**Model contract clauses for the Supplier Code of Conduct**

**DRAFTING NOTE:**

These model clauses are designed to be incorporated into existing Agreement templates used by government buyers.

When incorporating the clauses into an Agreement template, interactions with related clauses will need to be considered.

The clauses use generic language to minimise the need to align them with the language / terminology in the Agreement.

**Key steps:**

1. Ensure that the words or phrases used in the model clauses are consistent with the words or phrases used in the Agreement. For example, the words or phrases ‘Organisation’, ‘Agreement’, ‘Supplier’, ‘and ‘Term’ may need to be changed.
2. Ensure that the clauses are consistent with the clauses in the Agreement (i.e. to avoid any clauses being rendered inoperative by an order of precedence interpretation clause in the Agreement).
3. Update clause numbering as required, and check cross references.
4. Remove all drafting notes, square brackets and highlights from the model clauses.

**1 Supplier Code of Conduct Obligations**

**1.1 Code Compliance**

* + 1. The Supplier acknowledges that the Supplier Code of Conduct applies to the Agreement and undertakes that during the Term it will comply with the Supplier Code of Conduct, all applicable laws and regulations, and all obligations under this [clause ‎1]
    2. The Supplier must:
       1. establish all necessary policies and systems to monitor compliance by the Supplier with the Supplier Code of Conduct; and
       2. monitor its compliance with the Supplier Code of Conduct on a regular basis throughout the Term of the Agreement in accordance with the policies and systems established under paragraph ‎(b)‎(i).
    3. The Supplier must promptly provide any information requested by the Organisation related to:
       - 1. the compliance by the Supplier with the Supplier Code of Conduct; and
         2. any policies or systems established to monitor the compliance by the Supplier with the Supplier Code of Conduct.
    4. The Supplier must ensure that its Personnel engaged in the performance of the Agreement:
       1. comply with paragraphs ‎(a) and ‎(b)‎(ii) as though those requirements apply directly to them;
       2. provide to the Supplier, on request by the Organisation, a declaration of their compliance with the Supplier Code of Conduct, and with any policies or systems established to monitor the compliance by the Supplier with the Supplier Code of Conduct in the form required by the Organisation from time to time; and
       3. who have, or are suspected of having, breached the Supplier Code of Conduct do not remain engaged in the performance of the Agreement and return, or where directed by the Organisation, destroy all of the Organisation’s Confidential Information in their possession, custody or control.
    5. Where used in [clause ‎1], the term “**Compliance Event**” means a failure to comply with this [clause 1.1].

**1.2 Code Investigation**

* + 1. The Supplier agrees that:
       1. the Organisation may from time-to-time conduct an investigation into the character, integrity, honesty or other aspects of compliance with the Supplier Code of Conduct of the Supplier or any of its Personnel (“**Code Investigation**”), which may include:
          1. investigations into commercial structure and ownership, business and credit history, prior contract compliance or any criminal records or pending charges; and
          2. interviews of any person or research into any activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation; and
       2. if the Organisation requests in writing that the Supplier or a third party nominated by the Organisation must carry out the Code Investigation, the Supplier must carry out, or have carried out as requested, the investigation and provide a full report to the Organisation; and
       3. the Supplier must procure all relevant consent from people who will be the subject of a Code Investigation.

**1.3 Notice –Compliance Event**

* + 1. The Supplier must immediately notify the Organisation in writing on becoming aware that a Compliance Event has occurred or is likely to have occurred, describing the circumstances giving rise to the actual or likely occurrence of the Compliance Event, when it occurred or is likely to have occurred and any of the Supplier’s Personnel involved.
    2. Upon delivery of a notice under paragraph ‎(a) or if the Organisation otherwise becomes aware of a Compliance Event or likely Compliance Event, without prejudice to any other rights the Organisation may have in relation to the Compliance Event, then:
       1. the Supplier must take any action directed by the Organisation to remedy or otherwise address the Compliance Event;
       2. without limiting paragraph ‎(b)‎(i), the Organisation and the Supplier must meet within 5 Business Days and use reasonable endeavours to agree a course of action that will be taken by the Supplier to remedy the Compliance Event (including timing) and to ensure that it does not reoccur; and
       3. the Supplier must comply with any agreement made under paragraph ‎(b)‎(ii) and provide any reports or other information about the Supplier’s progress in implementing any agreement made under paragraph ‎(b)‎(ii) as may reasonably be requested by the Organisation from time to time.

**1.4 Additional rights of Organisation**

* + 1. The occurrence of a Compliance Event or a breach of [clause ‎1.3] will constitute a material breach of the Agreement, and the Organisation may, without prejudice to other remedies under the Agreement, in its sole and absolute discretion suspend or terminate the Agreement, immediately by written notice to the Supplier, upon receipt of which the Supplier must immediately cease all work under the Agreement.
    2. The Supplier acknowledges that a failure to comply with this [clause ‎1] may be considered by the Organisation and other Victorian Public Entities in any future approach to market or their respective procurement processes, and that such information may be shared with those Victorian Public Entities.
    3. The reasonable costs incurred by the Organisation in connection with this [clause ‎1] will be a debt due and payable by the Supplier to the Organisation on demand.
    4. The Supplier will comply with its obligations under this [clause ‎1] at its cost and without any additional charge to the Organisation.

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