Government Legal Services Panel

Deed of Standing Offer for the Provision of Legal Services

The State of Victoria through the Department of Justice and Community Safety

and

[Variable C] ABN [Variable G]

Table of Contents

[1. Definitions and Interpretation 1](#_Toc137208924)

[1.1 Definitions 1](#_Toc137208925)

[1.2 Interpretation – General 9](#_Toc137208926)

[1.3 Interpretation – Parties 10](#_Toc137208927)

[1.4 Scope of Agreement 10](#_Toc137208928)

[2. Term 10](#_Toc137208929)

[2.1 Term 10](#_Toc137208930)

[2.2 Extension of term 10](#_Toc137208931)

[3. Whole of Government procurement 11](#_Toc137208932)

[3.1 Entities entitled to benefit of Agreement 11](#_Toc137208933)

[3.2 Liability 11](#_Toc137208934)

[3.3 Services not included in Panel arrangements 11](#_Toc137208935)

[3.4 Client not bound to acquire Services from Service Provider 12](#_Toc137208936)

[4. Panel Refresh 12](#_Toc137208937)

[5. Performance of Services 13](#_Toc137208938)

[5.1 Standing offer for the provision of Services 13](#_Toc137208939)

[5.2 Pro Bono Services 13](#_Toc137208940)

[5.3 Pro Bono Secondment Services 13](#_Toc137208941)

[5.4 Value Added Services 14](#_Toc137208942)

[5.5 Minimum Service Standards and Key Performance Indicators 15](#_Toc137208943)

[5.6 Inability to provide Services 15](#_Toc137208944)

[5.7 Time of the essence 15](#_Toc137208945)

[6. Requests for Legal Services and Fee Proposals 15](#_Toc137208946)

[6.1 Request for Legal Services 15](#_Toc137208947)

[6.2 Clients may issue multiple Requests for Legal Services 16](#_Toc137208948)

[6.3 Fee Proposals 16](#_Toc137208949)

[6.4 Hourly Rates Proposal 17](#_Toc137208950)

[6.5 Ongoing obligation in relation to Fee Proposals 18](#_Toc137208951)

[7. Legal Services Contracts 18](#_Toc137208952)

[7.1 Legal Services Order 18](#_Toc137208953)

[7.2 Formation of Legal Services Contract 19](#_Toc137208954)

[7.3 Terms of Legal Services Contract 19](#_Toc137208955)

[7.4 Availability of Key Personnel for Legal Services Contract 19](#_Toc137208956)

[8. Price for the Services 20](#_Toc137208957)

[8.1 Price Schedule 20](#_Toc137208958)

[8.2 Secondments 21](#_Toc137208959)

[8.3 Disbursements 21](#_Toc137208960)

[9. Invoicing and payment 21](#_Toc137208961)

[9.1 Invoicing 21](#_Toc137208962)

[9.2 Payment of invoices 22](#_Toc137208963)

[9.3 Fair payment 22](#_Toc137208964)

[10. Key Personnel 22](#_Toc137208965)

[10.1 Key Personnel to provide Services 22](#_Toc137208966)

[10.2 Notification to Client that Key Personnel are not available 23](#_Toc137208967)

[10.3 Notification to Lead Department 23](#_Toc137208968)

[10.4 Additional Key Personnel 23](#_Toc137208969)

[10.5 Annual refresh of Key Personnel 23](#_Toc137208970)

[10.6 Termination of a Legal Services Contract 24](#_Toc137208971)

[11. Cooperation with other service providers 24](#_Toc137208972)

[12. Contract management 24](#_Toc137208973)

[12.1 Executive Contract Manager, Contract Manager & Relationship Manager 24](#_Toc137208974)

[12.2 Minimum Service Standards and Key Performance Indicators 25](#_Toc137208975)

[12.3 Reports and information to be provided by Service Provider 25](#_Toc137208976)

[12.4 Information technology systems 26](#_Toc137208977)

[12.5 Continuous improvement 26](#_Toc137208978)

[13. Performance Review 26](#_Toc137208979)

[14. Price review 27](#_Toc137208980)

[15. Commitments in Tender Documentation and most favoured pricing 27](#_Toc137208981)

[16. Materials to be provided by Service Provider 27](#_Toc137208982)

[16.1 Form of Contract Materials 27](#_Toc137208983)

[16.2 Provisions of advice to databases 27](#_Toc137208984)

[17. Access to records 28](#_Toc137208985)

[17.1 Service Provider to retain records 28](#_Toc137208986)

[17.2 Right to access and audit 28](#_Toc137208987)

[18. Intellectual Property Rights 29](#_Toc137208988)

[18.1 Warranty and indemnity by Service Provider 29](#_Toc137208989)

[18.2 Ownership of Contract Intellectual Property 30](#_Toc137208990)

[18.3 Moral rights 30](#_Toc137208991)

[18.4 Ownership of existing Intellectual Property 30](#_Toc137208992)

[18.5 Licence of State Intellectual Property 31](#_Toc137208993)

[18.6 Licence of Client Intellectual Property 31](#_Toc137208994)

[18.7 Client branding 31](#_Toc137208995)

[18.8 Licence of Pre‑Existing Intellectual Property 31](#_Toc137208996)

[18.9 Licence of Licensed Intellectual Property 31](#_Toc137208997)

[18.10 Confidentiality obligations of Service Provider not affected 32](#_Toc137208998)

[19. Failure to perform 32](#_Toc137208999)

[20. Warranties 32](#_Toc137209000)

[21. Conflicts of interest, Incidents and probity 33](#_Toc137209001)

[21.1 Conflicts of interest 33](#_Toc137209002)

[21.2 Pro Bono and conflicts of interest 34](#_Toc137209003)

[21.3 Incidents 34](#_Toc137209004)

[21.4 Probity 34](#_Toc137209005)

[21.5 Specific requirements of the Client including probity plans 35](#_Toc137209006)

[21.6 Termination of this Agreement or Legal Services Contracts 35](#_Toc137209007)

[22. Change in Control 35](#_Toc137209008)

[23. Termination 36](#_Toc137209009)

[23.1 Grounds for termination by the Lead Department 36](#_Toc137209010)

[23.2 Termination of Legal Services Contract by the Client without cause 38](#_Toc137209011)

[23.3 Termination of Legal Services Contract by the parties 38](#_Toc137209012)

[23.4 Consequences of termination or expiry 39](#_Toc137209013)

[23.5 State and Client’s rights not affected 39](#_Toc137209014)

[24. Transition 39](#_Toc137209015)

[24.1 Transitional assistance 39](#_Toc137209016)

[24.2 Client may require Transition Plan 40](#_Toc137209017)

[24.3 Handover of Contract Material 40](#_Toc137209018)

[25. Insurance 40](#_Toc137209019)

[26. Accident compensation 41](#_Toc137209020)

[27. Security 41](#_Toc137209021)

[28. Confidentiality, privacy and Data protection 42](#_Toc137209022)

[28.1 Service Provider’s obligations of confidentiality 42](#_Toc137209023)

[28.2 Exceptions to Service Provider’s obligations of confidentiality 42](#_Toc137209024)

[28.3 Prevention of use or disclosure of Confidential Information 43](#_Toc137209025)

[28.4 Confidentiality of Client Satisfaction Surveys 44](#_Toc137209026)

[28.5 Disclosure by Service Provider required by Law 44](#_Toc137209027)

[28.6 Return of information by Service Provider 44](#_Toc137209028)

[28.7 Service Provider’s Personnel, agents, sub‑contractors and advisers 45](#_Toc137209029)

[28.8 Specific confidentiality requirements of any Client 45](#_Toc137209030)

[28.9 Indemnity for breach of obligations of confidentiality 45](#_Toc137209031)

[28.10 Public domain 45](#_Toc137209032)

[28.11 Service Provider’s consent to disclosure of information 46](#_Toc137209033)

[28.12 Privacy 46](#_Toc137209034)

[28.13 Rights cumulative 47](#_Toc137209035)

[29. Data protection and Data Security Breaches 47](#_Toc137209036)

[29.1 Data protection 47](#_Toc137209037)

[29.2 Data Security Breaches 48](#_Toc137209038)

[29.3 Service Provider’s Personnel, agents, sub‑contractors and advisers 48](#_Toc137209039)

[29.4 Rights cumulative 49](#_Toc137209040)

[30. Disputes 49](#_Toc137209041)

[30.1 Dealing with disputes 49](#_Toc137209042)

[30.2 Representatives of the parties 49](#_Toc137209043)

[30.3 Senior Executive Officer review 50](#_Toc137209044)

[30.4 Expert determination 50](#_Toc137209045)

[30.5 Mediation 51](#_Toc137209046)

[30.6 Arbitration or litigation 52](#_Toc137209047)

[30.7 Performance during dispute resolution 52](#_Toc137209048)

[30.8 Interlocutory relief 52](#_Toc137209049)

[31. Compliance with Law and policies 52](#_Toc137209050)

[31.1 General Law and policy 52](#_Toc137209051)

[31.2 Victorian Public Sector Commission Code of Conduct 53](#_Toc137209052)

[31.3 Local Jobs First 53](#_Toc137209053)

[31.4 Fair Jobs Code 53](#_Toc137209054)

[31.5 Supplier Code of Conduct 53](#_Toc137209055)

[31.6 Modern Slavery 54](#_Toc137209056)

[31.7 Employment policy 54](#_Toc137209057)

[31.8 Gifts, benefits and hospitality 54](#_Toc137209058)

[31.9 Legal Services specific policies 55](#_Toc137209059)

[32. Sub‑contracting 55](#_Toc137209060)

[33. Access and safety 56](#_Toc137209061)

[33.1 Access to premises 56](#_Toc137209062)

[33.2 Obligations 56](#_Toc137209063)

[33.3 No occupier’s liability 56](#_Toc137209064)

[34. GST 57](#_Toc137209065)

[34.1 Definitions 57](#_Toc137209066)

[34.2 Consideration is exclusive of GST 57](#_Toc137209067)

[34.3 Recipient to pay an additional amount 57](#_Toc137209068)

[34.4 Reimbursement 57](#_Toc137209069)

[35. Staff Costs 57](#_Toc137209070)

[36. Indemnities 57](#_Toc137209071)

[37. Notices 58](#_Toc137209072)

[37.1 Giving a communication 58](#_Toc137209073)

[37.2 Time of delivery 58](#_Toc137209074)

[37.3 After hours communications 58](#_Toc137209075)

[38. General 59](#_Toc137209076)

[38.1 Legal costs 59](#_Toc137209077)

[38.2 Amendment 59](#_Toc137209078)

[38.3 Waiver and exercise of rights 59](#_Toc137209079)

[38.4 Severability 59](#_Toc137209080)

[38.5 Rights cumulative 59](#_Toc137209081)

[38.6 Set off 59](#_Toc137209082)

[38.7 Governing law and jurisdiction 59](#_Toc137209083)

[38.8 Assignment by the Service Provider 60](#_Toc137209084)

[38.9 Assignment by the State parties 60](#_Toc137209085)

[38.10 Counterparts 60](#_Toc137209086)

[38.11 Entire understanding 60](#_Toc137209087)

[38.12 Relationship of parties 60](#_Toc137209088)

[38.13 Survivorship 61](#_Toc137209089)

[Schedule 1 Contract Details 62](#_Toc137209090)

[Schedule 2 Categories and Areas of Law 66](#_Toc137209091)

[Schedule 3 VGSO Exclusive Services 68](#_Toc137209092)

[Schedule 4 Price Schedule 70](#_Toc137209093)

[Schedule 5 Clients 93](#_Toc137209094)

[Schedule 6 Pro Bono Obligations 96](#_Toc137209095)

[Schedule 7 Model Litigant Guidelines 102](#_Toc137209096)

[Schedule 8 Victorian Gender Equitable Briefing Policy 105](#_Toc137209097)

[Schedule 9 Fair Jobs Code 107](#_Toc137209098)

[Execution Page 111](#_Toc137209099)

[Annexure A Form of Request for Legal Services 112](#_Toc137209100)

[Annexure B Form of Legal Services Order 116](#_Toc137209101)

[Annexure C Key Personnel 119](#_Toc137209102)

[Annexure D Secondment Agreement 123](#_Toc137209103)

[Annexure E Service Level Agreement 129](#_Toc137209104)

Parties

The State of Victoria through the Department of Justice and Community Safety

of 121 Exhibition Street, Melbourne, Victoria 3000

(Lead Department)

and

[Variable C] ABN [Variable G]

of [Variable E]

(Service Provider)

Background

1. The State through the Lead Department wishes to appoint a panel of suppliers to provide legal services to Agencies.
2. This Agreement sets out the terms on which the State and the Service Provider have agreed that the Service Provider will:
	* + 1. be appointed as a member of the Panel; and
			2. supply legal services as a member of the Panel,

including the terms of the standing offer by the Service Provider to supply legal services to a Client in response to a Legal Services Order.

Agreed terms

* 1. Definitions and Interpretation
		1. Definitions

In this Agreement, unless the context otherwise requires:

**Addition Notice** is defined in clause 10.4.

**Agency** means a Budget Sector Agency, a Government Owned Entity, or a public entity which is located in Victoria and approved in writing by the Executive Contract Manager for the purposes of this Agreement, but excludes a ‘Council’ as defined in the *Local Government Act 1989* (Vic).

**Agency** **Contract Manager** means the person specified as the Agency Contract Manager for a Client in the Service Level Agreement or as notified by the Lead Department to the Service Provider from time to time in accordance with this Agreement.

**Agreement** means this deed and includes the schedules and any annexures to it or documents incorporated by reference.

**Annual Assessment** is defined in the Service Level Agreement.

**Area** **of** **Law** means an area of law specified in Schedule 2 in respect of a Category, as amended from time to time in accordance with clause 4(c).

**Authorisation** means any authorisation, permit, consent, approval, resolution, licence, exemption, permission, recording, filing, registration, or waiver required by any government authority or by any law or regulation.

**Budget** **Sector** **Agency** means each Victorian Government department and administrative office (each defined in s 4 of the *Public Administration Act 2004* (Vic)) and each office specified in s 16(1) of the *Public Administration Act 2004* (Vic).

**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.

**Category** means the classification groups set out in Schedule 2 grouping each of the Areas of Law and any new Category added from time to time in accordance with clause 4(c).

**Client** is defined in clause 3.1.

**Client Intellectual Property** means any and all Intellectual Property Rights of the Client in any Material provided by the Client to the Service Provider for the purposes of any Legal Services Contract.

**Client** **Satisfaction** **Survey** is defined in the Service Level Agreement.

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

**Commencement** **Date** means the date set out in Item 2 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).

**Community Legal Centre** or **CLC** has the meaning given to that term in Schedule 6.

**Confidential** **Information** means any technical, scientific, commercial, financial or other information of, about, or in any way related to, the State, the Lead Department or a Client, including any information designated by the State, the Lead Department or a Client as confidential, which is disclosed, made available, communicated or delivered to the Service Provider in connection with this Agreement or a Legal Services Contract, and includes:

* + - 1. the terms of this Agreement and any Legal Services Contract;
			2. any decisions or determinations made by the Lead Department or any Client in respect of this Agreement or a Legal Services Contract;
			3. Information relating to any Services undertaken pursuant to the Agreement or any Legal Services Contract;
			4. Information in any Request for Legal Services, regardless of whether this results in a Legal Services Contract;
			5. any report or other Material provided by the Lead Department to the Service Provider under this Agreement, including the results of any Client Satisfaction Survey conducted pursuant to this Agreement or in relation to any other service provider under the Panel arrangements;
			6. State Intellectual Property;
			7. Client Intellectual Property; and
			8. the Contract Materials,

but excludes information:

* + - 1. which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement or a Legal Services Order;
			2. which the Service Provider can demonstrate was in its possession prior to the date of this Agreement and in relation to which the Service Provider does not owe any obligation of confidence to the State or the relevant Client;
			3. which the Service Provider can demonstrate was independently developed by the Service Provider;
			4. which is lawfully obtained by the Service Provider from another person entitled to disclose such information; or
			5. which is disclosed pursuant to legal requirement or order.

**Contract Intellectual Property** is defined in clause 18.2(a).

**Contract** **Manager** means the person nominated by the Lead Department pursuant to clause 12.1(a)(ii) or as notified by the Lead Department to the Service Provider from time to time in accordance with this Agreement.

**Contract** **Material** means any Material created by or on behalf of the Service Provider in the course of or as a result of complying with its obligations under this Agreement or providing the Services to a Client under a Legal Services Contract, including any Material provided or required to be provided to the Lead Department or a Client under this Agreement or under a Legal Services Contract.

**Contract** **Year** means a financial year during the Term and where this Agreement terminates or expires in any financial year prior to 30 June, includes that part of the relevant financial year to the date of termination or expiry.

**Contracts** **Publishing** **System** means the system of the Victorian Government requiring publication of details of contracts entered into by Victorian Government departments or any successor system (including variations).

**Control** means in relation to any Service Provider, the ability of any person directly or indirectly to exercise effective control over the Service Provider (including the ability to determine the outcome of decisions about the financial and operating and other policies of the Service Provider) by virtue of control or influence, or having the capacity to control or influence the composition of the board, or decision making, directly or indirectly, or by the holding of voting shares, units or other interests in or in respect of the Service Provider or by any other means.

**Controller** means, in relation to a change in Control of a Service Provider, the person or body corporate to whom Control will pass.

**Counsel** means legal practitioners admitted to appear as a barrister in any Australian jurisdiction.

**Counsel's Fees** means any fees (charged as a Disbursement under a Legal Services Contract) incurred in relation to briefing of Counsel.

**CPI** means the ‘Consumer Price Index’ (All Groups, Melbourne) or if that index is discontinued or materially altered, such substituted index as may be agreed between the parties or if not agreed, as may be determined by the President of the Law Institute of Victoria to be an appropriate index reflecting the general level of monetary inflation in Victoria.

**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 Lead Department or a Client in connection with this Agreement or any Legal Services Contract (**Input Data**); or
			2. generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or in the course of supply the Services.

**Disbursements** means the costs and expenses outlined in Items 5(a) and (b) of Schedule 4 recoverable by the Service Provider under a Legal Services Contract but excludes those costs and expenses outlined in Item 5(c) of Schedule 4.

**Electronic Support System** means the Lead Department’s online or other system which is designed to manage Panel arrangements including the performance of service providers under the Panel arrangements and engagement of, and reporting by, service providers.

**Executive** **Contract** **Manager** means the person nominated by the Lead Department pursuant to clause 12.1(a)(i) or as notified by the Lead Department to the Service Provider from time to time in accordance with this Agreement, or the delegate of that person.

**Existing Matter** means any pre‑existing agreement for the provision of legal services between the Service Provider and any Client that remains on foot as at the Commencement Date.

**Expiry** **Date** means the date set out in Item 2 of Schedule 1.

**Fair Jobs Code** means the Fair Jobs Code, issued by the Victorian Government for suppliers of goods and services to Victorian Government (as amended from time to time).

**Fee Proposal** means the quote of fees provided by the Service Provider to a Client in accordance with clause 6.3, in response to Request for Legal Services.

**Further Term** has the meaning given in clause 2.2(a).

**Government Agency** means any government or any public, statutory, governmental, semi‑governmental, local governmental or judicial body, entity or authority in Australia, including the Australian Securities & Investments Commission, Commissioners, the Office of the Australian Information Commissioner or a Minister of the Crown (state or federal in any right).

**Government** **Owned** **Entity** means:

* + - 1. a statutory corporation;
			2. a State owned company or a State body as those terms are defined in the *State Owned Enterprises Act 1992* (Vic);
			3. a corporation limited by shares of which more than half are owned beneficially by the State; or
			4. a company limited by guarantee the majority of members of which are appointed by or on behalf of the State.

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

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

**Hourly Rates Proposal** is defined in clause6.3(e).

**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.

**Incidents** means any of the following, to the extent to which the Service Provider, or any Key Personnel or any other Personnel or sub‑contractor of the Service Provider who is a lawyer, is the subject of those matters, including any partner, consultant, solicitor (however designated) law graduate or trainee:

* + - 1. commencement of any legal or disciplinary proceedings within Australia or in any other jurisdiction involving:
				1. an offence in respect of which the maximum penalty is 12 or more months imprisonment or 100 or more penalty units;
				2. failure to pay any taxes or duties imposed by the Commonwealth, any State or Territory of Australia or by any local authority;
				3. duties, obligations or sanctions under the *Legal Profession Uniform Law Application Act 2014* (Vic), or equivalent duties, obligations or sanctions in any other jurisdiction; or
				4. the appointment of a liquidator or a receiver and manager or mortgagee’s or chargee’s agent, being subject to any form of insolvency administration or arrangement, or in the case of an individual, bankruptcy or entering into a scheme or arrangement with creditors; and
			2. going into liquidation or the appointment of a receiver and manager or mortgagee’s or chargee’s agent is appointed or becoming subject to any form of insolvency, administration or arrangement, or in the case of an individual, becoming bankrupt or entering into a scheme or arrangement with creditors.

**Indemnified Parties** means in relation to any indemnity set out in any provision of this Agreement, the Indemnified Parties specified in that provision.

**Information** includes any statement, representation, estimate, prediction, advice, plans, drawings, inventions and ideas which may be:

* + - 1. oral, written, recorded or stored by electronic, magnetic, electromagnetic, or in other form, process, media or otherwise in a machine readable form; or
			2. translated from the original form, re‑compiled, made into a compilation, partially copied, modified, updated or otherwise altered.

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

**Initial Insurance** is defined in clause 25(d).

**Initial Term** has the meaning given in clause 2.1.

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

**Key Performance Indicators** are defined in the Service Level Agreement.

**Key Personnel** means the persons specified in Annexure C, as amended from time to time in accordance with clause 10, and where under this Agreement the Service Provider is appointed for one or more Area of Law, means the persons specified in Annexure C as such key personnel with respect to the relevant Area of Law.

**Laws** means the law in force in the State and the Commonwealth of Australia, including common law and legislation.

**Legal Services Contract** means the contract which arises between a Client and the Service Provider as provided by clause 7.2.

**Legal Services Fees** means the amount paid by a Client to the Service Provider with respect to Services under any Legal Services Contract and excludes Disbursements and GST.

**Legal Services Order** means an order for Services, submitted by a Client to the Service Provider in accordance with clause 7.1(a).

**Licensed Intellectual Property** means any and all Intellectual Property Rights incorporated or comprised in any Contract Materials specified in clause 18.9(a) but does not include the Pre‑Existing Intellectual Property, the State Intellectual Property, the Client Intellectual Property or the Contract Intellectual Property.

**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).

**Material** includes anything in which Intellectual Property Rights can exist.

**Minimum Service Standards** are specified in Item 3.2 of the Service Level Agreement.

**Model Litigant Guidelines** means the Guidelines on the State of Victoria’s Obligations to Act as a Model Litigant in Schedule 7, as amended by notice by the Lead Department to the Service Provider from time to time under this Agreement.

**Modern Slavery** has the same meaning as in the *Modern Slavery Act 2018* (Cth).

**Panel** means the panel of suppliers appointed to provide legal services in one or more of the Areas of Law.

**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** means any employee, officer or partner.

**Pre‑Existing Intellectual Property** means any and all Intellectual Property Rights in any works, items or systems created by or the property of or licensed to the Service Provider either prior to the commencement of the provision of the Services, or after the commencement of the provision of the Services, but not in connection with this Agreement or any Legal Services Contract.

**Pricing Arrangements** means the models for Service pricing and invoicing as detailed in Item 1 of Schedule 4.

**Privacy Obligations** has the meaning given to that term in clause 28.12(a).

**Pro Bono Obligations** means the Service Provider obligations as set out in Schedule 6.

**Pro Bono Percentage** means the percentage set out in Item 10 of Schedule 1.

**Pro Bono Secondee** has the meaning given in clause 5.3(c)(i).

**Pro Bono Secondment Services** has the meaning given to that term in clause 5.3(c).

**Pro Bono Secondment Services Payment** has the meaning given to that term in clause 5.3(e).

**Pro Bono Services** has the meaning given to that term in Schedule 6.

**Probity Event** includes any:

* + - 1. Incident; and
			2. event relating to the Service Provider, the Service Provider’s Personnel and any sub‑contractor of the Service Provider:
				1. giving rise to an actual, potential or perceived conflict of interest;
				2. having a material adverse effect on the character, integrity, or honesty of a relevant entity or person, including a criminal charge or conviction and a breach of a confidentiality, privacy or security obligation;
				3. having a material adverse effect on public confidence in the provision of legal services to the State, or to any Client; or
				4. involving a material failure to achieve or maintain standards of ethical behaviour required by the State.

**Protective Data Security Standard** means any standard issued under Part 4 of the PDP Act (and includes any Australian or international standards (AS:ISO/IEC or others) referred to within that standard), as may be amended, updated or reissued from time to time.

**Rates** means the rates set out in Item 2 of Schedule 4 (Price Schedule) and adjusted under this Agreement.

**Relationship Manager** means the person nominated by the Service Provider pursuant to clause 12.1(a)(iii) or as notified by the Service Provider from time to time in accordance with this Agreement.

**Replacement Personnel** is defined in clause 10.2.

**Request for Legal Services** means a request by a Client under clause 6.1 for the provision of specified Services, which may be in the form as set out in Annexure A, any other such form as the Lead Department may notify Service Providers of from time to time or such other form as a Client may elect to use.

**Request for Tender** means the selection process conducted to appoint to the Panel released on 25 January 2023.

**Secondment Agreement** means Annexure D as amended from time to time and notified by the Lead Department to the Service Providers.

**Senior Executive Officer** means:

* + - 1. for the Lead Department, the Executive Contract Manager or his or her nominee;
			2. for a Client the person notified by the Agency Contract Manager to each of the Lead Department and the Service Provider from time to time under this Agreement; and
			3. for the Service Provider, the Managing Partner or chief executive officer.

**Service Level Agreement** means Annexure E as amended from time to time in accordance with clause 5 of Annexure E or otherwise in accordance with the terms of this Agreement.

**Services** means legal services in each of the Areas of Law as nominated in Item 1 of Schedule 1 (as varied from time to time under the terms of this Agreement) which the Service Provider has been appointed to provide, and, in relation to a Legal Services Contract, includes the Services specified in the relevant Legal Services Order or provided under that Legal Services Contract.

**Social Procurement Framework** means the Social Procurement Framework issued by the Victorian Government for suppliers providing goods and services to the Victorian Government outlining the State's social procurement objectives and corresponding outcomes (as amended from time to time).

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

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

**State Intellectual Property** means any and all Intellectual Property Rights of the State in any material provided by the State or any Client to the Service Provider for the purposes of this Agreement or any Legal Services Contract.

**Tender Documentation** means the documentation submitted by the Service Provider in response to a Request for Tender, including any revisions and clarification submitted on behalf of the Service Provider to the Lead Department.

**Term** means the term of this Agreement determined in accordance with clause 2, including any extension in accordance with that clause.

**Threshold Date** means:

* + - 1. For the first Contract Year, the Commencement Date; and
			2. for each subsequent Contract Year, 30 June of the year immediately preceding that Contract Year.

**Threshold Requirement** has the meaning given to that term in clause 5.3(b).

**Value Added Service** means the services detailed in Item 4 of Schedule 4 as may apply to this Agreement pursuant to clause 5.4.

**VGSO Exclusive Services** means the legal services provided by the Victorian Government Solicitor’s Office specified in Schedule 3, as amended from time to time.

**Victorian Gender Equitable Briefing Policy** as set out in Schedule 8.

**Volume Discount** means the pricing discount applied to Legal Services Contracts in accordance with Item 3 of Schedule 4.

**Volume Discount Threshold** has the meaning given to that term in Item 3(a) of Schedule 4.

* + 1. Interpretation – General

Unless expressed to the contrary, in this Agreement:

* + - 1. headings are for convenience only and do not affect interpretation;
			2. words in the singular include the plural and vice versa;
			3. if a word or phrase is defined, its other grammatical forms have corresponding meanings;
			4. ‘**includes**’ in any form is not a word 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. a reference to:
				1. a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
				2. a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
				3. any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
				4. an obligation includes a warranty or representation and a reference to a failure to comply with an obligation or a breach of this Agreement or a breach of any provision of this Agreement or a Legal Services Contract includes a breach of warranty or representation;
				5. ‘$’, ‘dollars’ or ‘AUD’ is a reference to the lawful currency of the Commonwealth of Australia;
				6. a clause, Schedule or annexure is a reference to a clause, Schedule or annexure of this Agreement, and a reference to this Agreement includes all Schedules and annexures to it;
				7. a party or parties to this Agreement is a reference to the Lead Department, the Service Provider or a Client to which clause 3.1 applies (as the case requires);
				8. a party or parties to any Legal Services Contract is a reference to the relevant Client and the Service Provider;
				9. the Lead Department is a reference to the Crown in right of the State of Victoria;
				10. a Client, where the Client is not a separate legal entity from the State or represents or acts as agent for the State, is a reference to the State, and all rights and obligations of such Client under this Agreement or any Legal Services Contract will be rights and obligations of the State, through that Client; and
				11. a financial year is a reference to a consecutive period of 12 months commencing on 1 July and ending on the following 30 June,
			7. if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.
		1. Interpretation – Parties
			1. If a party consists of more than one person, this Agreement or the relevant Legal Services Contract binds each of them separately and any two or more of them jointly.
			2. An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
		2. Scope of Agreement
			1. This Agreement sets out the terms on which:
				1. the Service Provider is appointed as a member of the Panel as specified in Item 1 of Schedule 1; and
				2. the Service Provider will supply Services to the Clients.
			2. This Agreement and any relevant Legal Services Contract prevail over any terms and conditions put forward by the Service Provider in respect of the provision of Services.
	1. Term
		1. Term

This Agreement commences on the Commencement Date and, unless terminated earlier in accordance with this Agreement, or extended in accordance with clause 2.2, will end on the Expiry Date (**Initial Term**).

* + 1. Extension of term
			1. The Lead Department may elect, by written notice to the Service Provider not later than 2 months prior to the expiry of the Initial Term, to extend the Term of this Agreement for one further period, and in respect of one or more Areas of Law as set out in Item 2 of Schedule 1 (**Further Term**).
			2. Any such Further Term or terms will be on the same terms and conditions as this Agreement except that:
				1. the Lead Department may, in its absolute discretion, remove one or more Areas of Law from the scope of this Agreement for the further term; and
				2. for the Further Term, this clause 2.2 is excluded.
	1. Whole of Government procurement
		1. Entities entitled to benefit of Agreement
			1. The Service Provider acknowledges and agrees that the Lead Department enters into this Agreement on its own behalf and on behalf of each:
				1. Agency identified in Schedule 5; and
				2. any Agency which is subsequently taken to be bound by this Agreement in accordance with clause 3.1(b),

(the Lead Department and each such Agency each being a **Client**).

* + - 1. If at any time following the Commencement Date an Agency (other than an Agency specified in Schedule 5) wishes to acquire Services from the Service Provider pursuant to this Agreement, that Agency will, upon the Contract Manager giving written notice to the Service Provider of that fact, be bound by the terms of this Agreement from the date specified in the notice.
			2. Each Client, upon the Commencement Date or, if applicable, the date on which they are subsequently taken to be bound by this Agreement pursuant to clause 3.1(b), will:
				1. be permitted to issue Legal Services Orders to the Service Provider in respect of Services under this Agreement (and the Service Provider must provide the Services to such Client accordingly); and
				2. will be taken to have agreed to be bound by, and have the benefit of, the terms of this Agreement applicable to Clients.
		1. Liability

The Service Provider acknowledges that, notwithstanding anything else in this Agreement, each Client is solely responsible for any and all orders placed by it under this Agreement, and neither the State, the Lead Department, nor any other Agency will be liable for the acts or omissions of any other Client, including any liability for moneys owing to the Service Provider.

* + 1. Services not included in Panel arrangements
			1. The following legal services are outside the scope of the Panel arrangements:
				1. services provided by the Solicitor‑General, the Office of the Chief Parliamentary Counsel, the Director of Public Prosecutions, the Solicitor for Public Prosecutions and Victoria Legal Aid;
				2. VGSO Exclusive Services;
				3. direct briefing of barristers;
				4. services being provided under instructions received from, or specific contractual arrangements entered into by, a Client prior to the Commencement Date; and
				5. services relating wholly to matters governed by an international jurisdiction.
			2. The Service Provider must not provide VGSO Exclusive Services to any Agency without approval in writing of the Executive Contract Manager, and this approval may be given, given on conditions, or withheld in the Executive Contract Manager’s absolute discretion.
		2. Client not bound to acquire Services from Service Provider
			1. A Client:
				1. is not obliged to issue any Legal Services Order to the Service Provider or to acquire any volume of Services from the Service Provider; and
				2. may at any time acquire Services the same as, or similar to, the Services from another supplier on the Panel or from any other person on such terms and conditions as the Client may require.
			2. The Service Provider agrees that:
				1. it is not guaranteed any particular volume of Service under this Agreement; and
				2. nothing in this Agreement confers on the Service Provider any right to be the exclusive supplier of any of the Services or any other legal Services to the Lead Department, State or any Client.
	1. Panel Refresh
		+ 1. The Service Provider acknowledges that the Lead Department will on an ongoing basis, monitor the Panel membership to ensure the scope and the nature of the services offered by the Panel continues to meet Clients’ evolving requirements.
			2. Without limitation to any other term of this Agreement, the Lead Department may in its absolute discretion periodically review the Panel arrangements, and may, at any time during this Agreement (and as often as it considers necessary) refresh the Panel arrangements via any means it thinks fit, including a public tender process.
			3. As part of any refresh undertaken pursuant to clause 4(b), the Lead Department may:
				1. vary the membership of any Area of Law (including adding a supplier without a public tender process);
				2. vary the Categories or the Areas of Law for any Category and add or remove Categories or Areas of Law;
				3. add suppliers to the Panel via any means it thinks fit, including without a public tender process;
				4. add, modify, expand or restrict the legal services to be provided under the Panel arrangements, including:

the legal services to be provided by members of any Area of Law; or

the Services to be provided by the Service Provider; and

* + - * 1. if a public tender process has been used, remove service providers (including the Service Provider) from the Panel or from any Area of Law, as applicable.
	1. Performance of Services
		1. Standing offer for the provision of Services

The Service Provider makes a standing offer to provide the Services during the Term, on the terms of this Agreement including the Service Level Agreement.

* + 1. Pro Bono Services
			1. The Service Provider must during the Term provide the Pro Bono Services in accordance with Schedule 6, Pro Bono Obligations.
			2. The provision of Pro Bono Services is a material term of this Agreement. Without limitation to any provision of this Agreement, if the Service Provider fails to comply with any of the obligations in Schedule 6, the Lead Department may suspend the Service Provider’s membership of the Panel or any Area of Law pursuant to clause 23.1.
		2. Pro Bono Secondment Services
			1. In addition to the Service Provider’s obligations in clause 5.2, the Service Provider must provide Pro Bono Secondment Services for each Contract Year if the Threshold Requirements set out in clause 5.3(b) are met.
			2. If on a Threshold Date,150 (or more) of the Service Provider's Personnel (including staff engaged by way employment, labour hire, sub‑contract or consultancy arrangement) are engaged by the Service Provider:
				1. as Australian legal practitioners (within the meaning of the *Legal Profession Uniform Law* (Victoria)),
				2. to provide work within Australia; then

the Service Provider will have met the requirements (**Threshold Requirements**) and must:

* + - * 1. notify the Contract Manger the Threshold Requirement has been met; and
				2. provide Pro Bono Secondment Services in the subsequent Contract Year.
			1. For the purposes of this Agreement the Pro Bono Secondment Services require:
				1. an employee, employed by the Service Provider as a legal practitioner (**Pro Bono Secondee**) being seconded (in accordance with the *Labour Hire Licensing Act 2018* (Vic)) to a Community Legal Centre based in Victoria on a full time basis;
				2. the Pro Bono Secondee to be seconded on the basis of providing legal services (substantially similar in nature to the Pro Bono Services); and
				3. each Pro Bono Secondee being seconded for a period of no less than 12 months, commencing no later than 1 month after the relevant Threshold Date, or may commence on a later date (with the prior written consent of the Contract Manager) such consent may be given or withheld by the Contract Manager in the Contract Manager’s absolute discretion.

(**Pro Bono Secondment Services**)

* + - 1. For each Contract Year that the Threshold Requirements are met, the Pro Bono Secondment Services provided by the Service Provider must be equal to (or more than) 1,748 hours (being the equivalent of a full-time employee less leave entitlements).
			2. If approved in writing by the Executive Contract Manager, the Service Provider may make a payment in lieu of providing Pro Bono Secondment Services (**Pro Bono Secondment Payment**).
			3. The Executive Contract Manager may, in his or her absolute discretion, approve or decline entirely or in part a request by a Service Provider to make a Pro Bono Secondment Payment in lieu of undertaking Pro Bono Secondment Services.
			4. A Pro Bono Secondment Payment will be such amount as may be determined by the Executive Contract Manager from time to time with the agreement of the Service Provider.
			5. Any Pro Bono Secondment Payment must be:
				1. paid to the Community Legal Centre or other entity or fund specified by and as otherwise directed by the Executive Contract Manager; and
				2. paid no later than 6 months from the end of the relevant financial year in respect of which the Pro Bono Secondment Services were not provided.
			6. The Service Provider must provide such reports and maintain records with respect to the Pro Bono Secondment Services as the Contract Manager may reasonably require.
			7. If the Service Provider does not receive any Legal Services Fees from any Client in a Contract Year, the Service Provider may apply in writing to the Executive Contract Manager for an exemption to comply with the requirement in clause 5.3(a) in the following Contract Year. The Executive Contract Manager may, in his or her absolute discretion, approve or decline an application for an exemption.
		1. Value Added Services

The Service Provider agrees to provide:

* + - 1. any of the Value Added Services listed in Item 4 of Schedule 4 requested by any Client in a Request for Legal Services, according to its capacity;
			2. any of the Value Added Services listed in Item 4 of Schedule 4 requested by any Client according to its capacity; and
			3. any Value Added Services that the Service Provider proposes to offer in a Fee Proposal.
		1. Minimum Service Standards and Key Performance Indicators

The Service Provider must provide the Services to a standard that reaches or exceeds the Minimum Service Standards and the Key Performance Indicators. In addition, the Service Provider must:

* + - 1. provide the Services in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services;
			2. ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
			3. act in good faith and in the best interests of each Client in the provision of any Services to that Client;
			4. keep the Lead Department informed of all matters of which it ought reasonably be made aware, and provide such information in relation to the provision of the Services as may reasonably be required by the Lead Department or by any Client with respect to the provision of any Services to that Client, including under any Legal Services Contract between the Service Provider and that Client; and
			5. carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of and in accordance with the requirements of:
				1. the Lead Department under this Agreement; and
				2. the relevant Client, with respect to the provision of any Services to that Client, including under any Legal Services Contract between the Service Provider and that Client.
		1. Inability to provide Services

If at any time during the Term the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify the Lead Department (and any Client which has issued a Legal Services Order for such Services) of that fact.

* + 1. Time of the essence

Time will be of the essence in the performance of any obligation by the Service Provider under this Agreement and each Legal Services Contract.

* 1. Requests for Legal Services and Fee Proposals
		1. Request for Legal Services
			1. During the Term, prior to issuing a Legal Services Order, a Client may provide the Service Provider in writing, a Request for Legal Services.
			2. A Request for Legal Services may be substantially in the form set out in Annexure A or otherwise detail the Services required by the Client as fully as possible including (but not limited to):
				1. confirmation that the Service Provider has no actual, potential or perceived conflict of interest in providing the Services;
				2. confirmation as to whether the Service Provider has previously provided substantially similar advice to another Client (or substantially similar advice on any aspect of the Services requested) and, if so, the name of the Client to whom the previous advice was provided; and
				3. may detail at the Client's discretion:

any Key Personnel requested to undertake the work, and the work to be performed by them; and

any preferred Pricing Arrangement for the Fee Proposal.

* + 1. Clients may issue multiple Requests for Legal Services

The Service Provider acknowledges that nothing in this Agreement prevents a Client from issuing a Request for Services and seeking Fee Proposals from multiple service providers on the Panel.

* + 1. Fee Proposals
			1. Unless otherwise agreed between the Service Provider and the Client, Service Providers must provide Fee Proposals in writing within the following periods calculated from receipt of the Request for Legal Services, as applicable:
				1. for complex matters, within 5 Business Days;
				2. for urgent matters within 4 hours; and
				3. for other matters, within 2 Business Days.
			2. The Fee Proposal must include confirmation that Services will be provided in line with the Request for Legal Services, including confirmation that:
				1. any Key Personnel requested to undertake the work are available or if they are not available, provide details of the Personnel whom the Service Provider proposes to provide the Services; and
				2. the Service Provider has no actual, potential or perceived conflict of interest in providing the Services, or details of any actual, potential or perceived conflict of interest of the Service Provider.
			3. Each Fee Proposal must include details of:
				1. the proposed Pricing Arrangement(s);
				2. estimated Disbursements likely to be incurred in relation to the Services calculated in accordance with Schedule 4;
				3. any contingency component which the Service Provider believes may be required; and
				4. any assumptions that the Service Provider has relied on in providing the Fee Proposal.
			4. The Fee Proposal must include provision for any additional related legal work not specified by the Client in a Request for Legal Services which the Service Provider considers may become necessary for the completion of the Services.
			5. If the Service Provider proposes a Fee Proposal based on the Rates calculated on an hourly basis (**Hourly Rate Proposal**), then:
				1. the Service Provider must also provide an alternative Fee Proposal using another Pricing Arrangement for the Services; and
				2. ensure that the Fee Proposal is compliant with clause 6.4.
			6. In providing any Fee Proposal the Service Provider warrants to the Client that: the Fee Proposal is as accurate as reasonably possible, given the information provided by the Client.
			7. Fee Proposals must be prepared and provided at no cost to Clients.
			8. On receipt of the Service Provider’s response to the Request for Legal Services, the Client may issue a Legal Services Order to the Service Provider in accordance with clause 7.
		2. Hourly Rates Proposal
			1. An Hourly Rates Proposal must include detailed breakdown of:
				1. estimated time required to undertake the scope of work and Rates of Personnel providing the Services (including, any additional related legal work not specified by the Client in a Request for Legal Services but which the Service Provider considers may become necessary for the completion of the Services) calculated in accordance with Schedule 4;
				2. estimated Disbursements likely to be incurred in relation to the Services calculated in accordance with Items 5(a) and (b) of Schedule 4; and
				3. any fee assumptions that the Service Provider has relied on in providing the Hourly Rates Proposal.
			2. A Service Provider will not be required to provide an Hourly Rates Proposal if:
				1. the total legal costs in respect of those Services detailed in the Request for Legal Services, excluding Disbursements, are not likely to exceed $3,000 (or such amount determined by the Executive Contract Manager and notified to the Service Provider from time to time, whichever is higher); or
				2. the Client has indicated in the Request for Legal Services that there is no requirement to provide the details set out in clause 6.4(a).
			3. If clause 6.4(b)(i) applies, and the Service Provider becomes aware that the total legal costs in respect of the scope of Services (as provided on an hourly basis) is likely to exceed $3,000 or some other amount determined by the Executive Contract Manager, the Service Provider must provide an Hourly Rates Proposal.
		3. Ongoing obligation in relation to Fee Proposals
			1. If in the course of performing the Services under a Legal Services Contract:
				1. the Service Provider considers the scope of the Services being performed have significantly changed and that the Fee Proposal does not reflect the instructions from the Client and it wishes to revise the Fee Proposal; or
				2. if:

work undertaken under a Legal Services Contract is likely to exceed the fees as set out in the Fee Proposal; or

Legal Service Fees and Disbursements accrued or incurred reaches 70% of an Hourly Fee Proposal,

then it must give prompt written notice to the Client setting out:

* + - * 1. a revised Fee Proposal for the Services, prepared in accordance with clause 6.3;
				2. the reasons why the original Fee Proposal will be exceeded; and
				3. including any steps taken by the Service Provider to mitigate the cost increase.
			1. A Client may approve a revised Fee Proposal in its sole and absolute discretion.
			2. Where a Service Provider has provided a Fee Proposal to a Client with respect to Services to be provided under a Legal Services Contract, the Client will not be liable to pay any amount to the Service Provider with respect to the Services which exceeds:
				1. the Fee Proposal, or
				2. where the Client has approved a revised Fee Proposal, that revised Fee Proposal.
	1. Legal Services Contracts
		1. Legal Services Order
			1. Where a Client wishes to accept the Service Provider’s Fee Proposal provided in accordance with clause 6.3, the Client will issue a Legal Services Order to the Service Provider.
			2. A Legal Services Order may be substantially in the form of or otherwise in accordance with Annexure B as amended from time to time (by written notice given by the Contract Manager to the Service Provider) and:
				1. must detail the Services required by the Client;
				2. must state whether the Fee Proposal provided by Service Provider is agreed or otherwise confirm the Pricing Arrangement that has been agreed between the Client and Service Provider;
				3. must specify any time by which the Services must be provided;
				4. may specify any Key Personnel who must undertake the work;
				5. may specify any key materials to be provided by the Client to the Service Provider to enable the Services to be performed; and
				6. must require the Service Provider to confirm that it has no actual, potential or perceived conflict of interest in providing the Services or provide details of any actual, potential or perceived conflict (if this has not already been done).
		2. Formation of Legal Services Contract

A Legal Services Contract will be formed upon the later of:

* + - 1. the Service Provider signing and returning the Legal Services Order to the Client; or
			2. receipt by the Client of written confirmation that the Service Provider has no actual, potential or perceived conflict of interest in relation to the provision of the relevant Services, whether such confirmation is provided in clause Fee Proposal 6.3 or otherwise.
		1. Terms of Legal Services Contract
			1. Subject to clause 7.2, a Legal Services Contract commences on the earlier of:
				1. commencement of work by the Service Provider; and
				2. if any date is specified in the relevant Legal Services Order by the Client, on that date.
			2. A Legal Services Contract will consist of:
				1. except to extent expressly set out in the Legal Services Order, the terms of this Agreement (except for clauses 2, 3, 5.1, 6, 7.1, 22, 23.1(a) and Item 1 of Schedule 1), and with such consequential changes as are necessary to reflect the formation of the relevant Legal Services Contract in such manner;
				2. the Legal Services Order;
				3. the Request for Legal Services and Fee Proposal (if relevant); and
				4. any other document that is expressly incorporated as part of the Legal Services Contract under clause 7.3(b)(i) or (ii).
			3. Where there is any inconsistency between the provisions of this Agreement and any Legal Services Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.
		2. Availability of Key Personnel for Legal Services Contract
			1. If a Legal Services Order specifies any Key Personnel who must undertake the work, and they are not available, the Service Provider must immediately on receiving the Legal Services Order notify the Client in accordance with clause 10.2(a).
			2. Where a Service Provider gives notice under clause 7.4(a):
				1. the Service Provider must not commence work under the Legal Services Contract unless the Client has either:

waived the requirement for the specified Key Personnel to undertake the work; or

approved the Replacement Personnel specified by the Service Provider, and

* + - * 1. if a Client does not wish to waive the requirement for specified Key Personnel to undertake the work or approve Replacement Personnel, it may terminate the Legal Services Contract by written notice to the Service Provider.
			1. Where a Legal Services Contract is terminated by the Client pursuant to clause 7.4(b)(ii), the Client will have no liability to make any payment to the Service Provider in respect of the Services.
	1. Price for the Services
		1. Price Schedule
			1. The Service Provider must ensure that Services are provided efficiently and that Personnel with appropriate expertise and experience perform the Services under each Legal Services Contract.
			2. Except as otherwise provided in this Agreement or otherwise as agreed with a Client, the Service Provider:
				1. may only charge a Client the Legal Service Fees and Disbursements as agreed under a Legal Services Contract;
				2. must only charge those Rates as set out in Item 2 of Schedule 4 if the agreed Pricing Arrangement for a Legal Services Contract is on the basis of the Rates; and
				3. must discount Legal Service Fees in accordance with the Volume Discounts as set out in Item 3 of Schedule 4 (where a Volume Discount Threshold is met).
			3. The Rates are fixed for the Term, except as adjusted in accordance with clause 14, or Item 3 of Schedule 4.
			4. Nothing in this Agreement prevents the Service Provider from charging a Client rates less than the Rates with respect to any Legal Services Contract.
			5. Subject to clause 34, amounts charged by the Service Provider must be inclusive of all costs and expenses of the Service Provider in relation to the provision of the Services including GST.
		2. Secondments
			1. Unless approved by the Client in writing, where the Services are provided by the Service Provider through secondment to a Client of any of its Personnel or approved sub‑contractors:
				1. the Client and the Service Provider must execute a Secondment Agreement prior to the commencement of any secondment engagement; and
				2. the Service Provider may only charge a Client the secondment Rates as set out in Item 2 of Schedule 4 in relation to the secondment in accordance with the Secondment Agreement.
			2. The Service Provider agrees that nothing in this Agreement confers on it any exclusive right to supply secondment services to any Client.
			3. When providing any Services under a Secondment Agreement, the Service Provider must comply with the *Labour Hire Licensing Act 2018* (Vic) and associated regulations.
		3. Disbursements

The Service Provider may only charge a Client for Disbursements:

* + - 1. where such Disbursements are of a reasonable amount and have been reasonably incurred;
			2. in accordance with Items 5(a) and (b) of Schedule 4; and
			3. if required by the Agency Contract Manager of that Client, such Disbursements have been approved in writing by the Agency Contract Manager before being incurred by the Service Provider.
	1. Invoicing and payment
		1. Invoicing
			1. The Service Provider must submit to the Client a tax invoice or tax invoices in respect of each Legal Services Contract:
				1. monthly;
				2. if required by the Client, as soon as practicable after the completion of the Services; or
				3. as otherwise provided for in the relevant Legal Services Order.
			2. A tax invoice submitted pursuant to clause 9.1(a) must contain each of the matters specified in Item 5 of Schedule 1 and be sent to the address specified in a Legal Services Order, or as otherwise required by the Client.
			3. No invoice may be submitted in respect of Services provided or Disbursements incurred more than six months before the date that the invoice is submitted to the Client.
		2. Payment of invoices
			1. Subject to this clause 9.2, the Client will pay the invoiced amount to the Service Provider 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 Agency Contract Manager for the Client. An invoice will not be certified for payment unless the Agency Contract Manager of the Client is satisfied that it is correctly calculated with respect to the Services that are the subject of the relevant Legal Services Contract and the Service Provider is entitled to claim payment.
			3. If the Agency Contract Manager of the Client disputes the invoiced amount (whether in whole or in part) for any reason, the Client must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount the Client believes is due for payment. If the Client and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 30.
			4. Payment of an invoice is not to be taken as:
				1. evidence or an admission that the Services have been provided in accordance with this Agreement and the applicable Legal Services Contract;
				2. evidence of the value of the Services supplied; or
				3. an admission of liability,

but must be taken only as payment on account.

* + 1. Fair payment
			1. A Client will, on demand by the Service Provider, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under s 2 of the *Penalty Interest Rates Act 1983* (Vic).
			2. For the purposes of clause 9.3, overdue amount means an amount (or part thereof) that:
				1. is not, or is no longer, disputed in accordance with this Agreement;
				2. is due and owing under a tax invoice (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) properly rendered by the Service Provider in accordance with this Agreement; and
				3. has been outstanding for more than 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.
	1. Key Personnel
		1. Key Personnel to provide Services

Subject to clause 10.2, where a Legal Services Order specifies that particular Key Personnel are required to provide the Services under a Legal Services Contract, the Services must be provided by those Key Personnel.

* + 1. Notification to Client that Key Personnel are not available
			1. Where a Legal Services Contract includes a term that specified Key Personnel are required to provide the Services, the Service Provider must immediately give written notice to the Client if such Key Personnel are not available or cease to be available to provide the Services, and provide details of a partner, employee or sub‑contractor of the Service Provider who is suitably qualified and experienced to replace the Key Personnel for the purposes of that Legal Services Contract (**Replacement Personnel**).
			2. A notice under clause 10.2(a) must specify the period for which Key Personnel will continue to be unavailable, where known.
			3. A Client must notify the Service Provider in writing within 2 Business Days of receipt of a notice under clause 10.2(a) as to whether or not it accepts the Replacement Personnel proposed by the Service Provider.
			4. A Client will be under no obligation to accept any person proposed by the Service Provider as Replacement Personnel and may grant or withhold approval of Replacement Personnel in its absolute discretion.
		2. Notification to Lead Department

If any of the Key Personnel ceases:

* + - 1. to be a partner, employee or approved sub‑contractor of the Service Provider; or
			2. otherwise ceases to be available on a long term basis to perform any Services under this Agreement or any Legal Services Contract,

then the Service Provider must immediately give written notice to the Lead Department of the relevant Key Personnel, and where the Key Personnel have ceased to be available, specify the period for which such Key Personnel will continue to be unavailable, where known.

* + 1. Additional Key Personnel
			1. At any time during the Term, the Service Provider may by written notice to the Lead Department nominate any partner, employee or sub‑contractor of the Service Provider as additional Key Personnel (**Addition Notice**).
			2. The Service Provider must set out in the Addition Notice the qualifications, knowledge and experience of the nominated additional person, and supply all details in relation to that person that were required by the Request for Tender to be provided in the Tender Documentation with respect to Key Personnel.
			3. The Service Provider must provide any documentation or other information with respect to the proposed additional person reasonably requested by the Lead Department.
		2. Annual refresh of Key Personnel

The Service Provider must provide to the Contract Manager an up to date list of all Key Personnel at the times set out in the Service Level Agreement.

* + 1. Termination of a Legal Services Contract

Without limitation to any other provision of this Agreement or a Legal Services Contract, where a Service Provider fails to comply with clause 10.1 in the provision of any Services under a Legal Services Contract, the Client may terminate that Legal Services Contract.

* 1. Cooperation with other service providers
		+ 1. The Service Provider must co‑operate with the Victorian Government Solicitor's Office and with any third party service provider appointed by the Client (including any other providers of legal services under the Panel arrangements) where this is necessary to ensure the integrated and efficient conduct of the Client’s operations or where the Client otherwise instructs the Service Provider to do so.
			2. The Service Provider must provide such reasonable assistance to other service providers as the Client may request from time to time, provided that the Service Provider will be entitled with the prior written approval of the Client (which will not be unreasonably withheld) to charge for costs incurred as a direct result of providing such co‑operation.
	2. Contract management
		1. Executive Contract Manager, Contract Manager & Relationship Manager
			1. For the purposes of ensuring a productive and efficient relationship between the Lead Department, each Client and the Service Provider under this Agreement:
				1. the Lead Department nominates the person specified in Item 3 of Schedule 1 as the Executive Contract Manager;
				2. the Lead Department nominates the person specified in Item 3 of Schedule 1 as the Contract Manager; and
				3. the Service Provider nominates the person or persons specified in Item 3 of Schedule 1 as its Relationship Manager and alternate.
			2. It is the intention of the parties that subject to clause 30:
				1. all queries or issues of a day‑to‑day operational nature (including the submission of a Legal Services Order, the delivery of Services and the invoicing and payment relating to a Legal Services Contract) will be dealt with by the Service Provider and the relevant Client; and
				2. all other queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement (including, for the avoidance of doubt, all matters relating to contract management, the relationship of the parties and the overall operation of the Agreement) will be dealt with by the Contract Manager (on the one hand) and the Relationship Manager (on the other hand).
			3. The Lead Department may, from time to time, nominate a replacement Executive Contract Manager or Contract Manager by written notice to the Service Provider.
			4. The Service Provider may from time to time nominate a replacement Relationship Manager or alternate by written notice to the Lead Department.
			5. The Service Provider may only replace a Relationship Manager or alternate nominated by it if:
				1. the proposed replacement Relationship Manager or alternate is of an equal or higher seniority as the Relationship Manager or alternate to be replaced; and
				2. the change to the Relationship Manager or alternate will not adversely affect the quality of the relationship between the Lead Department and the Service Provider.
			6. The appointment of a replacement Executive Contract Manager, Contract Manager or Relationship Manager or alternate will be effective from the date from which notice is given to the Service Provider or the Lead Department, as applicable, pursuant to this clause 12.1.
		2. Minimum Service Standards and Key Performance Indicators
			1. The Service Provider’s performance against the Key Performance Indicators will be tracked, monitored and reported on by the Lead Department as set out in the Service Level Agreement.
			2. The parties acknowledge and agree that the purpose of the Minimum Service Standards and the Key Performance Indicators is to ensure a minimum level of performance by the Service Provider, with the aim of continuous improvement in meeting the identified Key Performance Indicators (including measurable improvements in Client satisfaction, value, efficiency and productivity year on year), thereby increasing the benefits to the State or both parties during the Term.
		3. Reports and information to be provided by Service Provider
			1. The Service Provider must provide to the Contract Manager:
				1. all reports specified in this Agreement including the Service Level Agreement, in the format and containing the matters specified in, and at the times required by, this Agreement or the Service Level Agreement (or as otherwise advised by the Contract Manager); and
				2. all other Data or information that the Contract Manager or an Agency Contract Manager may request to enable it to adequately assess the performance of the Service Provider under this Agreement or any Legal Services Contract, in the format required by the Contract Manager or Agency Contract Manager.
			2. The obligations of the Service Provider under clause 12.3(a) survive termination or expiry of this Agreement.
			3. In addition to the obligations contained in clause 12.3(a), the Service Provider must, if so requested by the Contract Manager, ensure that its Relationship Manager attends any meeting in respect of the Panel arrangements reasonably required by the Contract Manager.
		4. Information technology systems
			1. The Service Provider may from time to time be required to use information technology systems designated by the Lead Department or individual Clients for the purpose of:
				1. reviewing Requests for Legal Services, providing Fee Proposals and entering into Legal Services Contracts;
				2. invoicing for Services rendered;
				3. case management;
				4. complying with reporting requirements; or
				5. to otherwise comply with this Agreement.
			2. The Service Provider agrees to follow all reasonable directions with respect to information technology systems required under clause 12.4(a).
		5. Continuous improvement
			1. The parties agree that they will work together during the Term to identify new measures or initiatives for mutual value enhancement in connection with the provision of the Services under this Agreement, including through the:
				1. identification of efficiencies in the provision of the Services;
				2. implementation of any applicable technological improvements; and
				3. utilisation of any applicable industry‑wide productivity gains,

with a view to achieving year on year improvements in value for both parties.

* + - 1. Any improvement measures or initiatives identified by the parties applicable at the Agreement level will be discussed and, if deemed appropriate, implemented by the parties as soon as practicable.
	1. Performance Review
		+ 1. The Service Provider will be subject to performance review throughout the Term in accordance with the Service Level Agreement and this clause 13.
			2. The Contract Manager and the Relationship Manager must meet at least once in each Contract Year, and at other times as reasonably required by the Contract Manager, to discuss contract management issues and review the Service Provider’s performance under this Agreement, including to review the Service Provider’s compliance with the Minimum Service Standards and the Key Performance Indicators as disclosed in the Annual Assessment performance report.
			3. The Service Provider will cooperate with each of the performance reviews referred to in this clause 13, including providing all reports and other information required under this Agreement or required by the Contract Manager or any Agency Contract Manager.
			4. The Service Provider acknowledges that as part of any performance review, whether arising out of the Annual Assessment or otherwise, the Lead Department may set a course of remedial action in a performance report for the Service Provider to follow and implement. The Service Provider must comply with the requirements of any performance report within the timeframes specified by the Lead Department in that report. If the Service Provider does not comply with the requirements of the performance report, the Lead Department may suspend or terminate the Service Provider’s membership of the Panel under clause 23.1.
			5. The Lead Department may make available results of the Annual Assessment or other performance reviews to all Clients via the Electronic Support System or alternative means.
	2. Price review

The parties will adopt the price review mechanism (if any) set out in Item 4 of Schedule 1. Any revised Rates calculated in accordance with the price review mechanism will take effect from the date specified in Item 4 of Schedule 1.

* 1. Commitments in Tender Documentation and most favoured pricing
		+ 1. The Service Provider must ensure at all times during the Term that:
				1. it complies with all commitments offered by it in the Tender Documentation; and
				2. the Rates are no less favourable than any rates at which the Service Provider provides or offers to provide services that are equivalent or similar to the Services to any other customer of the Service Provider whose orders of services are of a comparable volume to those placed by the Clients under this Agreement.
			2. The Service Provider must, provided it has received one month’s written notice from the Contract Manager, meet with the Contract Manager to discuss the commitments offered by it in the Tender Documentation and any appropriate further documentation of those commitments or reporting in relation to them.
	2. Materials to be provided by Service Provider
		1. Form of Contract Materials

The Service Provider must ensure that all Contract Materials provided or required to be provided to the Lead Department under this Agreement or to a Client as part of the Services under a Legal Services Contract, are provided in a form reasonably required by the Contract Manager or the Agency Contract Manager, as applicable, including in the case of documents, in electronically searchable form.

* + 1. Provisions of advice to databases

Where directed in writing by the Agency Contract Manager for the relevant Client, the Service Provider must ensure that any advice which forms part of the Contract Material is forwarded to any database of advice maintained by the Client or any cross Agency database maintained by the State.

* 1. Access to records
		1. Service Provider to retain records
			1. The Service Provider must, for a period of 7 years after the later of termination or expiry of this Agreement or the termination or expiry of any Legal Services Contract, keep true and particular accounts and records of all Services supplied under this Agreement and any Legal Services Contract, including, subject to the terms of this Agreement:
				1. copies of the Contract Materials;
				2. any Materials provided by the State or any Client;
				3. records of expenses or other Disbursements of the Service Provider in the provision of Services by the Service Provider; and
				4. all supporting materials used to generate and substantiate invoices submitted in respect of Services supplied under this Agreement or any Legal Services Contract.
			2. Upon expiry of the period stated in clause 17.1(a), prior to the destruction of any records referred to in that clause, the Service Provider must, if required by the Agency Contract Manager, deliver to the Agency Contract Manager:
				1. any Materials provided by the State or any Client as specified by the Agency Contract Manager; and
				2. copies of any other records referred to in clause 17.1(a),

where these are public records for the purposes of the *Public Records Act* *1973* (Vic) provided that the Client must meet the Service Provider’s reasonable direct cost of supplying any Materials or copies referred to in this clause 17.1(b). Materials or copies required to be delivered to the Agency Contract Manager under this clause 17.1(b) may be provided in electronic form.

* + - 1. If required by a Client, the Service Provider must comply with any relevant standard issued by the Keeper of Public Records.
		1. Right to access and audit
			1. The Lead Department and any Client, or their duly authorised representatives, will have the right, after giving reasonable notice, at any time during business hours, to inspect and/or audit the accounts and records of the Service Provider referred to in clause 17.1(a), for the purpose of auditing the Service Provider’s compliance with this Agreement and any Legal Services Contract, including the provision of the Services, the calculation of any Legal Services Fees, Disbursements incurred and the amount of any Counsel’s Fees charged. Such representatives will be entitled (at the expense of the Lead Department or the Client, as applicable) to take copies of or extracts from any such accounts or records. Copies or extracts of accounts or records taken by, or provided to, such representatives may be in electronic form.
			2. For the purposes of this clause 17.2, the Service Provider must grant, and where relevant must ensure that its sub‑contractors grant, the Lead Department and any Client or their duly authorised representatives, access at reasonable times and upon reasonable notice to any accounts or records related to this Agreement or any Legal Services Contract, and to any premises at which such accounts or records are held.
			3. The Service Provider must ensure that any sub‑contract entered into for the purposes of this Agreement or any Legal Services Contract contains an equivalent clause granting the rights specified in this clause 17 with respect to accounts or records and premises of the sub‑contractor.
			4. The rights of the Lead Department under clause 17.2(a) may be exercised with respect to this Agreement and any Legal Services Contract.
			5. The rights of a Client under this clause 17.2(a) may be exercised in relation to any Legal Services Contract between the Service Provider and the Client.
			6. At no additional cost to the State, the Lead Department or any Client, the Service Provider must promptly take corrective action to rectify any error, non‑compliance or inaccuracy identified in any audit in the way the Service Provider has under this Agreement or any Legal Services Contract:
				1. provided any Services;
				2. calculated any Legal Services Fees or Disbursements invoiced to the Client; or
				3. otherwise not complied with its obligations under this Agreement or any Legal Services Contract.
			7. The right of access and audit granted under this clause 17.2 may be exercised by the Lead Department and any Client at any time during the Term or in the 7 year period following the expiry of the Term.
			8. For the avoidance of doubt, the Lead Department or the relevant Client will be solely responsible for the costs of conducting any audit under this clause 17.2.
			9. Nothing in this Agreement or any Legal Services Contract reduces, limits or restricts in any way any function, power, right or entitlement of the Auditor‑General, the Information Commissioner or the Privacy and Data Protection Deputy Commissioner or a delegate of any of them. The rights of the Lead Department or a Client under this Agreement or a Legal Services Contract are in addition to any other power, right or entitlement of the Auditor‑General, the Information Commissioner or the Privacy and Data Protection Deputy Commissioner or a delegate of any of them.
	1. Intellectual Property Rights
		1. Warranty and indemnity by Service Provider
			1. The Service Provider warrants to each Client that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the Services under this Agreement or any Legal Services Contract, including any assignment or licence of Intellectual Property Rights to the State or any Client under this clause 18.
			2. The Service Provider indemnifies and will at all times keep the State and any Client indemnified against any loss, damage, claim, action or expense (including legal expense) arising out of or otherwise in connection with any breach or alleged breach by the Service Provider of the Intellectual Property Rights of any third person, relating to the provision of the Services under this Agreement or any Legal Services Contract or relating to the exercise by the State or a Client of its rights under any licence of Intellectual Property Rights granted by this clause 18.
		2. Ownership of Contract Intellectual Property
			1. Subject to clause 18.9(a), from the time of creation, any and all Intellectual Property Rights (excluding the Pre‑Existing Intellectual Property, the State Intellectual Property, the Client Intellectual Property or the Licensed Intellectual Property) incorporated or comprised in the following Contract Material will vest in the Client:
				1. any Contract Material prepared or provided for publication or communication by or on behalf of the Client;
				2. any Contract Material prepared or provided for use as precedents by a Client; and
				3. any other Contract Material where a Client specifies in a Legal Services Order that it requires Intellectual Property Rights in that Contract Material to vest in the Client,

(which Intellectual Property Rights are referred to in this Agreement as **Contract Intellectual Property**).

* + - 1. The Service Provider irrevocably and unconditionally assigns to each Client free of additional charge, all right title and interest in and to the Contract Intellectual Property and the Service Provider must sign all documents and do all things reasonably required to ensure that such assignment is effected.
			2. Subject to the express terms of any Legal Services Order, a Client grants to the Service Provider free of additional charge a non‑exclusive world‑wide licence for the Term of this Agreement and any Legal Services Contract, subject to clause 28, to use, reproduce, adapt and modify the Contract Intellectual Property, and to sub‑license its rights under this clause 18.2(c) solely for the purposes of providing the Services to the Client under this Agreement or the Legal Services Contract to which that Legal Service Order relates.
		1. Moral rights

The Service Provider must procure from all of its employees, agents, contractors and other third parties who are authors or makers of any Contract Intellectual Property or Licensed Intellectual Property (and must procure that any contract with any third party for the creation of any Contract Intellectual Property or Licensed Intellectual Property includes a provision that requires such a person to obtain from its employees, agents and contractors) a written assignment of all Intellectual Property Rights of the employee, agent, contractor or third party in the Contract Intellectual Property as necessary to give effect to clause 18.2(a) and a written consent from all individuals involved in the creation of any Contract Intellectual Property or Licensed Intellectual Property irrevocably consenting to the Client exercising its rights in the Contract Intellectual Property and Licensed Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

* + 1. Ownership of existing Intellectual Property
			1. All Pre‑Existing Intellectual Property used by the Service Provider in connection with the provision of Services under this Agreement or any Legal Services Contract or the creation of Contract Intellectual Property remains the property of the Service Provider or its licensors.
			2. All State Intellectual Property used by the Service Provider in connection with the provision of the Services under this Agreement or any Legal Services Contract remains the property of the State or the Client, as applicable.
		2. Licence of State Intellectual Property
			1. The State grants to the Service Provider free of additional charge, a non‑exclusive, non‑transferable, worldwide licence to use, reproduce, modify and adapt the State Intellectual Property to the extent necessary for the purposes of carrying out the Service Provider's obligations under this Agreement or a Legal Services Contract.
			2. The licence granted to the Service Provider under this clause 18.5 is for the Term or the term of any applicable Legal Services Contract.
		3. Licence of Client Intellectual Property

Subject to the terms of any Legal Services Contract, the Client grants to the Service Provider free of additional charge, a non‑exclusive, non‑transferable, worldwide licence to use, reproduce, modify and adapt the Client Intellectual Property to the extent necessary for the purposes of carrying out the Service Provider's obligations under the relevant Legal Services Contract.

* + 1. Client branding

Where a Client requires a Service provider to apply the Client's logos or branding on any Contract Materials, the Service Provider must follow any instructions from the Client regarding the use of the Client's branding and logos under a Legal Services Contract including compliance with any branding guidelines issued by the State.

* + 1. Licence of Pre‑Existing Intellectual Property

The Service Provider irrevocably and unconditionally grants to the State and each Client, free of additional charge, a perpetual non‑exclusive, worldwide licence to use, reproduce, adapt, modify, publish, communicate or exploit any Pre‑Existing Intellectual Property to the extent that such Pre‑Existing Intellectual Property forms part of or is integral to, any Contract Material and to sub‑license its rights under this clause 18.8.

* + 1. Licence of Licensed Intellectual Property
			1. Subject to clause 18.9(b), the Service Provider irrevocably and unconditionally grants to the State and to each Client, free of additional charge, a perpetual, non‑exclusive, world‑wide licence to use, reproduce, adapt, modify, publish, communicate or exploit any and all Intellectual Property Rights (excluding Pre‑Existing Intellectual Property, the State Intellectual Property or the Client Intellectual Property) in the following Contract Material for any purpose except commercial exploitation:
				1. all Contract Material filed, or prepared or provided for use, in any litigation or other dispute resolution;
				2. advice to a Client; and
				3. any other Contract Material not within the scope of clause 18.2(a) and clauses 18.9(a)(i) and (ii),

(which Intellectual Property Rights are referred to in this Agreement as **Licensed Intellectual Property**), and to sub‑license its rights under this clause 18.9(a).

* + - 1. The licence granted by the Service Provider to each Client under clause 18.9(a) is limited to Licensed Intellectual Property with respect to Contract Materials created by or on behalf of the Service Provider in the course of or as a result of providing the Services to that Client under a Legal Services Contract with that Client, including any Contract Material provided or required to be provided to that Client under the Legal Services Contract.
		1. Confidentiality obligations of Service Provider not affected

The provisions of clause 28 prevail over:

* + - 1. clause 18.2(c); and
			2. any express term of the relevant Legal Services Order relating to the Contract Intellectual Property referred to in clause 18.2(a)(iii) or clause 18.2(c),

and to the extent of any inconsistency, nothing in this clause 18 will license the Service Provider to use, disclose or otherwise deal with any Confidential Information contrary to clause 28 or any other provision of this Agreement.

* 1. Failure to perform
		+ 1. Without limiting any other clause of this Agreement, or any other remedy a Client may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of a Legal Services Contract and the applicable Minimum Service Standards or Key Performance Indicators, the relevant Client will not be required to pay for those Services and may, by written notice to the Service Provider, require the Service Provider to:
				1. remedy any default (if the default is capable of being remedied) at the Service Provider’s own expense; or
				2. re‑perform the Services (if the Services are capable of being re‑performed by the Service Provider),

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

* + - 1. If the remedied or re‑performed Services are remedied or re‑performed in accordance with the applicable Minimum Service Standards or Key Performance Indicators and otherwise to the satisfaction of the Client, then the Client will pay the applicable Rates or Legal Services Fees (and properly incurred Disbursements) for those remedied or re‑performed Services (which the parties acknowledge may be less than the cost to the Service Provider of remedying or re‑performing the Services).
			2. If the default referred to in clause 19(a) is not capable of being remedied or the Services are not capable of being re‑performed, or the Service Provider fails within the time specified to remedy the default or re‑perform the Services, the Client may terminate the Legal Services Contract, in which case clause 23.4 will apply.
	1. Warranties

The Service Provider warrants to the State and each Client that:

* + - 1. the Service Provider has the power to enter into this Agreement and perform its obligations under this Agreement and any Legal Services Contract;
			2. the Service Provider has the necessary Authorisations to perform its obligations under the Agreement and any Legal Services Contract and will use its best endeavours to maintain such Authorisations for the Term of this Agreement and the term of any Legal Services Contract;
			3. the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
			4. the Service Provider has and each of the Key Personnel have the accreditation in relation to the provision of the Services as set out in the Tender Documentation for the provision of the Services, and that it will use its best endeavours to maintain such accreditation during the Term of this Agreement and any Legal Services Contract;
			5. the Service Provider and its Personnel, including Key Personnel, agents and approved sub‑contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with the Minimum Service Standards and the Key Performance Indicators;
			6. whilst on premises owned or controlled by a Client, the Service Provider and its Personnel, agents and contractors will at all times comply with the Client’s lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
			7. where the Client has, either expressly or by implication, made known to the Service Provider any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result;
			8. the provision of the Services will not infringe any right of any third party (including any intellectual property right) or any Laws;
			9. all representations made by the Service Provider in or in connection with the Tender Documentation were and remain accurate and the Service Provider has and will maintain during the Term the quality assurance arrangements set out in the Tender Documentation; and
			10. the Information contained in the Tender Documentation as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Service Provider, its Personnel and contractors is correct.
	1. Conflicts of interest, Incidents and probity
		1. Conflicts of interest
			1. The Service Provider warrants that as at the Commencement Date and except as disclosed to the Lead Department or the relevant Client, it does not, and will ensure that its Personnel and sub‑contractors 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 interest under this Agreement or a Legal Services Contract.
			2. During the Term of this Agreement or the term of any Legal Services Contract:
				1. the Service Provider must immediately notify the Agency Contract Manager of the relevant Client of any matter or change in circumstances that may give rise to an actual, potential or perceived conflict of interest with respect to that Client and provide details of all circumstances relevant to the actual, potential or perceived conflict of interest; and
				2. the State, the Lead Department or a Client may notify the Service Provider that it believes an actual, potential or perceived conflict of interest has arisen in respect of the Service Provider.
			3. Where the Service Provider, or the Contract Manager or the Agency Contract Manager of the relevant Client gives notice under clause 21.1(b) the Service Provider must:
				1. provide any information reasonably requested by the Contract Manager or the Agency Contract Manager of the relevant Client; and
				2. take any steps reasonably required by the Contract Manager or the Agency Contract Manager of the relevant Client to address the actual, potential or perceived conflict of interest.
			4. The Service Provider agrees that failure to comply with this clause 21 will constitute a breach of a fundamental term of this Agreement.
		2. Pro Bono and conflicts of interest

The parties acknowledge that the State encourages lawyers to provide legal services on a pro bono basis and recognises that it is appropriate for providers of legal services, including the Service Provider, to act against the State and any Agency in pro bono matters where there is no conflict of interest, and where to do so would not be in breach of the Service Provider’s obligations under clause 21.1 or any other requirements of this Agreement or a Legal Services Contract with respect of any conflict of interest.

* + 1. Incidents
			1. The provisions of this clause 21.3 do not limit the obligations of the Service Provider under clause 21.4 in relation to Probity Events.
			2. The Service Provider warrants that to the best of its knowledge, after making diligent inquiry, as at the Commencement Date it has disclosed to the Lead Department or the relevant Client all Incidents which have occurred in the 5 years prior to the Commencement Date.
			3. During the Term of this Agreement and the term of any Legal Services Contract, the Service Provider will immediately notify the Contract Manager and the Agency Contract Manager of the relevant Client of any Incident, or any circumstance which might reasonably be considered an Incident, which has occurred:
				1. since the Commencement Date; and
				2. in relation to any Additional Key Personnel, in the 5 years prior to the Commencement Date.
		2. Probity
			1. During the Term of this Agreement and the term of any Legal Services Contract:
				1. if a Probity Event with respect to this Agreement or the provision of Services under any Legal Services Contract occurs, the Service Provider will immediately give written notice to the Contract Manager and the Agency Contract Manager of the relevant Client of the Probity Event, and the notice must provide details of all relevant circumstances; and
				2. the Lead Department or a Client may give written notice to the Service Provider that it believes such a Probity Event has occurred.
			2. Where the Service Provider or the Contract Manager or the Agency Contract Manager of the relevant Client gives notice under clause 21.4(a), the Service Provider must:
				1. provide any information reasonably requested by the Contract Manager or the Agency Contract Manager of the relevant Client; and
				2. take any steps reasonably required by the Contract Manager or the Agency Contract Manager of the relevant Client, to address the Probity Event, including:

procuring that the relevant Personnel or sub‑contractor ceases to be Key Personnel; or

requiring the Service Provider to preclude any person from having any involvement in the provision of any Services under this Agreement or any Legal Services Contract.

* + 1. Specific requirements of the Client including probity plans

The obligations of the Service Provider under this clause 21 are in addition to any specific requirements of a Client in relation to any Legal Services Contract concerning conflicts of interest or probity. The Service Provider must comply with any other requirements of the Client with respect to conflicts of interest or probity in the provision of Services under a Legal Services Contract, including the requirements of any probity policy or probity plan, whether stated in the relevant Legal Services Order or otherwise.

* + 1. Termination of this Agreement or Legal Services Contracts

Without limitation to any provision of this Agreement, where:

* + - 1. the Service Provider fails to comply with this clause 21; or
			2. any actual, potential or perceived conflict of interest, Incident or Probity Event is not resolved to the satisfaction of the State, the Lead Department or the relevant Client, including in any time the State, the Lead Department or the relevant Client may require,

then:

* + - 1. the Lead Department may by written notice to the Service Provider immediately exercise its rights under clause 23.1; and
			2. the Client may immediately terminate any Legal Services Contract.
	1. Change in Control
		+ 1. The Service Provider must notify the Lead Department in writing of any proposed or impending change in Control of the Service Provider (or of the ultimate holding company of the Service Provider, if applicable) of which it becomes aware and obtain the Lead Department’s prior written consent to such change in Control.
			2. Following receipt of a notice under clause 22(a), the Lead Department may seek such further information as is reasonable in relation to the proposed change in Control.
			3. If the proposed or impending change in Control occurs:
				1. the Lead Department may, by written notice to the Service Provider, remove the Service Provider from any Area of Law, or terminate this Agreement; and
				2. any Client may terminate any Legal Services Contracts on foot.

Termination under this clause will take effect at any nominated time within 12 months after the change in Control.

* + - 1. In determining whether or not to take any action under clause 22(c), the Lead Department may consider such information as it considers relevant or necessary, including:
				1. compliance by the Controller with Governmental policies including in relation to ethical employment standards;
				2. insurance coverage maintained by the Controller;
				3. the financial viability of the Controller; and
				4. the likely ability of the Controller to satisfy the requirements set out in the Tender Documentation, and the obligations of the Service Provider under this Agreement and any Legal Services Contract.
	1. Termination
		1. Grounds for termination by the Lead Department
			1. If:
				1. the Service Provider fails to provide the Services in accordance with the Minimum Service Standards or the Key Performance Indicators or otherwise in accordance with the requirements of this Agreement;
				2. the Service Provider fails to remedy, to the satisfaction of the Lead Department, any breach of this Agreement (which in the reasonable opinion of the Lead Department is able to be remedied) within 14 days after the date on which the Lead Department issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
				3. suspension or termination is permitted under clause 5.2(b), clause 13(d), clause 21.6, clause 22 or any other clause of this Agreement;
				4. the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the Lead Department such breach cannot be remedied;
				5. the Service Provider or any of its employees, agents or sub‑contractors are guilty of fraud, dishonesty or any other serious misconduct;
				6. during the Term there is a change in governmental policy that affects the Lead Department’s ability to perform its obligations under this Agreement or which, in the reasonable opinion of the Lead Department, has the effect of making the provision of Services under this Agreement unviable, inappropriate or otherwise unsuitable; or
				7. the Service Provider commits or any of its Personnel, agents or sub‑contractors commit any act or does anything that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the Service Provider into disrepute and as a consequence the Lead Department believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the State;
				8. the Service Provider:

being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of the Lead Department, limits the capacity of the Service Provider to provide the Services or otherwise precludes or adversely affects the Service Provider’s ability to carry out its obligations and duties under this Agreement or under a Legal Services Contract; or

goes into liquidation or a receiver and manager or mortgagee’s or chargee’s agent is appointed or becomes subject to any form of insolvency, administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors,

then the Lead Department may in its absolute discretion by written notice to the Service Provider immediately (or at such time within the immediately succeeding 12 months as specified in the notice):

* + - * 1. suspend, for such period as is specified in the notice, the Service Provider’s membership of the Panel to the extent specified in the notice (including in respect of the provision of Services in any Area of Law);
				2. terminate:

the Service Provider’s membership of the Panel;

the Service Provider’s membership of the Panel to the extent that it relates to any Area of Law; and/or

this Agreement.

* + - 1. In the event of suspension or termination of the Service Provider’s membership of the Panel pursuant to this clause 23.1:
				1. the Service Provider will not be entitled to receive any Legal Services Orders from any Client with respect to legal services within any of the Areas of Law to the extent to which and for the period in relation to which the suspension or termination applies; and
				2. the Service Provider will continue to perform its obligations under this Agreement, including the Service Level Agreement, including the Service Provider’s obligations under clause 5.2 and 5.3 with respect to Pro Bono Services, and under any Legal Services Contract;
				3. the suspension or termination will not prejudice any right of action or remedy which may have accrued to each party prior to such suspension or termination; and
				4. neither the State or any Client will be liable to the Service Provider in respect of any indirect or consequential loss, including any loss of profits or opportunity.
			2. Except to the extent required by the Client:
				1. suspension or termination of the Service Provider’s membership of the Panel pursuant to this clause 23.1; or
				2. termination of this Agreement,

will not terminate a Legal Services Contract or release the Service Provider from its obligations to continue to perform the Services under any Legal Services Contract.

* + - 1. Clause 23.1(a) does not limit the rights of the Lead Department to suspend or terminate this Agreement under any other provision of this Agreement.
		1. Termination of Legal Services Contract by the Client without cause
			1. A Client may immediately terminate a Legal Services Contract without cause by giving the Service Provider written notice.
			2. Where a Legal Services Contract is terminated by a Client pursuant to clause 23.2(a), then the Client will pay to the Service Provider all amounts owing under the terms of the Legal Services Contract in respect of Services completed, and work in progress as at the date of termination, provided that such Services or work in progress have, in the reasonable opinion of the Client, been performed in accordance with the Minimum Service Standards and the Key Performance Indicators and otherwise in accordance with the requirements of the relevant Legal Services Contract.
			3. Where a Legal Services Contract is terminated pursuant to clause 23.2(a) the Client will not be liable for any amount in excess of the total amount that would otherwise have been payable under the Legal Services Contract if it had not been terminated.
		2. Termination of Legal Services Contract by the parties
			1. Each of the parties to any Legal Services Contract may immediately terminate any Legal Services Contract by written notice to the other with a copy to the Contract Manager if the other party fails to remedy, to the satisfaction of the notifying party, any breach of the Legal Services Contract within 14 days after the date on which the notifying party issues the other party a written notice requiring the other party to remedy the breach.
			2. Clause 23.3(a) does not limit the rights of any Client to terminate a Legal Services Contract under any express provision of this Agreement or a Legal Services Contract.
		3. 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 (as the case may be).
			2. Termination or expiry of a Legal Services Contract will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
			3. Upon termination of this Agreement or a Legal Services Contract neither the State nor any Client will be liable to pay any compensation or other money to the Service Provider except as expressly provided for in this Agreement or that Legal Services Contract, as applicable.
			4. Upon termination of any Legal Services Contract, the relevant Client must pay to the Service Provider all amounts owing under the Legal Services Contract in respect of Services that have been completed but not invoiced as at the date of termination or expiry (provided that such Services have been performed in accordance with the Minimum Service Standards and the Key Performance Indicators and otherwise in accordance with the terms of this Agreement and the relevant Legal Services Order Contract).
			5. In the event of termination of this Agreement or any Legal Services Contract neither the State nor any Client will be liable to the Service Provider in respect of any indirect or consequential loss, including any loss of profit or loss of opportunity.
			6. Upon termination of this Agreement or any Legal Services Contract, the Service Provider must provide to the Lead Department or the Client as applicable a copy of all Contract Materials not already provided under this Agreement or the Legal Services Contract.
		4. State and Client’s rights not affected

Any termination of this Agreement by the Lead Department or termination of a Legal Services Contract by a Client and any payment of money upon termination, including any payment under clause 23.4(d) will not:

* + - 1. in any way prejudice the right of the State or any Client to claim and recover damages for any prior breach of contract by the Service Provider; and
			2. preclude the State or any Client from recovering such other damages as the State may suffer or incur arising out of the termination of this Agreement.
	1. Transition
		1. Transitional assistance

The Service Provider acknowledges and agrees that on termination or expiry of this Agreement or a Legal Services Contract the Service Provider will provide all such transitional assistance as may be reasonably necessary or requested by the Lead Department to facilitate the smooth transition of any relevant information, knowledge, systems or assets from the Service Provider to the Lead Department or a relevant Client (or to a third party nominated by the Lead Department) to enable the Lead Department or the relevant Client to continue to obtain the benefit of such information, knowledge, systems or assets following the termination or expiry of this Agreement or a Legal Services Contract.

* + 1. Client may require Transition Plan
			1. Without limitation to the scope of clause 24.1, if required by any Client in respect of which the Service Provider provides substantial or ongoing Services, the Service Provider must prepare a written proposal specifying the tasks to be performed for the purposes of transition upon the expiration or termination of any relevant Legal Services Contract (**Transition Proposal**).
			2. Within 30 days of the receipt of a request under clause 24.2(a), the Service Provider must submit the Transition Proposal to the Client for approval.
			3. The Service Provider must make such amendments (including additions) to the Transition Proposal as may be required by the Client. Upon approval in writing by the Client, the Transition Proposal will become the transition plan (**Transition Plan**).
			4. A Client may give written notice to the Service Provider to prepare and submit to the Client, for approval, a Transition Proposal setting out variations to the Transition Plan as may be reasonably required to update the Transition Plan.
			5. Within 30 days of the date of receipt of a notice under clause 24.2(d), the Service Provider must submit the Transition Proposal to the Client for approval, and clause 24.2(c) will apply.
			6. The Service Provider must prepare any Transition Proposal or Transition Plan under this clause 24 at its own cost.
			7. Upon expiry or termination of this Agreement or termination of the Service Provider’s membership of the Panel or any Area of Law, the Service Provider must carry out its obligations under the Transition Plan and cooperate with the Lead Department and any Client, where applicable, for a period of up to 3 months, for the purposes of transitioning the provision of the Services to any new provider of legal services, or to the Lead Department or the Client, as applicable.
		2. Handover of Contract Material

As part of the Service Provider’s transition obligations it must:

* + - 1. deliver any electronically stored Contract Material in the format or formats required by the Lead Department or the Client, as applicable; and
			2. provide access to all Contract Material held by the Service Provider, where this has not already been supplied to the Lead Department or the Client, as applicable.
	1. Insurance
		+ 1. The Service Provider must (and must ensure that any sub‑contractors appointed by it under clause 32) obtain and maintain the insurances specified in Item 7 of Schedule 1.
			2. The Service Provider must effect professional indemnity insurance for the amount specified in Item 7 of Schedule 1. The Service Provider must maintain such insurance for the Term and for a period of 6 years from the later of the date on which the Term expires or the last date on which the Service Provider provides any Services under a Legal Services Contract.
			3. The Service Provider must provide the Lead Department with evidence of the currency of any insurance it is required to obtain on or prior to submitting its first invoice under this Agreement, and otherwise in accordance with the Service Level Agreement and on request by the Lead Department at any time during the Term.
			4. Where any insurance the Service Provider is required to obtain and maintain expires during the Term (**Initial Insurance**), the Service Provider must provide the Lead Department with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.
			5. The Lead Department, acting reasonably, may require, any insurance obtained pursuant to clause 25(a) or (b) to be taken out with an insurer reasonably acceptable to the Lead Department. The Lead Department agrees that any insurer which is regulated by the Australian Prudential Regulatory Authority (APRA) and has a long term Standard & Poor's or equivalent rating of "A" or better will be an acceptable insurer.
	2. Accident compensation

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

* + - 1. complies with the provisions of the *Accident Compensation Act 1985* (Vic);
			2. insures against its liability to pay compensation whether under legislation or otherwise; and
			3. produces to the Lead Department on request any certificates or like documentation required by the *Accident Compensation Act 1985* (Vic).
	1. Security
		+ 1. In fulfilling its obligations under this Agreement or under any Legal Services Contract, the Service Provider must:
				1. comply with such Commonwealth, State or Territory legislation relating to matters of security as are set out in this Agreement or as may be advised by the Lead Department or the Agency Contract Manager for the relevant Client from time to time; and
				2. comply with any specific security requirements specified in a Legal Services Order or as advised by a Client (including undergoing any police checks, finger printing checks or other checks) prior to obtaining access to the Client’s site, or providing any Services or fulfilling its obligations under a Legal Services Contract, including any security clearance requirements.
			2. The Service Provider must inform its Personnel of the provisions of any relevant legislation relating to secrecy and security advised to it under clause 27(a).
			3. The Service Provider acknowledges that prior to being granted access to documents, Materials or Information pursuant to this Agreement or a Legal Services Contract, any of its Personnel may first be required to provide the Service Provider with an acknowledgement that he or she is aware of any applicable legislation or security instructions. Nothing in this clause excuses non‑compliance by the Service Provider or its Personnel with any applicable legislation.
	2. Confidentiality, privacy and Data protection
		1. Service Provider’s obligations of confidentiality
			1. Except as permitted in clause 28.2, the Service Provider must not, and must make sure that its Personnel, agents, sub‑contractors and advisers do not:
				1. disclose any Confidential Information without the prior written consent of the Lead Department or a Client, as applicable; or
				2. use any Confidential Information,

except strictly for the purposes of carrying out the Service Provider’s obligations under this Agreement or a Legal Services Contract.

* + - 1. In giving written consent to the disclosure of Confidential Information, the Lead Department or the relevant Client may impose such conditions as it thinks fit.
		1. Exceptions to Service Provider’s obligations of confidentiality
			1. The Service Provider may disclose the Confidential Information:
				1. to its legal advisers, auditors and other advisers who require this information to provide advice to the Service Provider in relation to this Agreement or a Legal Services Contract;
				2. to its associated firms, set out in Item 8 of Schedule 1, for the purposes of checking for conflicts of interest;
				3. to the Service Provider’s Personnel or permitted sub‑contractors who require this information for the purposes of this Agreement or the relevant Legal Services Contract, provided in each case that if required by the Contract Manager or the Agency Contract Manager of the Client, before such disclosure occurs the Service Provider will obtain an undertaking executed by those persons to maintain the confidentiality of the Confidential Information, in such form as is reasonably required by the Lead Department or the Client, as applicable;
				4. subject to clause 28.5, if required to do so by Law, court order, a House of Parliament, or Committee of a House of Parliament; or
				5. if strictly required in connection with legal proceedings relating to this Agreement, after notifying the Court of the obligations the Service Provider owes to the State or any Client in respect of the Confidential Information and where required by the Contract Manager or the Agency Contract Manager of the Client, the Service Provider using its reasonable endeavours to have the relevant Confidential Information disclosed only on a confidential basis and any proceedings be held in camera (as appropriate).
		2. Prevention of use or disclosure of Confidential Information
			1. The Service Provider must take all reasonable precautions to prevent any unauthorised disclosure of Confidential Information, including the following precautions:
				1. the Service Provider must at all times ensure that all Confidential Information is protected from unauthorised access or use and from misuse, damage and destruction by any person and must take protective measures, including, but not limited to, administrative, physical and technical safeguards, that are no less rigorous than accepted industry standards and commensurate with the consequences and probability of unauthorised access to, or use, misuse or loss of Confidential Information;
				2. except with the prior authority of the Lead Department or the relevant Client, the Service Provider must not store any Confidential Information in any location outside of Australia; and
				3. if Confidential Information is stored in any location outside Australia, as authorised, ensure that access is restricted to those Service Provider personnel with the appropriate authorisations who have a need for such access to enable the Service Provider to provide the Services or otherwise to comply with this Agreement or the relevant Legal Services Contract.
			2. The Service Provider must immediately notify the Contract Manager and if applicable the Agency Contract Manager of the relevant Client in writing of:
				1. any actual, threatened or suspected unauthorised access to or use of any Confidential Information including:

the nature of the Confidential Information; and

if known to the Service Provider, the person who has accessed or used the Confidential Information; and

* + - * 1. any request from a foreign government or agency for access to Confidential Information (unless such notification is prohibited by law).
			1. The Service Provider must:
				1. in the event of any actual, threatened or suspected unauthorised access to or use of Confidential Information, comply with the directions of the Contract Manager and the Agency Contract Manager of the relevant Client in relation to the measures to be taken, including in relation to:

obtaining evidence about how, when and by who the Service Provider's information system and/or the Confidential Information has or may have been compromised, providing it to the Contract Manager and Agency Contract Manager on request, and preserving and protecting that evidence for a period of up to 12 months;

implementing any mitigating strategies to reduce the impact of any unauthorised use or dissemination of any Confidential Information or the likelihood or impact of any future similar incident; and

preserving and protecting Confidential Information (including, as necessary, reverting to any backup or alternative site or taking other action to recover Confidential Information); and

* + - * 1. in the event of a request from a foreign government or agency for access to Confidential Information, attempt to redirect any such foreign government or agency to request the access directly from the Lead Department or the Client.
		1. Confidentiality of Client Satisfaction Surveys
			1. Without limitation to any other provision of this Agreement, the Service Provider acknowledges that any Client Satisfaction Survey conducted under this Agreement in relation to the Service Provider or any Client Satisfaction Survey conducted in relation to any other service provider under the Panel arrangements is Confidential Information.
			2. The Service Provider must not use or disclose Confidential Information with respect to any Client Satisfaction Survey other than pursuant to this clause 28.
		2. Disclosure by Service Provider required by Law
			1. Subject to the Service Provider first complying with clauses 28.5(b)(iii), 28.5(b)(iv) and 28.5(b)(v), the Service Provider may disclose Confidential Information that is required to be disclosed by Law, court order, a House of Parliament, or a Committee of a House of Parliament, but only to the extent of such requirements.
			2. In the event that the Service Provider:
				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 so required,

the Service Provider must as soon as possible:

* + - * 1. notify the Contract Manager and the Agency Contract Manager of any relevant Client of such actual or anticipated requirements;
				2. cooperate fully with the Lead Department and any relevant Client to try to lawfully avoid or limit the scope of that disclosure; and
				3. take such steps as the Lead Department or that Client reasonably requires to permit the Lead Department or that Client to have a reasonable opportunity to oppose or to restrict such disclosure by lawful means.
			1. If the Service Provider is required to disclose Confidential Information to a Court, the Service Provider must notify the Court of the obligations the Service Provider owes to the Lead Department and Client 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 seek to have proceedings be held in private (as appropriate).
		1. Return of information by Service Provider
			1. All Confidential Information will remain the property of the State or the relevant Client and all copies or other records containing the Confidential Information (or any part of it) must (except to the extent necessary to comply with requirements under law, the reasonable requirements of professional indemnity insurance or retained in automated business continuity procedures) be returned by the Service Provider to the Lead Department or the relevant Client on request, or upon termination or expiry of this Agreement or the relevant Legal Services Contract.
			2. Upon the occurrence of any of the events specified in clause 28.6(a), the Service Provider will not make any further use of, exploit or deal with in any way the relevant Confidential Information.
			3. The Service Provider must not refuse to comply with, or delay in performance of, its obligations under clause 28.6(a) whether on the basis of any alleged lien, set off, proprietary or quasi proprietary right or any other claim or demand against the State or any Client or any other person.
		2. Service Provider’s Personnel, agents, sub‑contractors and advisers

The Service Provider must procure that the Service Provider’s Personnel, agents, sub‑contractors and advisers do not do or omit to do anything that if done or omitted to be done by the Service Provider would be a breach of the Service Provider's obligations under this clause 28.

* + 1. Specific confidentiality requirements of any Client

The obligations of the Service Provider under this clause 28 are in addition to any specific requirements of a Client in relation to any Legal Services Contract with respect to confidentiality of Confidential Information. The Service Provider must comply with any other requirements of the Client with respect to confidentiality of Confidential Information in the provision of the Services under a Legal Services Contract, whether stated in the relevant Legal Services Order or otherwise.

* + 1. Indemnity for breach of obligations of confidentiality
			1. The Service Provider agrees to indemnify the State, the Lead Department and any Client (**Indemnified Parties**) and keep each of the Indemnified Parties indemnified from and against any and all damages, loss, cost, expense or liability incurred or suffered by any of the Indemnified Parties at any time as a result of any breach of its obligations under this clause 28 by the Service Provider, the Service Provider’s Personnel or agents or sub‑contractors.
			2. The Service Provider acknowledges that the State, the Lead Department or any relevant Client (as the case may be) will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Service Provider of this clause 28 and without the need on the part of the Lead Department or the relevant Client to prove any special damage.
		2. Public domain

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.

* + 1. Service Provider’s consent to disclosure of information

The Service Provider consents to the Lead Department or any Client (if required) publishing or otherwise making available information in relation to the Service Provider (and the provision of the Services including any Data from reports and client surveys):

* + - 1. by publishing, whether on the internet or otherwise, all such information as is necessary to comply with the requirements of the Contracts Publishing System;
			2. to any Agency;
			3. 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**);
			4. to comply with the Law, including the *Freedom of Information Act 1982* (Vic);
			5. to the IBAC; and
			6. in respect of aggregated Data may be provided to any Government Agency of any other state or territory or the Commonwealth for the purposes of benchmarking.
		1. Privacy
			1. The Service Provider acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, **Privacy Obligations**) with respect to any act done or practice engaged in by the Service Provider for the purposes of this Agreement and any Legal Services Contract, in the same way and to the same extent as the Privacy Obligations would have applied to the Lead Department or any Client in respect of that act or practice had it been directly done or engaged in by the Lead Department or Client.
			2. The Service Provider must comply with the *Privacy Act 1988* (Cth).
			3. The Service Provider agrees that it will:
				1. assist the Lead Department or Client to comply with its obligations under the Privacy Obligations, to the extent possible;
				2. immediately notify the Client upon becoming aware of any breach of the Privacy Obligations and comply with all directions of the Lead Department and Client in respect of the breach;
				3. provide the Lead Department or Client with such co‑operation as may be required in relation to resolving any complaint concerning privacy;
				4. provide access to or amendment of any record as directed by the Lead Department or Client; or
				5. must not disclose to any third party (including any Government Agency) the existence or circumstances surrounding any breach of clause 28.12(a) without the prior written approval of the Lead Department or Client (not to be unreasonably withheld).
			4. The Service Provider also agrees to comply with any directions made by any of the Commissioners, the Commonwealth Privacy Commissioner or the Victorian Health Services Commissioner relevant to this Agreement.
			5. Without limiting clauses 28.12(a) to 28.12(d), in relation to any Personal Information obtained by the Service Provider in connection with this Agreement, the Service Provider 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 relevant Client, disclose the information to a person who is outside Australia;
				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 Lead Department or relevant Client 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 Lead Department or Client in relation to a complaint concerning privacy received by either party.
		2. Rights cumulative

The right of the State and any Client under clause 28 are in addition to the right of the State and any Client at law or in equity, including under the *Legal Profession Uniform Law Application Act 2014* (Vic).

* 1. Data protection and Data Security Breaches
		1. Data protection
			1. The Service Provider acknowledges that the Lead Department and all Clients are bound by the Protective Data Security Standards. The Service Provider 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 Lead Department or Client in respect of any Data collected, held, used, managed, disclosed or transferred by the Service Provider on behalf of the Lead Department or any Client under or in connection with this Agreement or any Legal Services Contract.
			2. The Lead Department, a quality assessor engaged by the Lead Department or any other representative may conduct audits relevant to the performance of the Service Provider’s obligations under clause 29.1(a) of this Agreement in relation to the Service Provider’s compliance with the Protective Data Security Standards.
			3. The Service Provider must not, and must ensure that its Personnel (including any sub‑contractors) do not, without the Lead Department's prior written consent, take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Australia, and must not store any Data on any server located or operated outside Australia.
			4. The Service Provider must comply with any applicable direction, guideline, determination or recommendation made by the Victorian Information Commissioner or Privacy and Data Protection Deputy Commissioner with respect to Data protection
		2. Data Security Breaches
			1. In addition to any obligations that the Service Provider may have under Commonwealth legislation, if the Service Provider suspects that any Data has (or is suspected to have) become lost or corrupted or there is unauthorised access to that Data (**Data Security Breach**), it will:
				1. immediately notify the Lead Department and all affected Clients and propose remedial action, including action to mitigate the Data Security Breach escalating and to ensure that this does not recur;
				2. as soon as reasonably practicable, notify the Lead Department and all affected Clients in advance if it is required by Law or otherwise intends to report the Data Security Breach to the Office of the Australian Information Commissioner or any affected individuals;
				3. comply with the Lead Department and affected Clients' reasonable directions in relation to the Data Security Breach, including providing the Lead Department and affected Clients with a reasonable opportunity to be involved with and approve any report or notification under clause 29.2(a)(ii); and
				4. provide reasonable assistance to the Lead Department and all affected Clients if either seeks to report the Data Security Breach to the Commissioners or the Victorian Health Complaints Commissioner, or notify any affected individuals.
			2. In addition to the Service Provider's obligations under clause 29.2(a), the Service Provider must immediately notify the Lead Department in the event it reports any eligible data breach in accordance with the Notifiable Data Breach scheme as set out in Part IIIC of the *Privacy Act 1988* (Cth), regardless of whether such a breach involves Data under this Agreement.
			3. The Lead Department may suspend the Service Provider’s membership of the Panel or any Area of Law pursuant to clause 23.1 if the Lead Department reasonably believes that there is a material risk to the Data, whether related to an eligible data breach reported under clause 29.2(b) or otherwise.
		3. Service Provider’s Personnel, agents, sub‑contractors and advisers

The Service Provider must ensure that:

* + - 1. the Service Provider’s Personnel, agents, sub‑contractors and advisers do not do or omit to do anything that if done or omitted to be done by the Service Provider would be a breach of the Service Provider's obligations under this clause 29; and
			2. any person (including any sub‑contractor) who may deal with Data on behalf of the Service Provider in relation to the Services, this Agreement or any Legal Services Contract is made aware of the obligations in this clause 29
		1. Rights cumulative

The right of the State and any Client under clause 29 are in addition to the right of the State and any Client at law or in equity, including under the *Legal Profession Uniform Law Application Act 2014* (Vic).

* 1. Disputes
		1. Dealing with disputes
			1. The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this Agreement or a Legal Services Contract, including a dispute as to any amount payable with respect to the Services in accordance with this clause 30.
			2. Except where a party seeks urgent interlocutory relief (including interim injunctions), each party may not commence court proceedings relating to this Agreement or a Legal Services Contract before it has complied with the dispute resolution procedures under this clause 30.
			3. Subject to any express provision in this Agreement, unless otherwise agreed between the parties, each party will bear its own costs of dispute resolution pursuant to this clause 30.
			4. Any of the time periods that appear in this clause 30 may be varied by written agreement between the parties.
		2. Representatives of the parties
			1. In the first instance, disputes between the parties will be referred to the following representatives of the parties who will meet and in good faith attempt to resolve the dispute:
				1. in relation to the provision of Services or any other matter concerning the rights and obligations of a Client or the Service Provider under a Legal Services Contract, the relevant Agency Contract Manager and the Service Provider’s Relationship Manager; and
				2. any other dispute in relation to this Agreement, the Contract Manager and the Service Provider’s Relationship Manager.
			2. Where a dispute is referred to any representatives of the parties under clause 30.2(a), the parties will use their best endeavours to resolve the dispute through those representatives and neither party will give notice of a dispute to the other party pursuant to clause 30.3(a) with respect to that matter for a period of 30 days from the date of that referral.
			3. If:
				1. the relevant representatives are unable to resolve a dispute referred to them under clause 30.2(a) within 30 days of first convening to resolve the dispute; or
				2. the relevant representatives do not convene within 5 Business Days following a referral of the dispute under clause 30.2(a),

then the Lead Department, the Client or the Service Provider as applicable, may immediately refer the dispute to the Senior Executive Officers to be dealt with under clause 30.3.

* + 1. Senior Executive Officer review
			1. If a dispute is referred to the Senior Executive Officers under clause 30.2(c), then the party referring the dispute must give written notice to the other party or other parties, adequately identifying the matters the subject of the dispute (**Dispute Notice**).
			2. The following Senior Executive Officers are required to meet within 5 Business Days of receipt of a Dispute Notice to attempt to resolve the dispute in good faith:
				1. disputes referred to in clause 30.2(a)(i) must be referred to the Senior Executive Officers for the relevant Client and the Service Provider; and
				2. disputes referred to in clause 30.2(a)(ii) must be referred to the Senior Executive Officers for the Lead Department and the Service Provider.
			3. The joint decisions of the Senior Executive Officers will be contractually binding on the parties provided they are in writing and signed by the Senior Executive Officers.
			4. If:
				1. the Senior Executive Officers are unable to resolve the dispute within five Business Days of first convening to resolve the dispute under clause 30.3(b); or
				2. the Senior Executive Officers do not convene within 5 Business Days following referral of the dispute to them under clause 30.2(c),

then the Lead Department, the Client or the Service Provider may within 10 Business Days by written notice:

* + - * 1. refer any dispute in relation to payment for any Services (including any dispute under clauses 8 Price for the Services, 9 Invoicing and payment, 14 Price review or 15 Commitments in Tender Documentation and most favoured pricing) for expert determination in accordance with clause 30.4; or
				2. refer any other dispute to mediation or arbitration in accordance with clause 30.5 or 30.6.
			1. If the parties do not agree to refer the dispute for expert determination or to mediation or arbitration, either party may submit the dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.
		1. Expert determination
			1. In this clause 30.4 ‘**Expert**’ means a person qualified to resolve the dispute, as agreed between the parties, and if the parties cannot agree within 10 Business Days of referral of the dispute for expert determination under this clause 30, such person as is appointed by the President of the Law Institute of Victoria for the time being.
			2. Subject to compliance with this clause 30, disputes in relation to payment for any Services (including any dispute under clauses 8 Price for the Services, 9 Invoicing and payment, 14 Price review or 15 Commitments in Tender Documentation and most favoured pricing) may be referred to an Expert as follows:
				1. disputes referred to in clause 30.2(a)(i) may be referred to an Expert by the Client or the Service Provider, by written notice given to the other (a copy of which must be provided to the Contract Manager); and
				2. disputes referred to in clause 30.2(a)(ii) may be referred to an Expert by the Lead Department or the Service Provider by notice in writing given to the other.
			3. The Expert must:
				1. act as an expert and not as an arbitrator;
				2. proceed in any manner he or she thinks fit without being bound to observe the rules of evidence;
				3. take into consideration all documents, information and other material which the parties give the Expert that the Expert in his or her absolute discretion considers relevant to the determination of the dispute;
				4. not be expected or required to obtain or refer to any other documents, information or material but may do so if he or she so wishes;
				5. act in good faith and make his or her decision within 15 Business Days of appointment (or within a time otherwise agreed between the parties); and
				6. give his or her determination in writing (including a statement of the value of the determination) and give written reasons for the determination within 28 days from the acceptance by the Expert of his or her appointment, unless otherwise agreed between the parties.
			4. The Service Provider must provide the Expert with copies of all reports and other Materials relevant to the dispute, and all other information required to keep the Expert informed and able to carry out his or her function under this clause 30.4.
			5. To the extent permissible by Law, except in the case of manifest error, the determination of the Expert will be final and binding on each party.
		2. Mediation
			1. If any dispute is unable to be resolved in accordance with clause 30.3, the parties may agree to endeavour in good faith to settle the dispute by mediation.
			2. Subject to clause 30.5(c), the mediation will be conducted by the Australian Disputes Centre (**ADC**) in accordance with the ADC mediation guidelines for commercial mediation (**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.
			3. The mediator will be selected by mutual agreement. If the parties have not reached agreement on a mediator within 3 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.
			4. 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.
			5. Any breach of the Guidelines will constitute a breach of this Agreement.
		3. Arbitration or litigation
			1. If the parties fail to settle any dispute in accordance with clause 30.3 or clause 30.5 the parties may agree to submit the dispute for determination at arbitration under the Resolution Institute Arbitration Rules by an arbitrator 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 30.6(a) either party may submit the dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.
		4. Performance during dispute resolution
			1. Despite the existence of a dispute:
				1. the Service Provider must continue to provide the Services and perform its obligations under this Agreement and any Legal Services Contract;
				2. each party must otherwise comply with its obligations under this Agreement and any Legal Services Contract, except that a Client will be under no obligation to make any payment in respect of any amounts which are in dispute; and
				3. each party’s rights under this Agreement and under any Legal Services Contract, including the rights of the Lead Department to suspend or terminate the Service Provider’s membership of the Panel or any Area of Law under clause 23.1, and of any Client to terminate any Legal Services Contract will not be affected.
			2. The State and any Client may make full use of all Contract Materials regardless of any dispute in existence between any Client and the Service Provider over any unpaid amounts owing to the Service Provider or any other matter and the Service Provider waives any lien or similar right which might otherwise be attached to such Contract Materials.
		5. Interlocutory relief

Nothing in this clause 30 is to be taken as preventing any party to a dispute from seeking interlocutory relief in respect of such dispute.

* 1. Compliance with Law and policies
		1. General Law and policy
			1. The Service Provider must, in performing its obligations under this Agreement and under any Legal Services Contract, comply with all Laws affecting or applicable to the provision of Services by the Service Provider.
			2. The Service Provider is not required to do anything that would breach its professional or ethical obligations to the court or other clients.
		2. Victorian Public Sector Commission Code of Conduct
			1. Where, in the course of Providing the Services, the Service Provider, 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 Service Provider must (and must ensure that its Personnel) comply with the VPSC Code of Conduct.

* + - 1. In this clause 31.2 and clause 31.8, the **VPSC Code of Conduct** means Victorian Public Sector Commission 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 Client is a special body, in which case it means the Code of Conduct for Victorian Public Sector Employees of Special Bodies 2015 (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).
		1. Local Jobs First
			1. Local Jobs First will apply to Legal Services Contracts meeting the required Local Jobs First thresholds as may be amended from time to time.
			2. Where a Legal Services Contract meets the Local Jobs First thresholds (indicated in a Request for Legal Services) the Local Jobs First Policy and related model clauses will apply and be applied to the relevant Legal Services Contract.
		2. Fair Jobs Code

The Fair Jobs Code applies to this Agreement and the terms and conditions set out in Schedule 9 apply to this Agreement.

* + 1. Supplier Code of Conduct
			1. 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 Supplier Code of Conduct 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.
			2. In this clause 31.5, **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).
		2. Modern Slavery
			1. The Service Provider must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Services.
			2. If at any time the Service Provider becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of this Agreement, the Service Provider will as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chain, and will notify the Lead Department of the actions taken as soon as reasonably practicable.
		3. Employment policy
			1. The Service Provider must not be in breach of the *Workplace Gender Equality Act 2012* (Cth), the *Equal Opportunity Act 2010* (Vic) or the *Disability Discrimination Act 1992* (Cth) during the Term.
			2. The Service Provider and any person engaged in the provision of the Services 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.
			3. Where a federal industrial award may apply to the capacity in which an employee is engaged by the Service Provider, or by a sub‑contractor, in the provision of the Services, the rates of pay and conditions on which that employee is engaged must be no less beneficial to the employee than the rates and conditions under that award.
		4. Gifts, benefits and hospitality
			1. The Service Provider agrees that pursuant to:
				1. VPSC Code of Conduct;
				2. the Code of Conduct for Victorian Public Sector Employees of Special Bodies 2015;
				3. the Victorian Public Entity Directors Code of Conduct 2016;
				4. other codes under s 61 of the *Public Administration Act 2004* (Vic); or
				5. other Agency policies in effect from time to time,

each as updated, amended or replaced from time to time (each code or policy is referred to in this clause as a **Code of Conduct**), Personnel of the Lead Department or a Client may be precluded from accepting entertainment, hospitality, gifts or benefits where these might reasonably be perceived as influencing them in the performance of their duties, or as otherwise detailed in those Codes of Conduct.

* + - 1. Where details of any Code of Conduct are provided to the Service Provider by the Contract Manager or the relevant Agency Contract Manager:
				1. the Service Provider must inform each of its Personnel and any sub‑contractor engaged in providing any Services under this Agreement or a Legal Services Contract of the existence and terms of the Code of Conduct;
				2. the Service Provider must use reasonable endeavours to ensure that its Personnel and sub‑contractors do not offer any entertainment, hospitality, gifts or benefits to the Personnel of the Lead Department or any Client where that person would, if any such Code of Conduct applied to them, be in breach of the Code of Conduct were the entertainment, hospitality or gift accepted; and
				3. must comply with any reasonable direction of the Contract Manager or the relevant Agency Contract Manager relating to the Code(s) of Conduct.
		1. Legal Services specific policies

The Service Provider must ensure that, at all times throughout the Term and in relation to the provision of Services under a Legal Services Contract, it complies with the following policies:

* + - 1. the Victorian Model Gender Equitable Briefing Policy;
			2. the Model Litigant Guidelines; and
			3. the Pro Bono Obligations,

and with all other policies or amended policies notified to the Service Provider by the Lead Department or a Client from time to time under this Agreement.

* 1. Sub‑contracting
		+ 1. Except as expressly provided in this Agreement, the Service Provider must not sub‑contract to any third person (including any related bodies corporate, as defined in the *Corporations Act 2001* (Cth)) any of its obligations under this Agreement without the prior written consent of the Contract Manager, which consent may be given or withheld by the Contract Manager in the Contract Manager’s absolute discretion.
			2. Except as expressly provided in this Agreement and any Legal Services Contract, the Service Provider must not sub‑contract to any third person (including any related bodies corporate, as defined in the *Corporations Act 2001* (Cth)) any of its obligations under that Legal Services Contract without the prior written consent of the Agency Contract Manager for the relevant Client, which consent may be given or withheld by the Agency Contract Manager in the Agency Contract Manager’s absolute discretion.
			3. Except where clause 32(e) applies, any sub‑contracting arrangement approved under clause 32(b) with any legal firm who is not on the Panel must not result in more than 20% of the Legal Services Fees associated with the relevant Legal Services Contract being paid to the sub‑contractor unless the consent of the Executive Contract Manager is obtained before the commencement of any work under the Legal Services Contract.
			4. Any consent given under clause 32(a), 32(b) or 32(c) may be subject to any conditions determined by the Contract Manager, Agency Contract Manager or Executive Contract Manager, as appropriate. Without limitation any sub‑contractor may be required to enter into a deed poll in favour of the Client or the Lead Department agreeing to be bound by relevant provisions of this Agreement (including the Minimum Services Standards, pro bono obligations and reporting requirements).
			5. The Legal Services Fee percentage cap set out in clause 32(c) will not apply if the Service Provider is sub‑contracting services to an entity in furtherance of the Social Procurement Framework outcomes in order to provide Value Added Services as detailed in Item 4 of Schedule 4.
			6. The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement or any relevant Legal Services Contract. The Service Provider will not, as a result of any sub‑contracting arrangement, be relieved from the performance of any obligation under this Agreement or a Legal Services Contract and will be liable for all acts and omissions of a sub‑contractor as though they were the actions of the Service Provider itself, except where the sub‑contractor is a barrister or other expert and the consents required under clause 32(a) or 32(b) have been obtained.
			7. If specific conditions, with respect to sub‑contracting for a particular Category or Area of Law are set out in Item 6 of Schedule 4, those conditions will apply in addition to this clause 32.
	2. Access and safety
		1. Access to premises

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

* + 1. Obligations

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

* + - 1. protect people and property;
			2. prevent nuisance and unnecessary noise and disturbance; and
			3. act in a safe and lawful manner and comply with the safety standards and policies of the Client (as notified to the Service Provider).
		1. No occupier’s liability
			1. A Client and its officers, employees, agents and invitees will not be responsible for any damage done to the Service Provider’s property or to that of any of the Service Provider’s Personnel, agents or sub‑contractors or for any personal injury sustained by any of the Service Provider’s Personnel, agents or sub‑contractors occurring on the Client’s premises as a result of:
				1. the negligence or recklessness of such Personnel, agent or sub‑contractors; or
				2. if such Personnel, agent or sub‑contractor has failed to comply with the occupational health and safety and security policies of the Client (as notified to the Service Provider).
			2. The Service Provider unconditionally and irrevocably releases each Client and its employees, agents and invitees from all such responsibility and agrees to indemnify each Client, its officers, employees, agents and invitees (**Indemnified Party**) against any loss that the Indemnified Party may suffer as a result of any third party bringing an action against that Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party’s negligence.
	1. GST
		1. Definitions

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

* + 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. Recipient to pay an additional amount

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

* + 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. Staff Costs
		+ 1. The Service Provider will indemnify and keep indemnified each Client from and against all liability for the Staff Costs in any way relating to the Services.
			2. If a Client is or becomes liable to pay any Staff Costs, that Client may deduct the amount of its liability for the Staff Costs from any amount due by the Client to the Service Provider, whether under this Agreement or otherwise.
	2. Indemnities
		+ 1. Each indemnity under this Agreement is a continuing obligation, separate and independent from the other obligations of the party giving the indemnity and survives termination or expiry of this Agreement and any Legal Services Contract.
			2. It is not necessary for a party to incur any expense or to make any payment before enforcing a right of indemnity confirmed by this Agreement.
			3. If any indemnity payment is made by the Service Provider under this Agreement or any Legal Services Contract, the Service Provider must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
			4. The parties agree that each indemnity in this Agreement, to the extent to which it benefits an Indemnified Party as stated in that indemnity is held by the State or a Client, as applicable, for itself and on trust for each Indemnified Party and can be enforced by the State or the Client on behalf of itself and each Indemnified Party.
	3. Notices
		1. Giving a communication
			1. A Legal Services Order, notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre‑paid post, pre‑paid courier or by electronic mail to the applicable recipient as follows:
				1. to the Lead Department: at the address which is set out in Item 9 of Schedule 1 (or, where the notice or document is in relation to a Legal Services Contract, to the address nominated in the relevant Legal Services Order);
				2. to a Client: to the Agency Contract Manager at the address which is nominated in the Service Level Agreement; and
				3. to the Service Provider: at the address which is set out in Item 9 of Schedule 1.
			2. The Lead Department, a Client or the Service Provider may change its address for service under this clause 37.1 by written notice to the other parties from time to time.
		2. 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, 2 Business Days after the date of posting;
			3. in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Agreement or a Legal Services Contract, and the message is correctly addressed to and successfully transmitted to that party’s electronic mail address (legalpaneladminstration@justice.vic.gov.au), when 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 5.00 pm in the place of receipt; or
			2. on a day which is a Saturday, Sunday or public holiday in the place of receipt,

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

* 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
			1. This Agreement may only be varied or replaced by a document executed by the Lead Department and the Service Provider.
			2. A Legal Services Contract may only be varied or replaced by a document executed by the relevant Client and the Service Provider.
		2. Waiver and exercise of rights
			1. A single or partial exercise or waiver by a party of a right relating to this Agreement or a Legal Services Contract does not prevent any other exercise of that right or the exercise of any other right.
			2. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right by the first party.
		3. Severability

Any provision of this Agreement or a Legal Services 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 State or a Client may set off against any sum owing to the Service Provider under this Agreement or any Legal Services Contract any amount then owing by the Service Provider to the State or that Client.

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

The Service Provider must not assign, novate or transfer or otherwise dispose of any of its rights, title or interest in or under this Agreement or any Legal Services Contract without the prior written consent of the State, or the Client, as applicable, which consent may be given, given on conditions or withheld in the State’s or the Client’s discretion.

* + 1. Assignment by the State parties
			1. The State and any Client may assign, novate, transfer or otherwise dispose of any of its rights, title or interest in or under this Agreement and any Legal Services Contract, as applicable, to any other Agency where required in the event of any State government restructure or other re‑organisation.
			2. The Service Provider will execute such documents and do such things as and when reasonably requested by the State to do so in order to enable or facilitate such assignment, novation or transfer or other disposal in accordance with this clause 38.9.
		2. Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

* + 1. Entire understanding
			1. This Agreement, including all Schedules and Annexures, together with the Tender Documentation, contains the entire understanding between the parties as to the subject matter of this Agreement.
			2. Each Legal Services Contract formed pursuant to this Agreement contains the entire understanding between the parties as to the subject matter of that Legal Services Contract.
			3. Except as otherwise provided in clause 38.11(a) or (b) (as the case requires):
				1. all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement or Legal Services Contract (as the case requires) are merged in and superseded by this Agreement or Legal Services Contract (as the case requires) and are of no effect; and
				2. no oral explanation or information provided by any party to another:

affects the meaning or interpretation of this Agreement or Legal Services Contract (as the case requires); or

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

* + 1. Relationship of parties
			1. Neither this Agreement nor any Legal Services Contract is intended to create a partnership, joint venture or agency relationship between the parties.
			2. Without limitation to clause 38.12(a), the Service Provider will not have authority to incur and must not incur any obligation or purport to make any representation on behalf of the State or a Client except with the express written instructions of the State or that Client.
		2. Survivorship
			1. Without limitation to any other provisions of this Agreement, any indemnity, warranty or representation given or made under this Agreement survives the termination or expiry of this Agreement.
			2. In addition to any clause that expressly states that it survives, or that any rights or obligations of a party will survive termination or expiry of this Agreement, the following clauses of this Agreement survive the termination or expiry of this Agreement: 1 Definitions and Interpretation, 5.2 Pro Bono Services, 12.3 Reports and information to be provided by Service Provider, 17 Access to records, 18 Intellectual Property Rights, 20 Warranties, 23.4 Consequences of termination or expiry, 24 Transition, 25 Insurance, 27 Security, 28 Confidentiality, privacy and Data protection, 35 Staff Costs, 36 Indemnities and 38 General.
1. Contract Details
	1. Appointment to the Panel (clause 1.4)

The Service Provider is appointed to provide Services in the following Areas of Law:

|  |  |
| --- | --- |
| **Category** | **Areas of Law** |
| Government and Administrative | * Administrative Law
* Employment, Industrial Relations and Equal Opportunity
 |
| Commercial  | * Construction, Infrastructure and Major Projects
* Commercial and Contracts
* Intellectual Property, Information Technology
 |
| Property, Planning and Environmental  | * Property
* Planning & Environment
 |
| General Litigation, Public Inquiries, Personal Injuries, Coronial Inquiries and Prosecutions | * General Litigation
* Public Inquiries
* Personal Injuries
* Coronial Inquiries
 |
| Ancillary Legal Services  | * Legal Support Services
 |

* 1. Term (clause 2)

Commencement Date: 1 July 2023

Expiry Date: 30 June 2026

Further Term: no more than 3 years

* 1. Executive Contract Manager, Lead Department’s Contract Manager and Relationship Manager (clause 12.1)

**Executive Contract Manager**

|  |  |
| --- | --- |
| Name: | Toby Hemming  |
| Title: | Deputy SecretaryIntegrity, Regulation and Legal ServicesDepartment of Justice & Community Safety |
| Email: | legalpaneladministration@justice.vic.gov.au |

**Lead Department’s Contract Manager**

|  |  |
| --- | --- |
| Name: | Matthew McMahon |
| Title: | Legal Services Panel and Operations LeadDepartment of Justice & Community Safety |
| Telephone:  |  |
| Email: | legalpaneladministration@justice.vic.gov.au |

**Service Provider’s Relationship Manager**

|  |  |
| --- | --- |
| Name: |  |
| Title: |  |
| Telephone: |  |
| Mobile: |  |
| Email: |  |

**Service Provider’s Relationship Manager’s Alternate**

|  |  |
| --- | --- |
| Name: |  |
| Title: |  |
| Telephone: |  |
| Mobile: |  |
| Email: |  |

* 1. Price review (clause 14)

**Initial Term**

The Service Provider’s Rates will be fixed for the Initial Term.

**Further Term**

The Service Provider's Rates may be adjusted in accordance with the following methodology on and from the commencement of the Further Term (if any):

*IA x latest CPI number*

*earlier CPI number*

where:

**IA** is the relevant indexable amount of the Rates.

**latest CPI number** is the CPI number for the quarter ending on 31 March 2026.

**earlier CPI number** is the CPI number for the quarter ending on 31 March 2023.

The adjustment provided in this Item 4 will only be made where the latest CPI number is greater than the earlier CPI number. The Lead Department will advise the Service Provider in writing of any increased Rates following this price review prior to the commencement of the Further Term.

* 1. Invoicing (clause 9.1)

**Invoice requirements**

Invoices must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Services and Services Tax) Act 1999* (Cth) in addition to the following:

Invoice requirements include:

• the Service Provider’s name;

• the Service Provider’s ABN;

• the Client’s ABN or address;

• the date of issue of the tax invoice;

• Legal Services Order number;

• Legal Services Fees claimed, including (where relevant to the Pricing Arrangement used) details of Rates and expenses including detailed descriptions of the items to which they relate;

• detailed descriptions of all Disbursements claimed (including Counsel's Fees);

• the total amount payable (including GST);

• the GST amount shown separately; and

• such other information as may reasonably be required by the Client or the Lead Department.

If the Lead Department or a Client elects to utilise electronic billing software, and the Service Provider has advised that it is able to issue invoices which are compatible with that software, the Service Provider will, if requested, ensure it provides invoices in a format which is compatible with the software of the Lead Department or Client (as applicable).

**Address for invoice**

All invoices must be sent to the person(s) (if any) specified in the relevant Legal Services Order, to the address specified in the Legal Services Order.

* 1. Payment (clause 9.2)

Payment for Services is to be made in accordance with the method specified in relevant Legal Services Order.

* 1. Insurance (clause 25(a))

|  |  |
| --- | --- |
| **Type of coverage** | **Minimum indemnity limits (AUD)** |
| Professional indemnity insurance | **[Variable X]** per claim or any occurrence giving rise to a claim in any 12 month policy period or any greater amount as required by a Client under a Legal Services Contract |
| Public liability insurance | **[Variable AD]** per claim or any occurrence giving rise to a claim in any 12 month policy period or any greater amount as required by a Client under a Legal Services Contract |

* 1. Associated firms (clause 28.2(a)(ii))

|  |  |  |
| --- | --- | --- |
| **Name** | **Address** | **Phone** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

* 1. Notice particulars (clause 37)

**Lead Department**

|  |  |
| --- | --- |
| Address:  | Department of Justice and Community SafetyLevel 28, 121 Exhibition Street, Melbourne, Victoria 3000 |
| Email: | legalpaneladministration@justice.vic.gov.au |
| Addressee:  | Matthew McMahon Legal Services Panel Contract Manager |

**Service Provider**

|  |  |
| --- | --- |
| Address:  |  |
| Email: |  |
| Addressee:  |  |

* 1. Pro Bono Percentage (Schedule 6)

[Variable AL]

1. Categories and Areas of Law

All Areas of Law include transactions, litigation, dispute resolution and secondments relating to the Area

| **Category** | **Areas of Law** |
| --- | --- |
| **Government and Administrative** | **Administrative Law** * Legislation/Regulation/Policy development
* Judicial and Administrative Review
* Public law matters ‑ including public governance
* FOI, privacy and data protection
 |
| **Employment, Industrial Relations and Equal Opportunity** * Collective employment and bargaining
* General employment law
* Occupational Health and Safety
* Equal opportunity (includes work in areas other than employment)
* Employment or workplace related investigations
 |
| **Commercial** | **Construction, Infrastructure and Major Projects** * Construction, infrastructure projects, including maintenance
* Delivering Major Projects[[1]](#footnote-2) across the full life cycle of the project
 |
| **Commercial and Contracts** * Commercial transactions
* Contracts and procurement (includes contract management)
* Corporations law
* Competition law
* Data protection and privacy
* Taxation law
* Insurance Law
 |
| **Intellectual Property, Information Technology** * E‑commerce
* IT procurement, licences and contracts
* Telecoms procurement, contracts and licences
* Convergent technologies
* Intellectual property rights
* Data protection and privacy
 |
| **Property, Planning and Environment** | **Property** * Acquisitions and disposals
* Leases, licences and conveyancing
* Landlord and tenant matters
* Site re‑development, property development
* Sub‑divisions
* Compulsory purchases
* Social housing
* Crown Land
 |
| **Planning & Environment** * Heritage
* Statutory planning
* Judicial and administrative review of planning or environmental decisions
 |
| **General Litigation, Public Inquiries, Personal Injuries, Coronial Inquiries and Prosecutions**  | **General Litigation** * Common law including Tort and Contract
* Equity
* Miscellaneous (does not cover litigation arising from other Areas of Law)
* Prosecutions
 |
| **Public Inquiries**  |
| **Personal Injuries**  |
| **Coronial Inquiries**  |
| **Ancillary Legal Services**  | **Legal Support Services** * Document management services
* Automation services
* Digital forensics
 |

1. VGSO Exclusive Services

All matters:

* + - 1. relating to the roles of, or involving, the Attorney‑General as first law officer of the State of Victoria;
			2. relating to the Royal Prerogative of Mercy;
			3. where there is no obvious contradictor;
			4. relating to the establishment and powers of Royal Commissions, Boards of Inquiry, Formal Reviews under the Inquiries Act and other public inquiries (whether executive or parliamentary inquires) and the powers of implementation monitoring mechanisms arising from any such Royal Commission, Board of Inquiry, Formal Review or public inquiry;
			5. relating to representation of Victorian Courts and Tribunal or judicial officers (except for personal injuries matters);
			6. arising under, or involving the interpretation of, the Victorian Constitution;
			7. relating to the powers and privileges of the arms of the Victorian government, including executive privilege and executive power, Parliament (including its committees) or Cabinet (including its committees) but not individual legal requests of members of Parliament;
			8. arising under, or involving the interpretation of, the Commonwealth Constitution;
			9. relating to the Governor;
			10. relating to the establishment and structuring of co‑operative or uniform legislative schemes or referrals of legislative power to the Commonwealth;
			11. relating to intergovernmental agreements or relations (including interjurisdictional and international);
			12. relating to allegations by the State of contempt of court, except where the Director of Public Prosecutions is handling the matter;
			13. relating to First Peoples‑State relations, treaty, native title or the *Traditional Owner Settlement Act 2010*;
			14. relating to the *Charter of Human Rights and Responsibilities Act 2006*;
			15. relating to matters of special significance, sensitivity or which have whole of Victorian government implications:
				1. resolution of disputes between Departments and/or agencies of the State;
				2. management of governance and decision making arrangements between Departments and/or agencies of the State in relation to multi‑agency litigation (e.g. class actions against the State);
				3. disputes between, or joint requests for advice from agencies as to the interpretation of legislation, or the application of the common law;
				4. public interest immunity, in whatever context it arises;
				5. composition, jurisdiction and rules of quasi‑judicial bodies;
				6. matters relating to policing requiring governmental confidentiality); or
				7. industrial relations and employment law matters that impact all employees of the State (for example, novel questions regarding the *Public Administration Act 2004* or the referral of State industrial relations powers);
			16. relating to powers of coroners in coronial inquests;
			17. relating to powers of Victorian integrity bodies;
			18. relating to a prosecution where the Attorney‑General has decided to exercise the functions or powers of the Director of Public Prosecutions in response to a request made under section 29(1) of the *Public Prosecutions Act 1994*;
			19. relating to the interpretation of legislation and the exercise of powers of the State to make declarations or proclamations in response to public emergencies and natural disasters, including:
				1. gas or energy supply emergency powers;
				2. public health powers; or
				3. arrangements with the Commonwealth government regarding a Commonwealth natural disaster declaration;
			20. relating to the interpretation of the application of Victorian public sector governance legislation other than of a routine nature, including the *Public Administration Act 2004*, *Audit Act 1994*, Appropriation Acts, *Electoral Act 2002*, *Crown Proceedings Act 1958* or a General Order;
			21. relating to Commonwealth, State and local government elections, and other elections that the Electoral Commissioner is required to conduct by statute;
			22. relating to judicial review, when more than one Department or Agency is involved, and
			23. involving briefing the Solicitor‑General,

subject to any policy or direction issued by the Attorney‑General from time to time.

1. Price Schedule
	1. Pricing Arrangements
		* 1. In providing the Services, the Service Provider commits to providing value for money Fee Proposals to Clients and to providing at least one Pricing Arrangement option in addition to Fee Proposals based on Rates charged hourly.
			2. The Service Provider agrees (subject to the suitability of Services) to (at the request of a Client) provide in Fee Proposals, options for pricing calculated on the basis of:
				1. price set by way of a reverse electronic auction;
				2. fixed fee arrangements (specifying a total amount to be charged for in scope Services as whole or scoped stages);
				3. maximum fee arrangements (for Services charged hourly in line with the Rates with a total capped maximum fee amount for Services as whole or scoped stages);
				4. daily fixed fee amounts;
				5. fixed fee retainer for an agreed type of Service or defined period of Service provision;
				6. blended fee arrangement;
				7. event‑based costing (staged based matters, where a fixed price is agreed for each stage or upon occurrence of an event);
				8. Rates charged hourly;
				9. bundling arrangements; or
				10. such other fee arrangements as a Service Provider considers suitable for inclusion on the basis of the Services Requested.
	2. Rates
		1. Application of Rates
			1. Subject to Item 3 of this Schedule, where a Client and Service Provider agree to Services being charged on an hourly or daily basis, the following Rates (as adjusted under this agreement) will be the maximum rates that may be charged.
			2. For each of the Service Provider's Personnel who performs Services under a Legal Services Contract the maximum hourly rate able to be charged will be in accordance with the Rates detailed below aligning with that individual's level of experience and responsibility.
			3. For each of the Service Provider's Personnel who performs Services under a Legal Services Contract the amount of fees charged per day will be capped in accordance with the daily rate caps detailed below. This cap will apply in aggregate across all Legal Services Contracts for all Clients that each of the Service Provider's Personnel may work on in a day.
			4. For the avoidance of doubt, the daily rate caps will operate in line with the National Employment Standards.
			5. Upon request from a Client the Service Provider must provide details of the Rates applicable to Personnel reasonably expected to undertake work under a Legal Services Contract where the Rates are applicable to the Pricing Arrangement.
		2. Rates
			1. Maximum hourly and capped daily rates:

**Administrative Law**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Employment, Industrial Relations and Equal Opportunity**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Construction, Infrastructure and Major Projects**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Commercial and Contracts**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Intellectual Property, Information Technology**

|  |  |  |
| --- | --- | --- |
| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Property**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Planning & Environment**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**General Litigation**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Public Inquiries**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Personal Injuries**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Coronial Inquiries**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

**Legal Support Services**

| **EXPERIENCE / RESPONSIBILITY\*** | **MAXIMUM HOURLY RATE (EX GST)** | **DAILY RATE CAP\*\* (EX GST)** |
| --- | --- | --- |
| Partner |  |  |
| Special Counsel |  |  |
| Senior Associate |  |  |
| Lawyer (> 5 years PAE) |  |  |
| Lawyer (3 ‑ 5 years PAE) |  |  |
| Lawyer (< 3 years PAE) |  |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |  |
| Paralegal |  |  |

* + - 1. Secondment rates, pursuant to clause 8.2(a)(ii):

**Administrative Law**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Employment, Industrial Relations and Equal Opportunity**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Construction, Infrastructure and Major Projects**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Commercial and Contracts**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Intellectual Property, Information Technology**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Property**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Planning & Environment**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**General Litigation**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Public Inquiries**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Personal Injuries**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Coronial Inquiries**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

**Legal Support Services**

| **EXPERIENCE / RESPONSIBILITY\*** | **SECONDMENT RATE ‑ DAILY CAP\*\* (EX GST)** |
| --- | --- |
| Partner |  |
| Special Counsel |  |
| Senior Associate |  |
| Lawyer (> 5 years PAE) |  |
| Lawyer (3 ‑ 5 years PAE) |  |
| Lawyer (< 3 years PAE) |  |
| Graduate Lawyer / Legal Trainee (not admitted to practice)  |  |
| Paralegal |  |

* + - 1. For the avoidance of doubt with respect to the above Rates:

**\*PAE** means post‑ admission experience, and must be calculated to reflect number of years an individual has been working as a legal practitioner (less any periods of extended leave or career breaks) post admission to practice.

**\*\*Daily Cap** in line with the National Employment Standards, each daily rate cap must not exceed 7.6 hours at the maximum hourly rate amount.

* + 1. Exclusions from Rates

The Service Provider must not charge for:

* + - 1. the attendance of more than one lawyer at any meeting, without prior approval by the Client; or
			2. any items listed in paragraph 5(c) below.
	1. Volume Discounts
		+ 1. If, during the Term of the Agreement, the cumulative Legal Services Fees invoiced by the Service Provider (being the amount invoiced for all Legal Services Contracts with all Clients) reaches any of the threshold amounts in the table below (**Volume Discount Thresholds**), the Service Provider will apply the corresponding discount set out in the table below (**Volume Discount**):

| **Volume Discount Threshold (EX GST)** | **Discount** |
| --- | --- |
| $1 million  | 1% |
| $5 million | 3% |
| $15 million | 5% |
| $50 million | 7% |

* + - 1. Within 7 days of reaching a Volume Discount Threshold the Service Provider must notify the Lead Department (in writing) confirming which Volume Discount Threshold has been met. From the date of the notice (**Volume Discount Application Date**)the Service Provider must for the remainder of the Term of the Agreement (including any Further Term):
				1. apply the applicable Volume Discount to any Legal Services Contracts entered into after the Volume Discount Application Date (regardless of the Pricing Arrangement option which applies to such Legal Services Contracts); and
				2. ensure all Fee Proposals, Legal Services Orders and resulting invoices on and from the Volume Discount Application Date reflect the applicable Volume Discounts.
			2. The Volume Discounts will continue to apply to all Legal Services Contracts from the Volume Discount Application Date until:
				1. any higher Volume Discount Threshold has been met (and higher discount applies following the notification and application of discount procedure outlined in paragraph 3(b)); or
				2. the termination of this Agreement.
			3. For the avoidance of doubt, Disbursements and Legal Service Fees for secondments undertaken in line with clause 8.2, will not be included in any calculation of the Volume Discount Threshold and the Volume Discount will not apply to any Disbursements or Legal Service Fees for secondments undertaken in line with clause 8.2.
	1. Value Added Services

For the purposes of this Agreement, Value Added Services includes (but is not limited to):

* + - 1. **Administrative Law**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Employment, Industrial Relations and Equal Opportunity**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Construction, Infrastructure and Major Projects**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Commercial and Contracts**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Intellectual Property, Information Technology**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Property**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Planning & Environment**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **General Litigation**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Public Inquiries**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Personal Injuries**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Coronial Inquiries**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
			1. **Legal Support Services**
				1. An advice hot‑desk for small ad‑hoc requests.
				2. Provision of newsletters or updates on legal reform for Personnel.
				3. Continuing professional development (CPD) seminars or other professional development seminars/workshops provided by the Service Provider, either specific to the Client, or that the Client Personnel may attend (including in regional/rural areas of the State where relevant).
				4. Provision of precedent documents for a small or fixed fee.
				5. Use of or access to the Service Provider’s library or research facilities by Personnel.
				6. Secondments of the Service Provider’s Personnel (at the discounted rate of cost plus on cost plus 10% margin) to Clients, to cover extended absences of Client Personnel or to address capacity issues.
				7. Reverse secondments (where members of an Client’s Personnel are seconded to the Service Provider for short periods, for professional development purposes.
				8. Engaging businesses (on a sub‑contractor basis) aligned to the Social Procurement Framework objectives including (but not limited to) engaging with:

Victorian Aboriginal law firms and businesses; and

Law firms and businesses located in Victoria's rural and regional areas.

* + - * 1. [OTHER]
	1. Disbursements
		+ 1. The following expenses may only be charged at cost and only where the Service Provider has obtained the approval of the Client prior to incurring any such cost:
				1. Counsel's Fees;
				2. experts' fees;
				3. airfares (economy rate only);
				4. travel expenses incurred (excluding travel within metropolitan area);
				5. accommodation expenses (must be within ATO approved rates);
				6. meals/sustenance allowance (as part of approved interstate or overseas travel);
				7. agents' fees; and
				8. process servers.
			2. The Service Provider may only charge for the following if the approval of the Agency Contract Manager is obtained before the costs are incurred:
				1. bulk photocopying (the first 1000 pages of photocopying must not be charged);
				2. electronic processing of documents; and
				3. costs associated with e‑discovery,

these Disbursements may only be charged at cost and competitive rates sought.

* + - 1. The Service Provider must not charge for:
				1. local, interstate or international telephone calls;
				2. facsimiles;
				3. courier expenses incurred within the CBD;
				4. travel expenses incurred within the metropolitan area;
				5. accommodation expenses beyond ATO approved rates;
				6. sundries, bank fees;
				7. the costs associated with the administrative services of legal secretaries, administrative or clerical assistants;
				8. photocopying where less than 1000 pages are copied;
				9. training of Personnel;
				10. the provision of Value Added Services (except where a nominal fee has been agreed by the Service Provider and Client);
				11. administration of files including word processing, scheduling and arranging travel;
				12. work of administrative Personnel;
				13. overtime worked by Personnel;
				14. meals (unless as part of approved sustenance allowance associated with interstate or overseas travel);
				15. file management;
				16. file storage;
				17. preparation and provision of Fee Proposals;
				18. invoicing or bill review;
				19. Panel meetings;
				20. provision of reports under this Agreement;
				21. day to day management of the Services;
				22. management of this Agreement;
				23. client relationship management; and
				24. actions taken to promote continuous improvement of the Services.
	1. Sub‑contracting

Pursuant to clause 32(g), the following conditions will apply to any sub‑contracting arrangements related to Services (where the Service Provider is appointed by Item 1 of Schedule 1) in the **Legal Support Services** Area of Law under the **Ancillary Legal Services** Category,in addition to clause 32:

* + - 1. **Executive Contract Manager consent**
				1. The Service Provider must obtain the written consent of the Executive Contract Manager, prior to entering into any sub‑contracting arrangement in accordance with clause 32(a) or (b) if the sub‑contract's value exceeds $15,000 (EX GST).
				2. Such consent may be given or withheld by the Executive Contract Manager in the Executive Contract Manager’s absolute discretion and may be subject to any additional conditions pursuant to clause 32(d).
				3. For the avoidance of doubt where the Executive Contract Manger has given consent in line with this condition, no additional consent from the Contract Manager (clause 32(a) or (b)) will be required.
			2. **Sub‑contract Legal Service Fee cap**

The amount of Legal Service Fees charged to Clients for sub‑contracted Services must not exceed 3% of any fees charged by the sub‑contractor to the Service Provider.

1. Clients

| Agency |
| --- |
|  | [Confidential Section] |

1. Pro Bono Obligations
	1. Definitions

In this Schedule, unless the context otherwise requires:

**Approved Cause** means provision of Pro Bono Services within the State the Victoria or which will benefit Priority Groups based in Victoria.

**CLC** means a Community Legal Centre operating as an independent, not‑for‑profit organisation providing free legal and related services to the public, focussing on Priority Groups and that is a member of the Federation of Community Legal Centres.

**Legal Aid** means Victoria Legal Aid, a statutory authority established under the *Legal Aid Act 1978* (Vic) and the programs Legal Aid provides to improve the public's access to the Victorian legal system.

**Legal Assistance** may include (but is not limited to):

* + - 1. legal or paralegal advice, representation or assistance;
			2. legal research, education or law reform work; and
			3. provision of staff or financial assistance for legal services delivery.

**Legal Services Panel Agreement** means the Deed (including all schedules and annexures) establishing the Panel.

**Priority Group** may include:

* + - 1. individuals who can demonstrate a need for legal assistance but may not otherwise be eligible for Legal Aid or other access schemes without incurring significant financial hardship; or
			2. individuals or organisations whose matter raises an issue of public interest which would not otherwise be pursued; or
			3. charities, other not‑for‑profit organisations or social enterprises, in each case where
				1. their sole or primary purpose is to work in the interests of low income or disadvantaged members of the community; or
				2. for the public good;

**Pro Bono Payment** has the meaning given in paragraph 6 of this Schedule.

**Pro Bono Services** includes:

* + - 1. the provision of Legal Assistance for free or at a substantially reduced fee to Priority Groups;
			2. conducting law reform and policy work on issues affecting Priority Groups, or on issues of public interest;
			3. provision of free community legal education on issues affecting Priority Groups or issues of public interest;
			4. providing a lawyer on secondment at a community organisation (including a CLC) or a legal referral service provider; or
			5. the provision of free equipment or in‑kind assistance, and
			6. for the purposes of this Schedule, Pro Bono Services does not include:
				1. the Services under the Panel agreement;
				2. giving Legal Assistance to any person for free or at a reduced fee without reference to whether that person can afford to pay for that Legal Assistance or whether that person’s case raises an issue of public interest;
				3. free first consultations with clients who are otherwise billed at a Service Provider's normal rates;
				4. Legal Assistance provided under a grant of Legal Assistance from Legal Aid;
				5. contingency fee arrangements (including 'no win no fee') or other speculative work which is undertaken with a commercial expectation of a fee;
				6. the sponsorship of cultural and sporting events, work undertaken for business development and other marketing opportunities;
				7. time spent by lawyers sitting on the board of a community organisation (including a CLC) or a charity;
				8. time spent by lawyers to manage a pro bono program or management of lawyers or other staff to deliver Pro Bono Services; or
				9. donations or other forms of financial assistance to charities and not for profit organisations or other organisations or causes other than donations to CLC's.

**Pro Bono Service Amount** will be calculated in accordance with paragraph 5 of this Schedule.

* 1. Pro Bono Policy
		1. Guiding Principles
			1. The State is committed to the delivery of legal assistance to people experiencing vulnerability and disadvantage in Victoria. The Victorian Legal Assistance Strategy (**Strategy**) sets out the State's approach to implement its commitment.
			2. The State is committed to recognising and encouraging the provision of pro bono services for people experiencing vulnerability and disadvantage, consistent with the Strategy. It is meeting this commitment by requiring Service Providers to provide Pro Bono Services. This initiative seeks to encompass pro bono work currently being performed by Service Providers, as well as increase future service provision.
			3. The State also committed to strengthening the viability of Community Legal Centre's in Victoria through the provision of Pro Bono Services by Service providers. Although, the Government acknowledges that Pro Bono Services is not a replacement for Legal Aid and does not diminish the Government's responsibility for providing free and accessible legal services for vulnerable and disadvantaged persons.
			4. The Pro Bono Services reflects the inherent values of:
				1. all people having access to legal advice, representation and assistance, regardless of financial means; and
				2. the community having access to legal education, research and law reform.
			5. The State is committed to Pro Bono Services delivering benefit of persons residing in Victoria, although acknowledges that lawyers or other staff providing Pro Bono Services to persons in Victoria may be located outside of the State of Victoria.
		2. Overview of the Pro Bono arrangements under this Agreement
			1. The Service Provider has a legal obligation to provide Pro Bono Services for Approved Causes to Priority Groups. This obligation is a fundamental term of this Agreement.
			2. The value of the Pro Bono Services that a Service Provider must deliver is linked to an agreed proportion of the value of all fees generated by the Service Provider. This means a Service Provider’s obligation to provide Pro Bono Services increases where they generate more fees under this Agreement.
			3. This Agreement sets out what activities will constitute Pro Bono Services to ensure that Priority Groups receive access to legal assistance. In addition, to facilitate the provision of legal assistance, the Agreement requires that at least 60% of the Pro Bono Services delivered are in collaboration with Justice Connect or a CLC operating within Victoria.
	2. Service Provider's Pro Bono obligation
		+ 1. The Service Provider must during the Term provide Pro Bono Services (approved in accordance with this Schedule) equivalent in value to (or exceeding) the Pro Bono Service Amount.
			2. In discharging the Pro Bono Services, the Service Provider must ensure that (at a minimum) 60% of the Pro Bono Services it delivers (as calculated on the basis of the Pro Bono Service Amount) are undertaken in collaboration with Justice Connect (ACN 164 567 917) or a CLC operating within Victoria for the benefit of Victorian community.
	3. Approved Pro Bono Services

For Pro Bono Services to be approved they must:

* + - 1. meet the definition of Pro Bono Services;
			2. provide services to the Priority Group; and
			3. be for the Approved Cause.
	1. Pro Bono Service Amount
		+ 1. The Pro Bono Service Amount (for each financial year) is the amount equal to the Pro Bono Percentage (as set out in Item 10 of Schedule 1 of the Legal Services Panel Agreement) of the aggregate of all Legal Service Fee amounts (excluding GST) paid by all Clients to the Service Provider in that financial year, including in relation to Existing Matters.
			2. The Service Provider must provide the Pro Bono Services required by no later than 6 months from the end of the relevant financial year in respect of which the Pro Bono Service Amount is calculated.
			3. Where the Pro Bono Services consist of the provision of Legal Assistance, the value must be calculated as follows:
				1. if the person performing Pro Bono Services is a member of the Key Personnel or comprises one of the Service Provider’s Personnel available then the relevant Rate set out in Schedule 4 will apply for time spent providing the Pro Bono Services; and
				2. if none of the Rates applies to the person performing the Pro Bono Services, the value of Pro Bono Services will be calculated on the basis of the normal hourly rate charged by the Service Provider for the services of that person except that such rate must not exceed the highest Rate for a person at a corresponding level (e.g. Partner, Senior Associate).
			4. Where the Pro Bono Services consist of the provision of:
				1. services other than Legal Assistance; or
				2. equipment or in kind assistance,

then the value of those Pro Bono Services will be calculated at the cost to the Service Provider less GST.

* 1. Pro Bono Payments
		+ 1. If approved in writing by the Executive Contract Manager, the Service Provider may make a payment in lieu of providing Pro Bono Services (**Pro Bono Payment**).
			2. The Executive Contract Manager may, in his or her absolute discretion, approve or decline entirely or in part a request by the Service Provider to make a Pro Bono Payment in lieu of undertaking Pro Bono Services.
			3. A Pro Bono Payment may comprise of all or part of the Pro Bono Service Amount of the relevant financial year in respect of which the Pro Bono Service Amount is calculated.
			4. Any Pro Bono Payment must be:
				1. paid to the person or entity specified by and as otherwise directed by the Executive Contract Manager (being an entity that provides legal services to the Priority Group for the Approved Cause); and
				2. paid no later than 6 months from the end of the relevant financial year in respect of which the Pro Bono Service Amount is calculated.
	2. Pro Bono Service compliance and reporting

The Service Provider's compliance with the Pro Bono Services obligation will be monitored by way of the Key Performance Indicators, Minimum Service Standards and reporting obligations as set out in the Service Level Agreement.

* 1. Records of Pro Bono Services
		+ 1. In addition to the Legal Services Panel Agreement recordkeeping and reporting obligations, the Service Provider must maintain, and provide to the Executive Contract Manager as requested in writing from time to time, records including but not limited to:
				1. in respect of Pro Bono Services performed by the Service Provider’s Personnel:

matter name of each Pro Bono Service

Brief description of each Pro Bono Service

the dates on which, and the Priority Group for which, the Pro Bono Services were performed;

the location where any Pro Bono Services were performed including the location of Priority Group recipients of Pro Bono Services;

the name and level or experience of each of the Personnel performing the Pro Bono Services;

value of each Pro Bono Service

the nature of the Pro Bono Service for each Pro Bono Service; and

the number of hours of Pro Bono Services performed); and

* + - * 1. for any other services or payments directly related to Pro Bono Services (or where approved, Pro Bono Payments), such records as the Executive Contract Manager may reasonably request.
			1. The Service Provider must ensure that its arrangements with the recipients of Pro Bono Services allow disclosure of these records and must make such records available for inspection by, or provide copies to, the Executive Contract Manager upon reasonable request.
			2. The provisions of clause 17 of the Legal Services Panel Agreement will apply to any records relating to Pro Bono Services.
1. Model Litigant Guidelines

**Guidelines on the State of Victoria’s obligation to act as a model litigant**

1 In order to maintain proper standards in litigation, the State of Victoria, its Departments and agencies behave as a model litigant in the conduct of litigation.

2 The obligation requires that the State of Victoria, its Departments and agencies:

(a) act fairly in handling claims and litigation brought by or against the State or an agency;

(b) act consistently in the handling of claims and litigation;

(c) deal with claims promptly and not cause unnecessary delay;

(d) make an early assessment of:

(i) the State’s prospects of success in legal proceedings; and

(ii) the State’s potential liability in claims against the State;

(e) pay legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount paid;

(f) consider seeking to avoid and limit the scope of legal proceedings by taking such steps, if any, as are reasonable having regard to the nature of the dispute, to resolve the dispute by agreement, including participating in appropriate dispute resolution (**ADR**) processes or settlement negotiations;

(g) where it is not possible to avoid litigation, keep the costs of litigation to a minimum, including by:

(i) not requiring the other party to prove a matter which the State or the agency knows to be true;

(ii) not contesting liability if the State or the agency believes that the main dispute is about quantum;

(iii) taking such steps, if any, as are reasonable to resolve such matters as may be resolved by agreement and to clarify and narrow the remaining issues in dispute; and

(iv) monitoring the progress of the litigation and, where appropriate, attempting to resolve the litigation, including by settlement offers, offers of compromise and ADR;

(h) when participating in ADR or settlement negotiations, ensure that as far as practicable the representatives of the State or the agency:

(i) have authority to settle the matter so as to facilitate appropriate and timely resolution; and

(ii) participate fully and effectively.

(i) do not rely on technical arguments unless the State’s or the agency’s interests would be prejudiced by the failure to comply with a particular requirement;

(j) do not take advantage of a claimant who lacks the resources to litigate a legitimate claim;

(k) do not undertake and pursue appeals unless the State or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest; and

(l) consider apologising where the State or the agency is aware that it or its representatives have acted wrongfully or improperly.

NOTES

1. The State of Victoria acknowledges the assistance of the Commonwealth in developing these Guidelines. The Guidelines are based on the Directions on the Commonwealth’s Obligation to Act as a Model Litigant, which were issued by the Commonwealth Attorney General pursuant to s 55ZF of the *Judiciary Act 1903* (Cth).
2. The obligation applies to litigation (including before courts, tribunals, inquiries, and in arbitration and other ADR processes) involving State Departments and agencies, as well as Ministers and officers where the State provides a full indemnity in respect of an action for damages brought against them personally. Ensuring compliance with the obligation is primarily the responsibility of the agency which has responsibility for the litigation. In addition, lawyers engaged in such litigation, whether Victorian Government Solicitor, in‑house or private, will need to act in accordance with the obligation to assist their client agency to do so.
3. Appropriate Dispute Resolution (**ADR**) means a process including but not limited to mediation, early neutral evaluation, judicial resolution conference, settlement conference, reference of a question to a special referee, expert determination, conciliation, and arbitration.
4. Where State of Victoria Departments and agencies are involved in disputes with other State of Victoria Departments and agencies, they are expected also to adhere to the ‘Guidelines for the conduct of disputes between different public sector bodies within the State of Victoria’, approved by Cabinet on 11 February 2008.
5. In essence, being a model litigant requires that the State and its agencies, as parties to litigation, act with complete propriety, fairly and in accordance with the highest professional standards. The expectation that the State and its agencies will act as a model litigant has been recognised by the Courts. See, for example, *Melbourne Steamship Limited v Moorhead* (1912) 15 CLR 133 at 342; *Kenny v State of South Australia* (1987) 46 SASR 268 at 273; *Yong Jun Qin v The Minister for Immigration and Ethnic Affairs* (1997) 75 FCR 155.
6. The obligation to act as a model litigant may require more than merely acting honestly and in accordance with the law and court rules. It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations.
7. The obligation does not prevent the State and its agencies from acting firmly and properly to protect their interests. It does not therefore preclude all legitimate steps being taken to pursue claims by the State and its agencies and testing or defending claims against them. The commencement of an appeal may be justified in the public interest where it is necessary to avoid prejudice to the interests of the State or an agency pending the receipt or proper consideration of legal advice, provided that a decision whether to continue the appeal is made as soon as practicable.
8. The obligation does not prevent the State from enforcing costs orders or seeking to recover costs.
9. The obligation should be observed in conjunction with the provisions of the *Civil Procedure Act 2010* (Vic) and, in particular, the paramount duty and overarching obligations imposed by Chapter 2 of that Act.
10. Victorian Gender Equitable Briefing Policy
	1. Policy Background
		* 1. The Victorian Government is committed to addressing economic inequity for Victorian women, including achieving gender equity for women in the legal profession.
			2. The Victorian Government enacted the *Gender Equality Act 2020* (Vic) with purposes that included, requiring the public sector to:
				1. take positive action towards achieving workplace gender equality; and
				2. promote gender equality in their policies, programs and services.
			3. Further, in response to the Inquiry into Economic Equity for Victorian Women, the Victorian Government gave support in principle to improve gender equity in professional services suppliers to the Victorian Government.
			4. The Victorian Government acknowledges the National Model Gender Equitable Briefing Policy issued by the Law Council of Australia (reviewed in June 2022) which the Victorian Government has previously endorsed and required adherence to by legal service providers to Victorian agencies under the Legal Services Panel contract.
			5. The Victorian Government considers that promoting equitable briefing in Victoria has a range of benefits, including:
				1. broadening the pool of skilled and experienced barristers that Agencies can brief to;
				2. aligning with the Victorian Government Social Procurement Framework to drive greater diversity and representation and commitment to improve gender equity in professional services;
				3. leveraging a greater breadth of perspectives and experiences to represent government interests;
				4. acknowledging the historic underrepresentation of women in the legal profession, supporting the career development and progression of women in the profession, the pay gap and improving the availability of senior women role models to mentor future generations, and
				5. better‑reflecting community expectations of fairness and representation.
	2. Policy Obligations

Accordingly, the Victorian Government requires service provider's appointed to the Panel to:

* + - 1. make all reasonable endeavours to brief or select women barristers with relevant seniority and expertise, experience or interest in the relevant practice area;
			2. brief or select senior women barristers for at least 50% of all briefs and at least 50% of the value of all brief fees paid to senior barristers;
			3. brief or select junior women barristers for at least 50% of all briefs and at least 50% of the value of all brief fees paid to junior barristers; and
			4. report 6 monthly under compliance with this policy (including for any Existing Matters) in accordance with the Service Level Agreement.
1. Fair Jobs Code
	1. Definitions

In this Schedule:

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

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

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

**FJC** means the Fair Jobs Code issued by the State of Victoria available at [www.buyingfor.vic.gov.au/fair‑jobs‑code](http://www.buyingfor.vic.gov.au/fairjobscode).

**FJC Guidelines** means Fair Jobs Code Guidelines, available at [www.buyingfor.vic.gov.au/fair‑jobs‑code‑and‑guides](http://www.buyingfor.vic.gov.au/fairjobscodeandguides) as may be amended from time to time.

**FJC Plan** means a Fair Jobs Code Industrial Relations and Occupational Health and Safety Plan, addressing industrial relations, occupational health and safety requirements and commitments and standards as required (and in the form required) by the FJC and which the Service Provider may be required to submit to the Lead Department.

**FJC Plan Trigger** has the meaning given in clause 3(a) of this Schedule.

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

**High Value Procurement Contract Threshold** means a cumulative invoicing over the Term of the Agreement of more than $20 million or more (exclusive of GST).

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

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

* 1. Fair Jobs Code Pre Assessment Certificate
		+ 1. The Service Provider warrants that at the time of entering this Agreement it holds a valid Pre‑Assessment Certificate.
			2. In performing its obligations under this Agreement the Service Provider acknowledges and agrees that it shallcontinue to hold a valid Pre‑Assessment Certificate.
			3. If at any time during the Term of this Agreement the Service Provider’s Pre‑Assessment Certificate is revoked by the FJC Unit that revocation will constitute a breach of this Schedule which will enable the Lead Department to exercise its rights under clause 9 of this Schedule.
			4. The Service Provider acknowledges and agrees that the obligations for holding and maintaining a Pre‑Assessment Certificate apply during the Term of this Agreement and any extensions to the Term and until all of its reporting obligations set out in clause 4 of this Schedule are fulfilled.
	2. Fair Jobs Code Plan
		+ 1. If, during the Term of the Agreement the cumulative Legal Services Fees invoiced amounts of the Service Provider reach $15 million (excluding GST) (**FJC Plan Trigger**) then, the Service Provider must:
				1. within 7 days, notify the Lead Department that the FJC Plan Trigger has been met and confirm that it has commenced preparation of an FJC Plan; and
				2. within 60 days (from first reaching the FJC Plan Trigger), submit to the Lead Department an FJC Plan.
			2. Once an FJC Plan is accepted by the Lead Department the Service Provider must;
				1. comply with its FJC Plan; and
				2. perform all obligations required to be performed under the FJC Plan by the due date set in the FJC Plan.
	3. Reporting
		+ 1. The Service Provider must prepare and maintain records demonstrating its compliance with, and implementation of, the FJC Plan (if required).
			2. The Service Provider must provide reports during this Agreement which demonstrate the Service Provider’s progress towards implementing the FJC Plan at a time or times to be determined by the Lead Department.
			3. Prior to or at expiration or otherwise termination of this Agreement, the Service Provider must provide to the Executive Contract Manager:
				1. a final report identifying FJC Plan commitments and actual achievements; and
				2. a statutory declaration to confirm that the information contained in the final FJC Plan report is true and accurate. The statutory declaration must be made by a director of the Service Provider or the Service Provider's Chief Executive Officer or Chief Financial Officer.
			4. At the request of the Executive Contract Manager, the Service Provider must provide further information or explanation of any differences between expected and achieved FJC Plan outcomes.
			5. The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Agreement.
	4. Verification of Service Provider’s compliance with the Fair Jobs Code
		+ 1. The Service Provider must, on request by the Lead Department, provide a copy of the Pre‑Assessment Certificate or any related correspondence with the FJC Unit.
			2. If, during the Term of this Agreement, the Service Provider’s Pre‑Assessment Certificate expires the Service Provider must provide Notice to the Lead Department of the expiry within 10 Business Days.
			3. If the Service Provider fails to promptly take steps to renew an expired Pre‑Assessment Certificate after notifying the Lead Department of the expiration, the expiration will constitute a breach of this Schedule which will enable the Lead Department to exercise its rights under clause 9 of this Schedule.
	5. Ongoing duty of disclosure and cooperation and audits
		+ 1. If during the Term of this Agreement, the Service Provider is the subject of an Adverse Ruling or Enforceable Undertaking it must provide Notice to the Lead Department and the FJC Unit within 10 Business Days of the Adverse Ruling or Enforceable Undertaking being made.
			2. During the Term of this Agreement the Service Provider must:
				1. cooperate with all reasonable requests from the Lead Department seeking evidence of the Service Provider’s compliance with the FJC and the FJC Plan;
				2. permit the Executive Contract Manager, an accountant or auditor on behalf of the Lead Department, DJSIR or any other person authorised by the Lead Department or DJSIR, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Service Provider relating to compliance with the FJC and FJC Plan under this Agreement; and
				3. ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Lead Department or DJSIR to undertake such audit or inspection.
			3. The Lead Department will bear all costs for any audit in accordance with clause 6(b)(ii) of this Schedule.
			4. The Service Provider acknowledges and agrees that the Lead Department, DJSIR, the Lead Department’s and DJSIR's duly authorised representatives (including the FJC Unit) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Service Provider’s compliance with the FJC.
			5. The obligations set out in this clause 6 are in addition to and do not derogate from any other obligation under this Agreement.
			6. A failure to comply with this clause 6 will constitute a breach of this Schedule which will enable the Lead Department to exercise its rights under clause 9 of this Schedule.
	6. Legal Services Contracts

If the Service Provider is in breach of clauses 2, 3, 4, 5 or 6 of this Schedule:

* + - 1. all Legal Services Contracts entered into prior to the breach will continue unless and until terminated by the Lead Department or Client; and
			2. no further Legal Services Contracts may be entered into until such time as the breach is remedied.
	1. Use of information

The Service Provider acknowledges and agrees that:

* + - 1. FJC Unit will assess the Service Provider's compliance with the FJC.
			2. information regarding the Service Provider's compliance with the FJC including any disclosures regarding Adverse Rulings or Enforceable Undertakings:
				1. will be reported by the Lead Department to the FJC Unit in compliance with the Lead Department's obligations under the FJC; and
				2. may be disclosed in the circumstances authorised or permitted under the terms of this Agreement or as otherwise required by Law; and
			3. nothing in this provision removes the obligation for the Service Provider to report Adverse Rulings or Enforceable Undertakings to the FJC Unit as per clause 6 of this Schedule.
	1. Consequences of breach

Any breach of the provisions of this Schedule will enable the Lead Department, in its absolute discretion, to do any or all of the following:

* + - 1. suspend the Agreement until such time as the breach has been remedied to the satisfaction of the Lead Department and within a timeframe acceptable to the Lead Department;
			2. by written notice immediately terminate the Agreement; or
			3. exercise any rights that it has under this Agreement.

Execution Page

Executed as a deed

|  |  |  |
| --- | --- | --- |
| Signed sealed and delivered by **Toby Hemming, Deputy Secretary****Integrity, Regulation and Legal Services** for and on behalf of the **Department of Justice and Community Safety** representing the **STATE OF VICTORIA**  | )))))) |  |
|  |  |  |
|  |  | Date |

|  |  |  |
| --- | --- | --- |
| Signed sealed and delivered by: | ))))))) |  |
| *Name of authorised representative*  |
|  |
| *Job title of authorised representative*  |
| as authorised representative for and on behalf of all parties trading as [**FIRM NAME]** (ABN XXXX) in the presence of: |  | *Signature of authorised representative*By executing this document the signatory warrants that the signatory is authorised to execute this document on behalf of [Firm Name] |
| *Signature of witness* |  |  |
| *Name of witness* |  |  |
| Date |  |  |

1. Form of Request for Legal Services

Client to complete Request for Legal Services form and provide to Service Provider/s.

| **Request for Legal Services (RFLS)** |
| --- |
| **Client Information** |
| **Client**  | *[Insert Client name]* |
| **Client Reference** | *[Insert Client's File Reference]* |
| **Date of Request** | *[Insert date]* |
| **Client Representative** | Name: *[Insert contact name]* Position: *[Insert title]*Email: *[Insert email address]* Telephone: *[Insert telephone number, including area code]* Mobile: *[Insert mobile number]* |
| **Proposed Order Details ‑ Timeframes** |
| **Proposed Legal Services Contract Commencement Date** | *[Insert date]* |
| **Proposed Legal Services Contract Term and/or Completion Date** | *[Insert date]* |
| **Proposed Order Details – Services Requested** |
| **Category** | *[Insert relevant Category]* |
| **Area of Law** | *[Insert the relevant Area of Law]* |
| **Sub Item Area** | *[Insert the sub Item Area for the relevant Area of Law]* |
| **Matter name** | *[Insert the Client's matter name]* |
| **Advice, Litigation details or Transaction Requirements**  | *[Confirm which required: Advice, Litigation or Transaction]* |
| **Detailed Scope of Work required** | *[Insert a detailed description of Legal Services required, including relevant background material. A separate scope of work may be referenced and attached including defined stages of work]* |
| **Timeframes and Milestones** | *[Insert proposed timeframes and/or milestones for Legal Services if applicable]* |
| **Location** | *[Insert the required work location/site, or insert ‘Not Applicable’]* |
| **Client Materials** | *[List any documents attached to the RFLS]* |
| **Other Material** | *[Insert details of any other Material or insert ‘Not Applicable’ that should be taken into consideration ‑ including links to any relevant State policies]* |
| **Confidential Information** | *[Include details if any specific confidential information (e.g. Cabinet, commercial in confidence, PII information) or if any confidentiality restrictions/orders apply (e.g. confidentiality deed required) or insert 'Not Applicable']* |
| **Additional Terms**  | *[Insert any terms and conditions required by the Client in addition to the standard terms and conditions in the Legal Services Panel Agreement e.g. Data security protocols or Client policy requirements related to site access etc., or insert ‘Not Applicable’]* |
| **Other Requirements** | *[Insert any other relevant requirements or Service Provider’s offering above those specified in the Legal Services Panel Agreement, including the Schedules, for example in relation to:*1. *Special conditions*
2. *Reporting, if Client requires regular reporting directly*
3. *Value Added Services, if wish law firm to provide additional services e.g. training subcontract to a regional or Aboriginal law firm*
4. *Document database requirements, if needed*
5. *Particular requirements concerning activities that must be undertaken jointly with other existing Service Provider or the VGSO*
6. *If contingency component required to be quoted*
7. *VGSO consultation requirements, if PII involved or briefing of Solicitor‑General required*
8. *Any preferred counsel to be retained, if needed*
9. *Any confidentiality requirements to be placed on Key Personnel]*
 |
| **Policies Applicable to this Request for Legal Services** | *[ ]* Local Jobs First is applicable to this Agreement *[Tick above if Local Jobs First applies, e.g., if the value of the Legal Services Contract will be than $1m (regional) or $3m (metro / state‑wide). If ticked, Local Jobs First is applicable and Client must ensure that the Local Jobs First protocols are complied with and model clauses are included in this Request for Legal Services and subsequent Legal Services Contract. The project must also be registered with ICN ‑ see* [*https://localjobsfirst.vic.gov.au/agency‑guidance*](https://localjobsfirst.vic.gov.au/agency-guidance) *for more details]**[ ]* Local Jobs First is not applicable to this Agreement[ ]  Client specific policies apply to this Request for Legal Services *[Insert details of any other Client specific policy applicable to this RFLS]* |
| **Requested Key Personnel** |
| **Required Qualifications and Experience** | *[Include details of mandatory/desired qualifications and experience (including any specialist knowledge), if required or insert ‘Not Applicable’]* |
| **Key Personnel** | *[Insert the required Key Personnel details, or insert ‘Not Applicable’]* |
| **Requested Pricing Arrangement *(optional ‑ Client not required to complete)*** |
| **Pricing Arrangement options requested** *In providing Fee Proposal the Service Provider must provide proposed quotes for each of the Pricing Arrangements selected*  | [ ]  fixed fee ‑ total (amount to be charged for total Services) [ ]  fixed fee ‑ staged (amount to be charged for per scoped stage Services)[ ]  maximum fee (Services charged hourly according to Rates with a total capped maximum fee amount Services) [ ]  daily fixed fee amounts[ ]  event‑based costing[ ]  hourly on the basis of the Rates (note ‑ Hourly Rates Proposal will be required unless Client expressly states is not needed) [ ]  *[insert other (e.g. bundling arrangement, blended fee, fixed fee retainer)]* |

Service Provider to complete and Return Fee Proposal section to client:

| **Service Provider Fee Proposal**  |
| --- |
| **Fee Proposal Pricing Arrangement A** **(GST incl.)\*** | *[Insert details of proposed fees and Disbursements, including Rates (if relevant to[ pricing)* *Must Include:** *any assumptions that the Service Provider has relied on providing the Fee Proposal*
* *any additional related legal work not specified by the Client in the Request for Legal Services but which may become necessary*
* *estimated Disbursements likely to be incurred*

*\*If this Fee Proposal Pricing Arrangement is for more than $3,000 and on the basis of hourly Rates ‑ an Hourly Rates Proposal must be provided including a breakdown of* * *estimated time required to undertake the scope of work*
* *Rates of Personnel providing the Services]*
 |
| **Fee Proposal Pricing Arrangement B****(GST incl.)\*** | *[Insert estimate of fees, including daily rates, fixed fee, capped fee, blended rates, daily fee, Bundling Arrangements, and Disbursements (as applicable).**Include any assumptions on which an estimate (if applicable) is based* *If additional Pricing Arrangements are being provided ‑ insert additional rows]*  |
| **Volume Discount to be applied** | *[Insert yes or not applicable ‑ where Service Provider has reached the Volume Discount Thresholds, the Volume Discount must be shown in the Fee Proposal and be applied to invoices]*  |
| **Contingency Component**  | *[Include details of any contingency components recommended and details of when may be required. Note that Contingency component estimates may not exceed any caps as set out in Schedule 4 (hourly or daily)]*  |
| **Value Added Services**  | *[Insert details of the Value Adds specific to the Legal Services Order]* |
| **Key Personnel** | *[Insert details of the Key Personnel for the Legal Services Order]* |
| **Subcontractors** | *[Insert details of its proposed subcontractors for preapproval, or insert ‘Not Applicable’]* |
| **Conflict of Interest** | *[Include details of any conflict of interest and how the Service Provider proposes to resolve or otherwise deal with the conflict of interest]* |
| **Compliance with Request for Legal Services**  | The Service Provider confirms the Fee Proposal is provided in line with the Request for Legal Services *[Yes/No]* |
| **Any similar work for other Victorian Departments or Agencies** | *[Firms to set out if given advice previously on same or similar subject‑matter and if so, to advise of relevant agency. If so, who was the relevant lawyer(s) who gave the advice]*  |
| **Other Comments** | *[Any other relevant comments, including with regard to timeframes, etc.]* |

\*If the Service Provider is providing an Hourly Fee Proposal on the basis of the Rates then the Service Provider must in addition provide a Fee Proposal using an alternative Pricing Arrangements.

1. Form of Legal Services Order

| **Legal Services Order (LSO)** |
| --- |
| **Legal Services Order – Client Information** |
| **Client**  | *[Insert Client name]* |
| **Client Reference** | *[Insert Client's File Reference]* |
| **Legal Services Order (LSO) / Purchase Order (PO) Number** | *[Insert Client's LSO/PO reference number]* |
| **Date** | *[Insert Date of this LSO]* |
| **Client Representative** | Name: *[Insert contact name]* Position: *[Insert title]*Email: *[Insert email address]* Telephone: *[Insert telephone number, including area code]* Mobile: *[Insert mobile number]:::::* |
| **Legal Services Order – Service Provider Details** |
| **Service Provider** | *[Insert firm name]* |
| **Address of Service Provider** | *[Insert address]* |
| **Nominated Service Provider Contact** | Name: *[Insert contact name]* Position: *[Insert title]*Email: *[Insert email address]* Telephone*: [Insert telephone number, including area code]* Mobile*: [Insert mobile number]* |
| **Legal Services Order ‑ Details of Services Ordered** |
| **Category** | *[Insert relevant Category]* |
| **Area of Law** | *[Insert the relevant Area of Law]* |
| **Sub Item area** | *[Insert the sub Item Area for the relevant Area of Law]* |
| **Matter name** | *[Insert the Client's matter name]* |
| **Advice, Litigation details or Transaction**  | *[Confirm which required: Advice, Litigation or Transaction]* |
| **Detailed Scope of Work** | *[Insert a detailed description of Legal Services being ordered, including relevant background material. A separate document can be referenced and attached including any defined stages of work]* |
| **Timeframes and Milestones** | Date to be commenced: *[Insert date]*Date to be completed: *[Insert date]**[Insert any other proposed timeframes and/or milestones for Legal Services]* |
| **Location** | *[Insert the required work location/site, or insert ‘Not Applicable’]* |
| **Client Material** | *[List any Client documents attached to the LSO]* |
| **Other Material** | *[Insert details of any other materials attached or provided by Client or insert ‘Not Applicable’]* |
| **Confidential Information** | *[Include details if any specific confidential information (e.g. Cabinet, commercial in confidence, PII information) or if any confidentiality restrictions/orders apply or insert 'Not Applicable']* |
| **Additional Terms**  | *[Insert any terms and conditions required by the Client in addition to the standard terms and conditions in the Legal Services Panel Agreement, or insert ‘Not Applicable’]* |
| **Special Conditions (Other Requirements):** | *[Insert any other relevant requirements or Service Provider’s offering above those specified in the Legal Services Panel Agreement, including the Schedules, for example in relation to:*1. *Special conditions*
2. *Reporting, if Client requires regular reporting directly*
3. *Value Added Services, if part of LSO, if wish law firm to provide additional services e.g. training subcontract to a regional or Aboriginal law firm*
4. *Document database requirements, if needed*
5. *Particular requirements concerning activities that must be undertaken jointly with other existing Service Provider or the VGSO*
6. *If contingency component required to be quoted*
7. *VGSO consultation requirements, if PII involved or briefing of Solicitor‑General required*
8. *Any preferred counsel to be retained, if needed*
9. *Any confidentiality requirements to be placed on Key Personnel]*

**Policy Specific Special Conditions**[*Insert any relevant special conditions e.g.* ***Local Jobs First if required*** *or Client specific Special Conditions]*  |
| **Legal Services Order – Key Personnel**  |
| **Key Personnel of Service Provider:** | *[Insert the required Key Personnel details of all service provider staff working on the matter’]* |
| **Subcontractors:** | *[Insert details of its proposed Subcontractors for approval, or insert ‘Not Applicable’]* |
| **Legal Services Order – Details of Legal Services Fees** |
| **Agreed Legal Services Fees (GST incl.)**  | *[Insert agreed amount of Legal Services Fees and details of the Pricing Arrangement e.g. fixed fee, hourly Rates, capped fees etc. where fee amounts relate to stages each stage and relevant Legal Services Fees should be outlined, whether Volume Discount applies and any Value Added Services]* |
| **Counsel’s Fees** | *[Insert name and details of Counsel’s Fees if agreed or mark 'Not Used' or 'to be later agreed' if required]*  |
| **Secondment charges** | *[Insert details of fees to be paid for secondee and if any cap applies or mark 'Not Used']* |
| **Disbursements authorised** | *[Insert list/nature of Disbursements authorised]* |
| **Cap on Disbursements**  | *[Insert cap on Disbursements authorised]* |
| **Invoicing requirements** | All invoices are to be addressed to:* *[Provide Name, Address and contact details*
* *Insert method of payment*
* *Set out any other requirements including frequency of invoices. Standard requirement is to be invoiced monthly or at the conclusion of the matter if earlier unless otherwise advised]*

**The invoice must refer to the LSO number** |
| **Other Comments** | *[Any other relevant comments, including with regard to timeframes, etc.]* |

Except as expressly provided above this Legal Services Order and any Legal Services Contract between the parties concerning this matter are governed by the terms and conditions of the Legal Services Panel Agreement executed by the Department of Justice and Community Safety as the Lead Department on behalf of the State of Victoria and the Service Provider, including without limitation the Rates specified.

**Acknowledgement**

The Service Provider confirms

* it will provide the Services in line with this Legal Services Order;
* Key Personnel required to undertake the work are available to undertake the work in including any outlined timeframes and milestones; and
* it (and it's Personnel)have no actual, potential, perceived or apparent conflict of interest as defined in the Legal Services Panel Agreement in providing the advice requested.

|  |  |
| --- | --- |
| Signed on behalf of the Service Provider by: |  |
|  | Signature: |
| Name: | *[Set out full name]* |
| Position: | *[Set out position/title]* |
| Date |  |

Please e‑mail acknowledgement to the Client's Representative quoting the corresponding Legal Service Order / Client Reference Number/s.

1. Key Personnel

Key Personnel include Partners, Special Counsel and Senior Associates (or equivalent) only.

Where the Service Provider is appointed as a member for one or more Area of Law then Key Personnel must be specified separately below for each Area of Law, if applicable.

Where the same person is a member of the Key Personnel for more than one Area of Law, that person’s name must be included for each relevant Area of Law.

Specialisation should detail any qualifications or accreditations Personnel or the Service Provider have as related to the Area of Law the Service Provider has been appointed for.

**On the Commencement Date, the Service Provider's Key Personnel are as follows:**

| **Administrative Law**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Employment, Industrial Relations and Equal Opportunity**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Construction, Infrastructure and Major Projects**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Commercial and Contracts**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Intellectual Property, Information Technology**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Property** |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Planning & Environment**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **General Litigation** |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Public Inquiries**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Personal Injuries**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Coronial Inquiries**  |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

| **Legal Support Services** |
| --- |
| **Key Personnel** | **Specialisation** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

The Service Provider must provide updated details of Key Personnel to the Lead Department in addition to providing updates with regard to specialisation annually in line with reporting requirements.

1. Secondment Agreement

[Date] LSO/Reference Number: [x]

|  |  |
| --- | --- |
| **By Email**the Secondee [Position] [Law Firm][Address] **[Email Address]**  |  |

Confidential

# Dear [insert]

**Secondment of [Secondee name] (Name) to [insert department/agency name] (VPS Client)**

[Firm Name] (**Firm**) is a service provider engaged to provide legal services to the Victorian Government under the Legal Services Panel Agreement (**Panel Agreement**).

Pursuant to the Panel Agreement the Firm may from time to time provide secondment services to Victorian Government bodies under the Panel Agreement. This letter sets out the terms and conditions applicable to the secondmentof [Name] (**Secondee**) from the Firm to the VPS Client (**Agreement**)**.**

1. **Term of secondment**
	1. The secondment is for a duration of [term of secondment] (**Term**), for [number] days per week, commencing on [date] and concluding on [date].
	2. During the Term, the secondment may be terminated at any time by either party, on the provision of at least [notice period] days' written notice. If the Firm provides notice to terminate the secondment, the VPS Client may request that the Firm provides a mutually acceptable replacement secondee for the remainder of the Term.
2. **Position**

* 1. The Secondee will be working as a [role title] in the [Name of relevant legal group] team within the VPS Client.
	2. During the secondment, the Secondee will be required to:
		1. comply with all VPS Client policies and procedures and all applicable laws, regulations and standards in performing the secondment;
		2. comply with all directions relating to work health, safety and security given by the VPS Client;
		3. take reasonable care of any VPS Client equipment used by the Secondee during the secondment;
		4. notify the VPS Client if the Secondee identifies any actual or potential conflict of interest between the Firm and the VPS Client or the Secondee and the VPS Client during the Term; and
		5. if requested by the VPS Client:
			1. undertake a National Police Check; and/or
			2. execute a deed of confidentiality in the form reasonably required by the VPS Client.

**Rate/pricing policy**

* 1. The VPS Client will pay to the Firm the rate of $[amount] per day (exclusive of GST) that the Secondee attends the secondment.
	2. The Firm will provide the VPS Client with an invoice at the end of each month, for the number of days the Secondee has attended the secondment. The Firm must not charge for a public holiday or a day for which the Secondee takes leave.
	3. If the Firm becomes liable to pay GST in respect of any supply made to the VPS Client pursuant to the terms of this Agreement, the amount otherwise payable by the VPS Client under this Agreement will be increased by the amount of that GST (unless the consideration is expressed on a GST inclusive basis).
	4. The increased amount will be payable by the VPS Client in the same manner and at the same time as other amounts payable under this Agreement. Terms used in this paragraph 2.5 and 2.6 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax)* *Act* 1999 (as amended from time to time).
1. **Remuneration and other entitlements**
	1. The terms and conditions of the Secondee's employment with the Firm will continue to apply during the Term.
	2. The Firm will be responsible for the Secondee's salary, leave, superannuation, and other employee entitlements including tax and workers' compensation requirements, and will continue to pay the Secondee's salary during the Term of the secondment.
	3. If the Secondee seeks to take leave during the secondment, the VPS Client will discuss with the Firm how it may impact the secondment and what measures may need to be put in place, if any.
	4. In the course of providing services to the VPS Client, the Secondee may incur out of pocket expenses including travel, accommodation or other costs. The Secondee must obtain the VPS Client’s prior written consent prior to the Secondee incurring the expenses.
	5. Provided that the Secondee has obtained the VPS Client’s consent in accordance with paragraph 3.4, the VPS Client may either reimburse the Secondee directly for these expenses or pay such expenses on the Firm's behalf that may be incurred in the course of providing services in accordance with VPS Client's policies and procedures for its own employees. Alternatively, such expenses may be included as Disbursements in the monthly accounts rendered by the Firm.
2. **Work and Work Environment**
	1. The Secondee will remain an employee of the Firm during the Term of the secondment for all purposes, including the applicable legal profession laws.
	2. During the secondment term, the Secondee will work under the direction and report to the nominated supervisor/s of the VPS Client. The Firm will not direct the Secondee in the day to day work performed during the secondment, and the VPS Client will have supervision of the tasks and the manner in which those tasks are performed.
	3. The VPS Client agrees to provide the Secondee with a safe and healthy working environment during the secondment and has appropriate policies in place to manage occupational health and safety, bullying, and harassment.
	4. **[Optional for junior lawyers]** The Victorian Legal Services Board governs legal practising certificates in Victoria. If the Secondee has a supervised legal practice condition on their practising certificate. Therefore, throughout the period of the secondment the VPS Client will ensure they are directly supervised by a person who holds an unrestricted practising certificate, which authorises the holder to supervise legal practice.
	5. The VPS Client acknowledges that the Secondee may be required to attend the Firm meetings, internal education program(s) and/or partner briefings on an ad hoc basis during the Term of the secondment. If so, the Secondee is required to provide prior written notice to the VPS Client and will be permitted to partake, if the activity does not unreasonably disrupt the secondment.
	6. Unless otherwise agreed between the VPS Client and the Firm, the Secondee will be covered by the VPS Client's professional indemnity insurance policy during the Term of the secondment.
3. **Location**

Option 1: the Secondee will work remotely at the beginning of the secondment whilst the VPS Client facilitates access to the VPS Client's premises at [***insert address location, for example, Level 28, 121 Exhibition Street, Melbourne VIC 3000*]** (**Premises**).

OR

Option 2: the Secondee will work at the VPS Client's premises located at [***insert address location, for example, Level 28, 121 Exhibition Street, Melbourne VIC 3000***] (**Premises**).

* 1. [To be amended as required] [Once access to the Premises has been granted – ***delete words if Option 2 above is selected***], the Secondee is expected to work from the Premises [number] days per week and remotely [number] days per week for the duration of the secondment.
1. **Access and systems**
	1. The VPS Client will provide the Secondee with:

* + 1. a VPS Client email address;

* + 1. relevant IT access;
		2. [optional] access to LawVu or other case management system (if possible);
		3. [optional] building access;
		4. [optional] a VPS Client laptop for use during the secondment.
	1. If a laptop and the VPS Client IT access is not organised prior to the commencement of the secondment, the Secondee will work remotely and use a laptop, IT access and email account provided by the Firm (which meets the Data protection requirements set out in clause 29 of the Panel Agreement), to provide advice to the VPS Client.
	2. The Secondee will retain access to the Firm's physical and electronic resources while on secondment, including access to the Firm's knowledge management resources, templates and precedents.
	3. At the end of the Term, the Secondee must return [the VPS Client issued laptop] and any access passes provided to their nominated supervisor at the VPS Client.
1. **Confidentiality**
	1. During the course of the secondment, the Secondee may be provided with VPS Client confidential and/or sensitive information. The Firm must ensure that the Secondee acknowledges that they are bound by strict confidentiality obligations, and must not communicate, publish or release, permit the communication, publication or release of any confidential or sensitive information, including to any person at the Firm or any associated entity of the Firm on an indefinite basis, unless the VPS Client otherwise agrees in writing.
	2. As the Secondee owes duties of confidentiality to others who are, or have been, the Firm clients, the VPS Client accepts that the Secondee acting on the VPS Client’s behalf does not place the Secondee under any obligation to disclose to the VPS Client, or use for the VPS Client’s benefit, any confidential information that the Secondee currently has or may obtain.
2. **Intellectual Property**
	1. The intellectual property rights in or relating to the work undertaken by the Secondee to the VPS Client during the secondment vests in the VPS Client immediately on their creation. The Firm must do everything, and must ensure the Secondee does everything necessary to perfect that vesting.
3. **Conflict of Interest**
	1. The Firm warrants that neither the Firm nor the Secondee has, at the commencement of the secondment, any conflict of interest or duty in relation to the secondment.
	2. If the Firm become aware of any circumstances, arrangements, corporate relationships or understandings that constitute, or may reasonably be considered to constitute, an actual, potential or perceived conflict of interest or duty of the Firm or the Secondee, the Firm must immediately notify the VPS Client and describe how you propose to manage any such actual, potential or perceived conflict of interest or duty.
	3. Where the Firm or Secondee gives notice under paragraph 9.2, the Firm or Secondee must:
		1. provide any information reasonably requested by the VPS Client; and
		2. take any steps reasonably required by the VPS Client to address the actual, potential or perceived conflict of interest.
	4. The VPS Client may give the Firm directions in relation to a conflict of interest or duty of the Firm or the Secondee in relation to the secondment. The Firm and the Secondee must comply with any direction of the VPS Client given under this paragraph 9. This obligation to comply with directions from the VPS Client in relation to any conflict of interest is subject to legal and professional obligations (including duties owed to other clients).
4. **Performance Management**
	1. The VPS Client acknowledges it is responsible for monitoring and supervising the quality of the Secondee's performance during the secondment, to ensure that all work is of an appropriate standard.
	2. If at any time during the secondment, the VPS Client has any concern regarding the Secondee's performance, the VPS Client may seek to discuss the concern with the Firm, and determine what, if any, action is required.
	3. The VPS Client acknowledges that the Secondee will be working under its control and in accordance with the VPS Client’s directions.
	4. The VPS Client will, at the end of the secondment, provide the Firm with feedback on the Secondee's performance during the secondment. The VPS Client will either provide the Firm with written feedback or invite the Firm to attend a meeting to discuss the Secondee's performance at a mutually convenient time.
5. **General**
	1. (Governing Law): This Agreement is governed by, and must be construed according to, the laws in force in the State of Victoria, Australia.
	2. (Amendments): This Agreement may only be varied with the written consent of each party.

* 1. (Entire agreement): This Agreement, together with the Government Legal Services Panel ‑ Deed of Standing Offer for the Provision of Legal Services in place between the Firm and the VPS Client as at [insert date], constitute the entire agreement between the parties in connection with the performance of the secondment and will take effect according to those terms despite any prior agreement or prior representations, understandings or arrangements made between the parties whether orally or in writing.
	2. (Relationship between the parties): This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties. Nothing in this agreement creates any employment relationship between the Firm and the VPS Client, or the Secondee and the VPS Client.
	3. (Labour Hire). The Firm agrees in respect of this Agreement, to comply with the *Labour Hire Licensing Act* 2018 (Vic) and associated regulations.

If the terms set out are acceptable, please acknowledge this by signing and returning the attached copy of this letter.

Thank you for your assistance with the secondment, we look forward to welcoming [Name] into [name of legal team] for the Term of the secondment.

Yours sincerely

[name]

[position]

[insert business unit name]

[insert department/agency name]

 I confirm acceptance of the above terms and conditions

 **[Signatory Law Firm] [Signatory Position]**

 **[Signatory name] Date:**

1. Service Level Agreement

**Table of Contents**

Service Level Agreement Definitions 130

Key Performance Indicators 131

Service Expectations 132

Reporting Specifications 137

Variations to the Service Level Agreement 146

Governance 147

Agency Contract Managers 152

Attachment 1: Assurance of Compliance Report 161

Attachment 2: Exemption policy 163

* 1. Service Level Agreement Definitions
		1. Definitions

In this Service Level Agreement (**SLA**), unless the context otherwise requires:

**Annual Assessment** is defined in clause 3.3 of this SLA.

**Assessment Methods** means the mechanisms for monitoring and assessing the Service Provider's compliance with KPIs and MSSs.

**Assurance of Compliance Report** means the report in the form of Attachment 1 of this SLA as amended from time to time and notified by the Lead Department to the Service Provider.

**Client Satisfaction Survey** means a survey used by the Contract Manager to measure the satisfaction of the Agency Contract Managers and other Personnel of Clients with the provision of Services by the Service Provider.

**Exemption Policy** means the policy that applies to Clients in the engagement of legal Service Provider who are not appointed to the Panel, or not appointed for the Area of Law for which a Client proposes to engage them (as amended from time to time).

**Key Performance Indicators** (**KPIs**) means the performance measures to be used to review and assess the performance of Service Provider specified in clause 2 of this SLA.

**Legal Services Panel Governance Committee** means the Committee comprised of General Counsel of Clients as may be appointed by the Executive Contract Manager to set the strategic direction for the Panel arrangements and the provision of services under the Agreement.

**Minimum Service Standards (MSS)** means the base level of KPI and Service performance required by the Service Provider as detailed in clause 3.2 of this SLA.

**SLA Variation** means a change to this SLA agreed in accordance with clause 5 of this SLA.

**Transactional Data** means information relating to each matter including:

* + - 1. Service Provider information, including:
				1. name and ABN of the Service Provider;
				2. number and seniority of solicitors providing Services; and
				3. gender and seniority of any Counsel engaged;
			2. Client information, including the name of the Client and relevant business unit;
			3. information on the Services that are to be, or have been, provided, including:
				1. the relevant Area of Law;
				2. a brief description of the matter;
			4. cost and invoicing information, including:
				1. Pricing Arrangements used;
				2. Counsel's Fees;
				3. other Disbursements;
				4. GST; and
			5. any other information required by the Contract Manager.
		1. Other terms used in this SLA

Terms that are not defined this SLA and that are defined in the Agreement or any Schedule of the Agreement have the same meaning in this SLA.

* 1. Key Performance Indicators

The Service Provider must comply with each of the following KPIs in the Performance of the Services. Compliance with KPIs will be measured in line with the Minimum Service Standards and Assessment Methods.

* + 1. Legal Expertise

The Service Provider must:

* + - 1. provide legal advice which is relevant, accurate, succinct, practical and offers creative solutions where applicable;
			2. ensure that they have capable and available Key Personnel appointed for each Legal Services Contract;
			3. provide Contract Materials, correspondence and documentation with high level of accuracy and in plain English;
			4. engage appropriate dispute resolution/litigation strategies; and
			5. ensure the Services provided met the Client needs, and requirements of the Legal Services Order.
		1. Communication

The Service Provider must:

* + - 1. provide proactive and effective communication with Clients;
			2. demonstrate responsiveness; and
			3. comply with notification requirements in the Agreement relating to:
				1. conflicts of interest
				2. Probity events; and
				3. Incidents.
		1. Customer Service

The Service Provider must deliver Services that demonstrate:

* + - 1. an understanding of Client’s needs;
			2. effective management of timelines;
			3. effective budget management;
			4. diligence in Service delivery; and
			5. reasonable assistance provided in respect of any inquiry concerning a Legal Services Contract.
		1. Value for Money

The Services must be delivered so as to:

* + - 1. provide value for money;
			2. offer effective Value Added Services;
			3. offer and provide varied and effective Pricing Arrangements; and
			4. comply with Volume Discount requirements, where applicable.
		1. Corporate Social Responsibility

The Service Provider must:

* + - 1. comply with the Victorian Gender Equitable Briefing Policy;
			2. comply with Pro Bono Obligations;
			3. comply with Model Litigant Guidelines;
			4. be proactive and effective in the management of staff wellbeing, health and safety;
			5. ensure effective equal opportunity in the employment of Personnel and prospective Personnel; and
			6. comply with employment and workplace health and safety law including the *Fair Work Act* 2009 (Cth), Labour Hire legislation, *Occupational Health and Safety Act 2004.*
	1. Service Expectations
		1. General
			1. In providing Services pursuant to the Agreement, the Service Provider must meet each of the KPIs and obtain the Minimum Service Standards.
			2. Assessment of KPI compliance and Minimum Service Standard performance will be assessed on the basis of the Assessment methods as detailed in clause 3.2 of this SLA.

.

* + 1. Minimum Service Standards and Assessment Methods

| **Service Level** | **Minimum Service Standards** | **Assessment method** | **Related KPIs** (SLA clause reference) |
| --- | --- | --- | --- |
| * + - 1. **Reporting – Quality and on time**
 | * 100% accuracy in all Data and reports provided to the Lead Department
* Lead Department is not required to request missing Data or seek corrections on reports submitted by the Service Provider
* 100% of reports and Data files are provided to Lead Department within the timing specified in the reporting specifications in the SLA
 | * Lead Department will determine the level of compliance by calculating the number of instances (failures) that are erroneous, incomplete, or reporting that is not compliant with the reporting specifications in clause 4 of this SLA or any other reporting requirement under the Agreement by the Service Provider
* Lead Department will determine the level of compliance with this Service Level by calculating the number of instances that reporting is not provided within the reporting time frames detailed in the reporting specifications in the SLA or any other reporting requirement under the Agreement of Standing by the Service Provider
 | 2.2 and 2.3 |
| * + - 1. **Service Delivery**
 | * The Service Provider’s provision of the Services as detailed in the Legal Services Order to a satisfactory level
* 100% compliance with the ongoing obligation in clause 6.5 of the Agreement regarding the obligation in relation to Fee Proposals
* 100% compliance with the ongoing obligations in clause 21 of the Agreement regarding conflicts of interest, incidents and probity
 | Lead Department will determine the level of compliance with this Service Level by analysing: * Agency Contract Manager feedback
* Client satisfaction surveys
* Service Provider Key Personnel Report
* notifications of non‑availability of Key Personnel and Replacement personnel
* Assurance of Compliance Report
 | 2.1, 2.2 and 2.3 |
| * + - 1. **Value for Money Services**
 | * The Service Provider provides the Value Added Services identified in Schedule 4 of the Agreement to a satisfactory level
* The Service Provider provides:
	+ value for money for services; and
	+ varied and effective Pricing Arrangement options at a satisfactory level
* The Service Provider applies Volume Discount in accordance with Schedule 4 of the Agreement
 | Lead Department will determine the level of compliance with this Service Level by analysing the:* Service Provider’s Transactional Data Report
* Service Provider’s Value Added Services Report
* Agency Contract Manager feedback
* Client Satisfaction surveys
* Assurance of Compliance Report
 | 2.4 |
| * + - 1. **Pro Bono**
 | The Service Provider complies with the Pro Bono Obligations set out in Schedule 6 of the Agreement | Lead Department will determine the level of compliance with this Service Level by analysing the Service Provider’s Pro Bono Services Report | 2.5 |
| * + - 1. **Corporate Social Responsibility**
 | The Service Provider achieves the corporate social responsibility KPIs set out in 2.5 of this SLA to a satisfactory level  | Lead Department will determine the level of compliance with this service level by analysing the Service Provider’s:* Barrister Briefing report
* Assurance of Compliance Report
* Service Provider’s Corporate Social Responsibility report
* verification by regulatory Agencies, such as WorkSafe, VEOHRC, Victoria Police, Victorian Legal Services Board
 | 2.5 |

* + 1. Performance Assessment
			1. The Service Provider's performance will be assessed in respect of each Contract Year against all KPIs (**Annual Assessment**). As part of the Annual Assessment, a performance report will be prepared and provided to the Service Provider reporting on:
				1. the outcome of Client Satisfaction Surveys;
				2. achievement of KPIs;
				3. compliance with reporting requirements of the Agreement (including this SLA);
				4. the outcome of any audit conducted in relation to the Service Provider in respect of the relevant Contract Year; and
				5. compliance with policies including Pro Bono Obligations, the Victorian Model Gender Equitable Briefing Policy and other policies under the Agreement.
			2. The Annual Assessment will be undertaken by the Contract Manager and Agency Contract Managers.
			3. The State may remove or suspend the Service Provider from provision of Services in any Categories or Areas of Law for consistent failure to achieve any of the Minimum Service Standards or the KPIs, in accordance with the terms of the relevant Agreement.
		2. Client Satisfaction Survey
			1. Client Satisfaction Surveys will be undertaken throughout the Term and used as part of the monitoring mechanism for the performance of the Service Provider. Client satisfaction will be an integral part of the Annual Assessment of performance of the Service Provider by the Contract Manager with input from Agency Contract Managers. Agency Contract Managers will oversee the completion of Client Satisfaction Surveys. Results of the Client Satisfaction Surveys in respect of a Contract Year will be applied to measure the Service Provider’s compliance with the KPIs and MSSs.
			2. Each Service Provider must use reasonable endeavours to ensure that Client Satisfaction Surveys are completed for at least 30% of their matters that have been completed or substantially completed each financial year. If this is not achieved, the Service Provider must provide reasons and evidence of the efforts taken to achieve compliance, for the Contract Manager's consideration.
		3. Audit Review
			1. Without limitation to any other provision of the Agreement, an audit of:
				1. the quality of the legal advice provided by the Service Provider (including the timeliness of the legal advice, comprehension, useability, accuracy and consistency);
				2. the Legal Services Fees and Disbursements invoiced by the Service Provider (including the Rates applied, hours spent on the matter and the level of the lawyer providing the Services); or
				3. any other aspect of the delivery of the Services,

may be undertaken by the State at the request of:

* + - * 1. the Agency Contract Manager; or
				2. the Executive Contract Manager.
			1. The provisions of clause 17 of the Agreement apply to any audit conducted pursuant to clause 3.5 of this SLA.
	1. Reporting Specifications
		1. Service Provider Reporting Obligations
			1. The following table sets out reports to be provided by the Service Provider to the Contract Manager or, where specified, to the Agency Contract Managers and the time at which they are to be provided.
			2. Where the table specifies that reports must be provided during the term of any Legal Services Contract, or by a date following the final Contract Year, those reports must be provided notwithstanding termination or expiry of the relevant Legal Services Deed, in accordance with clause 23 of the Agreement.
			3. Where the Term of the Agreement or the term of any Legal Services Contract under that Agreement terminates or expires on a day prior to the end of a calendar quarter, a reference in clause 4 of this SLA to a calendar quarter includes that part of that calendar quarter up to the date of termination or expiry.
			4. The Lead Department may from time to time issue templates for each Report providing the format that required Report content must be provided. Where a Report template is issued the Service Provider must use that template.
		2. Reports by Service Provider

| **Report Title** | **Timing**  | **Required Content**  |
| --- | --- | --- |
| * + - 1. **Transactional Data Report**
 | Monthly within 7 days of the end of each calendar month or as otherwise required by the Agreement or Contract Manager | Report outlining: * Data for each Legal Services Contract by using the Electronic Support System or as otherwise directed
* Pricing Arrangements used in report period
 |
| * + - 1. **Key Personnel Report**
 | Annual with regard to specialisation by 1 August following the end of the Contract Year and updated within 7 days upon departure or commencement of any Key Personnel  | Update of Key Personnel Annexure C to reflect changes during report period to: * Key Personnel (including change in role in role at firm)
* Specialisation information for all Key Personnel
 |
| * + - 1. **Pro Bono Services Report**
 | Quarterly within 14 days of the end of each calendar quarter throughout the Term | Report on Pro Bono Services for the Contract Year including: * Matter name of each Pro Bono Service
* Brief description of each Pro Bono Service
* Nature of Pro Bono Service for each Pro Bono Services
* Name of Recipient or Referral service
* Value of each Pro Bono Service
* Location of Pro Bono Service
* Hours of Pro Bono Service of each lawyer employed by Service Provider
 |
| * + - 1. **Assurance of Compliance Report**
 | Quarterly within 14 days of the end of each calendar quarter throughout the Term | Report (in the form provided at Attachment 1) providing assurance that the following clauses and policies have been complied with: * Conflicts of interest
* Incidents
* Probity events
* Non‑availability of key staff
* Model litigant obligations
* Budget monitoring guidelines
* Compliance with Fair Jobs Code
* Compliance with Volume Discount Rate obligations
* Compliance with Data protection and Data Security Breach obligations
* Insurance
 |
| * + - 1. **Briefing Practices Report**
 | Monthly, within 7 days of the end of each calendar month throughout the Term | Report detailing briefs issued broken down to reflect: * Gender
* Counsel level (junior or senior)
* Jurisdiction
* Advice or litigation
* Compliance with targets from Victorian Equitable Briefing Policy
* (if applicable) Reasons that Victorian Equitable Briefing Policy targets not met and plan to address issues in future
 |
| * + - 1. **Corporate Social Responsibility Report**
 | Annual by 1 August following the end of the Contract Year | Report detailing: * Record of diversity (Equal Opportunity) policies and practices (detailed description with examples of diversity policy implemented in recruitment, promotion and retention of staff)
* Record of employee diversity statistics
* Policies for gender equality and gender pay equity
* Record of all employee (legal practitioners in Australia) gender and other diversity statistics including details of
	+ level of employment in the firm (i.e. partner, associate etc.)
	+ employment type break down (a) full time (b) part time (c) flexible
	+ promotion and progression details for employees by work type (a) full time (b) part time (c) flexible and gender
	+ any gender pay gaps for legal practitioners at each employment level (i.e. partner, associate etc.)
* Records of occupational health and safety and wellbeing policies and practices
* Policies for staff work/life balance (including conformance with daily rate caps as set out in Schedule 4)
* Detailed description with examples of Equal Opportunity, Occupational Health and Safety and wellbeing policies being implemented for the staff
* Details of any volunteering with charities or community organisations during working hours by any staff members
* Details of any volunteering with charities or community organisations during working hours by any Personnel
* Details of number and nature of any breach, notification, investigation or legal action taken by:
	+ WorkSafe Victoria
	+ Victorian Legal Services Board
	+ Victoria Police
	+ Fair Work Ombudsman
	+ VHEORC
	+ Health Records Commission
	+ Office of the Victorian Information Commissioner
 |
| * + - 1. **Value Added Services Report**
 | Quarterly Value Added Service Report ‑ within 14 days of the end of each calendar quarter throughout the Term | Value Added Services provided in the report period including: * Number, duration (by work days) and brief description of secondments to Clients
* Amount charged for each secondment
* Number and nature of professional development activities held by Service Provider for Clients’ benefit
* Details of each Value Added Service provided, not described above
* Report on the volume discount applied – specific matters where discount applied and total discount per matter and total over all matters
 |
| Annual Value Added Service Report ‑ by 1 August following the end of the Contract Year | Value Added Services provided in the report period including: * Actions undertaken to pass knowledge and experience to Clients
* Activities undertaken to build expertise in Service Provider’s staff
* Description of efficiencies achieved in provision of services
* Description of IT systems utilised and efficiencies achieved
* Description of any industry wide productivity gains
 |
| * + - 1. **Data Protection and Information Security Report**
 | Annual by 1 August following the end of the Contract Year | Up to date copies of: * ISO/IEC 27001 Certificate
* Statement of Applicability in relation to the implementation of ISO/IEC 27001; and
* external auditors report in relation to the implementation of ISO/IEC 27001
 |

* + 1. Reports to be provided to the Service Provider

The table below sets out reports to be provided to Service Provider. The reports described in 4.3(a) and (b) apply to the Panel as a whole and not to individual Service Provider.

| **Report Title** | **Details**  | **Provided by and format**  |
| --- | --- | --- |
| * + - 1. **Legal Services Fees and Counsel’s Fees**
 | Annual reports of the total Legal Services Fees, Disbursements and Counsel’s Fees paid in respect of all Legal Services Contracts under the Agreement by:* Client
* Area of Law
* Legal Services Fees
* secondment fees
* Counsel's Fees
* Disbursements
* GST
* Total costs incurred and paid

This report is to be provided by 31 August in each Contract Year and by 31 August in the year following the final Contract Year (except that where this Agreement is terminated by the Lead Department under clause 23 of the Agreement, the Contract Manager will have no obligation to provide further Legal Services Fees and Counsel’s Fees reports to the Service Provider under that Agreement) | Contract ManagerBy email |
| * + - 1. **Pro Bono Service** **Amount**
 | Annual reports of the Service Provider's Pro Bono Service Amount to be provided by 31 August in each Contract Year | Contract Manager |
| * + - 1. **Annual performance review**
 | Annual performance review report which may include:* Client Satisfaction Survey results
* Assessment against each of the KPIs
* Audit findings
* Complaints findings
* Disclosure of any conflict of interest, Incidents and Probity Events

This report is to be provided within 90 days of the end of each Contract Year (except that where the Agreement is terminated by the Lead Department under clause 23 of the Agreement, the Contract Manager will have no obligation to provide further performance review reports to the Service Provider under that Agreement) | Contract ManagerThrough the feedback mechanism of the Client Satisfaction Survey  |

* 1. Variations to the Service Level Agreement

The following procedures apply regarding variations to the SLA:

* + - 1. The Contract Manager, an Agency Contract Manager or any Service Provider may submit a SLA variation request to the Executive Contract Manager.
			2. All requests must be in writing and contain the following information:
				1. a description of the variation requested and rationale for the variation;
				2. the date from which it is proposed the variation becomes effective; and
				3. draft wording of the variation sought.
			3. The Executive Contract Manager will decide whether the request will necessitate an amendment to the SLA, and if so the Executive Contract Manager will draft the amendment and provide it to Legal Services Panel Governance Committee (**LSPGC**) for discussion.
			4. The Executive Contract Manager may seek comment from the relevant Service Provider concerning the proposed amendment in his or her absolute discretion.
			5. If the LSPGC and the relevant Service Provider agree to the proposed amendment, then the Executive Contract Manager or the Contract Manager will notify relevant Service Provider of the amendment and the terms of the SLA in the relevant Agreements will be amended with effect from the date set out in the notification to the Service Provider.
			6. The State will not be obliged to agree to any variation to the SLA in this Agreement which is not to be made to all relevant Agreements, but may in its absolute discretion do so.
			7. A control file will be kept by the Executive Contract Manager of resolved and outstanding requests for variations to the SLA under this clause 5.
	1. Governance
		1. Roles and Responsibilities

Responsibility for the management of the SLA is detailed in the table below.

| **Entity** | **Responsibilities** |
| --- | --- |
| * + - 1. **Lead Department ‑ Department of Justice and Community Safety**
 | Responsible for the development, establishment and overall management of the Panel arrangements. Appoints the Contract Manager. |
| * + - 1. **Executive Contract Manager**
 | Overall oversight and responsibility for the Agreement, including:* make decisions on exemption requests referred to him or her under the Exemption Policy;
* determine variations and changes to Minimum Service Standards and KPIs (note any proposed changes to the terms and conditions of this Agreement or any other Agreement will be referred to the Legal Services Panel Governance Committee);
* exercise statutory and regulatory decision making;
* exercise the options for extension or termination of this Agreement or any other Agreement;
* remove or add Service Provider as Service Provider, extend or vary the services to be made available by the Service Provider on the Panel, in accordance with the terms of the Agreements; and
* determine whether to suspend or terminate a Service Provider’s membership on the Panel.
 |
| * + - 1. **Contract Manager**
 | Oversight and responsibility for overall category (Area) and contract management of the Panel arrangements including:* develop and implement a category management plan including communication strategy, transition, value for money and identify continuous improvement opportunities;
* oversee maintenance of the technological systems supporting the panel through data collection and analysis;
* monitor client satisfaction with Service Provider;
* monitor overall performance of Service Provider including audit and quality assurance processes and determination as to the composition of the Panel;
* review of performance of Service Provider against Minimum Service Standards and KPIs;
* create protocols and procedures for the Panel;
* manage and report on exemption requests by Clients;
* manage and report on conflict of interest notifications and coordinate decisions made by Agency Contract Managers in response to such notifications;
* benchmark performance and service delivery arrangements between Service Provider and the State;
* determine whether a proposed Pro Bono activity meets the definition of Pro Bono Service under the Agreement;
* monitor and report on Service Provider’ compliance with Pro Bono Obligations, Model Litigant and other policies, guidelines and work practices;
* monitor and report on Service Provider’ internal initiatives to promote diversity and work/life balance; and
* approve any application by an Agency to be added as a Client.
 |
| * + - 1. **Legal Services Panel Governance Committee (LSPGC)**
 | The LSPGC is responsible for:* periodic review of the outcomes from the Agreements from a whole of Government perspective;
* provision of policy and guidance on the legal requirements of Clients; and
* creation or variation of transaction (procurement) business rules.
 |
| * + - 1. **Agency Contract Manager**
 | Each Agency Contract Manager is to:* obtain regular reports as to legal services acquired by the Client;
* be the main point of contact with the Contract Manager and a conduit for communications to their Client;
* communicate operating arrangements for the Panel to contact users within their Client;
* implement and support value for money and continuous improvement initiatives;
* assist Client Personnel in framing requests for the provision of Services from Service Provider;
* identify operational legal issues and develop strategies, policies and interventions to address these issues;
* advise Client Personnel of the most appropriate Service Provider to provide the Services required;
* coordinate the completion of Client Satisfaction Surveys across the Agency, thereby providing timely and regular review of Service Provider’ performance against the SLA;
* provide reports and survey results on the resolution of any complaints resolved by the Agency Contract Manager on the management of costs; and
* provide reports and survey results on the resolution of any complaints regarding the Model Litigant Guidelines.
 |
| * + - 1. **Service Provider**
 | Compliance with provisions of this Agreement including the SLA. |
| * + - 1. **Client Agencies**
 | The role of Agencies requiring services under this Agreement is to:* ensure compliance with their obligations under the Agreement;
* appoint an Agency Contract Manager to manage the Agency's rights and obligations under this Agreement and be a conduit of information back to Agency Personnel;
* support the Agency Contract Manager in the conduct of his or her roles and responsibilities; and
* establish and maintain the necessary records systems to support the obligations of the State and the Agency under this Agreement and provide access to any records required by the Contract Manager.
 |

* + 1. Governance and Performance Management Meetings

| **Meeting** | **Agenda** | **Frequency**  |
| --- | --- | --- |
| * + - 1. **Legal Services Panel Governance Committee (LSPGC)**
 | * Discuss contractual management issues:
	+ Service Provider’ performance
	+ Panel effectiveness
	+ improvements to the Panel administration
	+ develop and review policies and guidelines affecting the Panel arrangements
* Review client satisfaction
* Consider changes of services that may impact on the SLA
* Review government’s requirements for legal services
* Review of Service Provider’ remedial action if applicable
* Consider and recommend termination or suspension of Service Provider from the Panel
 | Half‑yearly |
| * + - 1. **Contract Manager and Agency Contract Managers’ assessment of Service Provider’ performance**
 | Performance assessment reports based on responses to Client Satisfaction Survey | Annual |
| * + - 1. **Review of composition of Panel by Contract Manager and Agency Contract Managers**
 | * Performance reports against KPIs
* Consider, recommend and agree changes to composition of Panel
* Meet with Service Provider on a six‑monthly basis in a forum to discuss service needs and requirements and to exchange information about innovative pricing and services Service Provider are able to offer

*The Executive Contract Manager will, if required, determine changes to the Panel composition and size.* | Annual |
| * + - 1. **Contract Manager and Relationship Manager**
 | * Annual review of performance
* Put in place and report on any remedial action
* Discuss any changes to improve the administration of the Panel arrangements
 | Annual and as required |

* 1. Agency Contract Managers

| **Client Name** | **Manager Name** | **Legal Panel Role** | **Title** | **Telephone**  | **Email**  |
| --- | --- | --- | --- | --- | --- |
|  | [Confidential Section] |  |  |  |  |  |

**Attachment 1: Assurance of Compliance Report**

|  |  |
| --- | --- |
| Name of Service Provider |  |
| Name of Partner/Officer providing the assurance |  |
| Period covered by the assurance | From [*xxx*] to [*yyy*] |

**1. Conflicts of interest**

Please provide assurance that the Service Provider has complied with the disclosure of any conflicts of interest as required by clause 21 of the Agreement.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify conflict of interest and any client or matter potentially affected or affected] |
| Action taken to ensure compliance |  |

**2. Disclosure of Incidents or Probity Events**

Please provide assurance that the Service Provider has complied with the disclosure of any Incidents or Probity Events as required by clause 21 of the Agreement.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify incident and person who is the subject of incident] |
| Action taken to ensure compliance |  |

**3. Notification of non‑availability of Key Personnel**

Please provide assurance that the Service Provider has complied with the notification of the non‑availability of Key Personnel and provided a notice of replacement or addition as required by clause 10 of the Agreement.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify key personnel and circumstances of non‑availability] |
| Action taken to ensure compliance |  |

**4. Model Litigant Guidelines**

Please provide assurance that the Service Provider has complied with the Model Litigant Guidelines as required by clause 31.9(b) of the Agreement.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify client, matter and failure to comply] |
| Action taken to ensure compliance |  |

**5. Budget monitoring and reporting of costs**

Please provide assurance that where the Service Provider has complied with ongoing obligations with regards to Fee Proposals, scope of work provided, for Hourly Fee Proposals, have informed the Client no later than the time the legal costs accrued or incurred in respect of the Services reached 70% of that Hourly Fee Proposal amount as required by clause 6.5 of the Agreement.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify client, matter and failure to comply] |
| Action taken to ensure compliance |  |

**6. Compliance with Fair Jobs Code**

Please provide assurance that the Service Provider has complied with the Fair Jobs Code as required by clause 31.4 of the Agreement including the ongoing duty with regard to continuous disclosure with regard to Adverse Rulings and Enforceable Undertakings and notice with regard to reaching the FJC Plan Trigger.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify client, matter and failure to comply] |
| Action taken to ensure compliance |  |

**7. Compliance with Volume Discount obligations**

Please provide assurance that the Service Provider has complied with the obligations with regards to Volume Discounts as required by clause 8.1(b) of the Agreement including providing notice with regard to Volume Discount Threshold.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify client, matter and failure to comply] |
| Action taken to ensure compliance |  |

**8. Compliance with Data protection and Data Security Breach requirements**

Please provide assurance that the Service Provider has complied with the obligations with regards to Protective Data Security Standards and Data Security Breach requirements as set out in clause 29 of the Agreement.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |
| Non‑Compliance issues  | [Must specify client, matter and failure to comply] |
| Action taken to ensure compliance |  |
| In relation to ISO/IEC 27001 are the last supplied copies of the following still valid? * Certificate
* Statement of Applicability in relation to the implementation; and
* external auditors report in relation to the implementation
 | Yes | No |
| If no, please provide a new copy as an attachment to this Assurance of Compliance  |

**9. Insurance**

Please attach copies of insurance certificates for all insurances required to be maintained under the Agreement. These should include the relevant policy number, amount insured, policy start and end dates and number of the insurer.

|  |  |  |
| --- | --- | --- |
| Complied | Yes | No |

Signed

|  |  |  |
| --- | --- | --- |
| Name | Title | Date |

**Attachment 2: Exemption policy**

**EXEMPTION POLICY**

**Purpose**

1. The Legal Services Panel (**Panel**) contract is a State Purchase Contract that requires all departments and participating statutory agencies (**Clients**) to procure all legal services from the law firms appointed to the Panel (**Service Providers**). The policy seeks to balance the need for Clients to have their legal needs addressed and the integrity of the panel arrangements.
2. The Exemption Policy outlines the process and criteria for engaging a law firm that is either:
	1. not appointed to the Panel as a Service Provider; or
	2. not appointed to be a Service Provider for a particular Area of Law for which the services are required.

**Process**

1. Subject to the thresholds imposed in paragraph 10, all requests for an exemption must be made in writing to the relevant Agency Contract Manager, and must address the relevant criterion (**criteria**) as outlined in paragraphs 6 and 7 below. The Agency Contract Manager is responsible for assessing the merits of the exemption application against the below criteria, prior to providing a recommendation to the responsible delegate on the merits of the request.
2. Subject to the conditions imposed in paragraphs 10 to 12, the Agency Secretary/CEO or their nominee is the decision maker for approving exemption applications for their department or agency. A nominee must be either hold the role of Deputy Secretary (or equivalent) or the Chief Procurement Officer, and have the appropriate financial delegation to approve the exemption application.
3. If an exemption application is approved, the Agency Contract Manager must keep a record of the engagement, and report this information as part of the Panel’s quarterly reporting requirements.

**Criteria**

1. The Agency Contract Manager must ensure that the exemption application meets either one or more of the following criteria to qualify for an approved exemption:
	1. the Service Providers are all faced with a conflict of interest and unable to provide the Services;
	2. the Service Providers are all unable to provide the required Services;
	3. the Service Providers do not have the necessary expertise to provide the Services;
	4. the legal issue is such that it was not contemplated within the arrangements and no Service Provider has been appointed to provide such services;
	5. engaging a law firm identified in paragraphs 17 and 18 (supporting the engagement of regional and disadvantaged suppliers); and
	6. the Agency Contract Manager is satisfied that the Services required are more effectively and efficiently provided by a firm not on the Panel taking into account the circumstances of the legal issue and matter.
2. The Agency Contract Manager may also provide an exemption where there is a proposal to engage a business that is not a law firm to undertake work ancillary to existing legal requirements. Examples may include:
	1. workplace related investigations; or
	2. work undertaken by trade mark, copyright and patent agents or attorneys.
3. In making a case under paragraph 6(f), the requesting department/statutory agency must be satisfied that the Service Providers appointed to the relevant Area of Law do not have the expertise to adequately provide the required legal services. Noting that all Service Providers participated in a rigorous evaluation process and assessed as being technically capable to provide legal services within the Areas of Law for which they were appointed.
4. The unavailability of Key Personnel is not sufficient to satisfy the criteria, but may be taken into account under paragraph 6(f). Agency Contract Managers must be satisfied that the necessary expertise is not available from the Service Providers appointed to that Area of Law

**Conditions**

1. Applications for exemption must be made on a case‑by‑case basis. Where an ongoing exemption is required, the request must be made in writing to the Contract Manager to assess the eligibility of the application. Where the Contract Manager is satisfied with the merits of an ongoing exemption application, the request will be forwarded to the Executive Contract Manager for final determination.
2. Engagements under the exemption must not exceed $100,000 per annum for those Clients with total annual Legal Services Fees and Disbursements of less than $1m per annum, and $300,000 per annum for those Client's with Legal Services Fees and Disbursements of more than $1m per annum, based on the last financial year.
3. Where the Legal Services Fees and Disbursements will (or are likely to) exceed these thresholds, the application for exemption must be made in writing to the Executive Contract Manager through the Contract Manager.

**Requirements**

1. Engagement of Services from a non‑Service Provider under the exemption policy must reflect core procurement principles. Value for money determined on a whole of procurement basis remains the primary criterion in the selection of non‑panel firms. Normal procurement planning, tendering and contract management apply. This includes the Victorian Government Purchasing Board policies, procurement rules and thresholds.
2. Engagements under the exemption policy must comply with procurement requirements within the relevant department or agency.
3. The Panel contract (terms and conditions) and Legal Services Contract where applicable, is to be used for any engagement.
4. The non‑Panel firm must comply with the Pro Bono Obligations, Key Performance Indicators and Minimum Service Standards under the Panel contract. A Pro Bono Percentage 15% is the default Pro Bono Percentage to apply for the purposes of calculating the Pro Bono Service Amount and will only apply where the total amount of Legal Services Fees paid to the non‑Panel firm exceeds $100,000 per matter. This obligation must be met by the non‑Panel firm by 30 June after that financial year, and reported to the Contract Manager for assessment.

**Exceptions**

1. Clients are permitted to engage regional law firms without seeking an exemption if the following criteria are met:
	1. the total value of the matter is less than $50,000;
	2. the services are delivered outside the metropolitan area; and
	3. the regional provider offers the same or better value for money as Service Providers.
2. Clients are also permitted to engage other Victorian based law firms that are identified as either Aboriginal, or belonging to an under‑represented group for matters worth less than $50,000 without seeking an exemption. These suppliers must meet one of the following definitions to be eligible for engagement:
	1. an Aboriginal law firm, being at least 50% Aboriginal owned, and verified by Kinaway or Supply Nation as an Aboriginal business as defined in the Government’s Social Procurement Framework.
	2. an under‑represented legal supplier includes those groups that are identified as being either disadvantaged or supports women’s equality in the workforce (i.e. law firm owned solely by women).
1. Major Project is a project that is deemed to be complex, significant to the State, and would have legal fees valued over $500,000 in total. [↑](#footnote-ref-2)