.] | | |
|  | **Price** | **Unit Price:** | [insert Unit Price] (excluding GST) | [insert Unit Price] (including GST) |
| **Purchase Price:** | [insert Purchase Price] (excluding GST) | [insert Purchase Price] (including GST) |
| [Include any other necessary information relating to the pricing for the Goods. The prices should include the GST exclusive price, the GST payable and the total cost for the Goods.] | | |
|  | **Liquidated damages** | [Select which of the following applies in relation to this Purchase Order. Only select the first option if liquidated damages are applicable as set out in Item 2 of Schedule 1 of the Agreement. If they are not applicable, or are applicable under the Agreement but are not to be applied to the Goods under this Purchase Order, select the second option.]  Liquidated damages apply to the Purchase Order Contract in accordance with clause 0 of the Agreement (and as set out in Item 2 of Schedule 1 of the Agreement).  Liquidated damages do not apply to the Purchase Order Contract. | | |
|  | **Invoicing requirements** | [Select which of the following applies in relation to this Purchase Order:]  The invoicing requirements set out in Item 5 of Schedule 1 of the Agreement apply to this Purchase order.  The following invoicing requirements apply in addition to, or instead of (as applicable), the invoicing requirements set out in Item 5 of Schedule 1 of the Agreement.  [Describe additional / alternative invoicing requirements.] | | |
|  | **Notice requirements** | [Select which of the following applies in relation to this Purchase Order:]  The notice particulars set out in Item 15 of Schedule 1 of the Agreement apply to this Purchase order.  The following notice particulars apply in addition to, or instead of (as applicable), the notice particulars set out in Item 15 of Schedule 1 of the Agreement.  [Describe additional / alternative notice particulars.] | | |
|  | **Other information** | [Describe any other information relevant to the supply of the Goods under the Purchase Order Contract. Note that this information will not over-ride the terms and conditions of the Agreement.] | | |

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