

# PROVISION OF PROJECT SERVICES

## CONDITIONS OF CONTRACT

**Contents**

- 1. Definitions and interpretation ..... 1**
  - 1.1 Definitions ..... 1
  - 1.2 Interpretation ..... 17
  - 1.3 No liability for review..... 17
- 2. Entire agreement..... 18**
- 3. Resolution of ambiguities in or between parts of this Contract ..... 18**
- 4. No commitment to proceed..... 19**
  - 4.1 No commitment to proceed..... 19
  - 4.2 Other work..... 19
  - 4.3 No Exclusivity ..... 19
- 5. Works Orders ..... 20**
  - 5.1 Rates..... 20
  - 5.2 Acceptance of Works Orders..... 20
  - 5.3 Revisions to Works Orders ..... 22
- 6. Contract administration..... 23**
  - 6.1 Contract Administrator..... 23
  - 6.2 Review and comments ..... 24
  - 6.3 Performance Review ..... 24
- 7. Time for performance ..... 25**
  - 7.1 Commencement ..... 25
  - 7.2 Contract expiry and option to renew ..... 25
  - 7.3 Progress..... 26
  - 7.4 Programming..... 26
  - 7.5 Notice of matters impacting on the Project Services ..... 26
  - 7.6 Unilateral extensions ..... 27
  - 7.7 Suspension..... 27
  - 7.8 Co-location ..... 28
- 8. The Project Services..... 28**
  - 8.1 Performance of the Project Services ..... 28
  - 8.2 Non-complying Project Services ..... 29
- 9. Quality ..... 30**
- 10. Contractor's Methodology..... 31**
- 11. Compliance with Commonwealth funding conditions ..... 32**
- 12. Variations ..... 33**
- 13. Fees and expenses for Project Services ..... 36**
  - 13.1 Project Fee ..... 36
  - 13.2 Not used..... 36
- 14. Indexation of Rates..... 36**
- 15. Invoicing and payment ..... 37**
  - 15.1 Invoicing and payment..... 37
  - 15.2 Payment of workers and Subcontractors ..... 40
- 16. Contractor’s warranties ..... 41**
- 17. Records ..... 43**

17.1	Records maintained by the Contractor.....	43
17.2	Return of Contract Material.....	45
<b>18.</b>	<b>Key People and Resources .....</b>	<b>46</b>
18.1	Key People.....	46
<b>19.</b>	<b>Subcontracting.....</b>	<b>47</b>
19.1	Subcontracting .....	47
19.2	Subcontract novation.....	49
19.3	Amendments to Key Subcontracts.....	50
<b>20.</b>	<b>Other Service Providers .....</b>	<b>50</b>
<b>21.</b>	<b>Confidentiality .....</b>	<b>50</b>
<b>22.</b>	<b>Conflict of interest and exclusivity .....</b>	<b>54</b>
<b>23.</b>	<b>Waiver .....</b>	<b>55</b>
<b>24.</b>	<b>Intellectual Property and Moral Rights .....</b>	<b>55</b>
24.1	Warranty by Contractor .....	55
24.2	Licence to the State.....	56
24.3	Moral Rights .....	56
24.4	IP Indemnity .....	57
24.5	Data .....	58
<b>25.</b>	<b>Geological Materials .....</b>	<b>58</b>
<b>26.</b>	<b>Termination .....</b>	<b>59</b>
26.1	Immediate termination for Default.....	59
26.2	Termination following Default Notice .....	60
26.3	General termination terms .....	62
26.4	Wrongful termination .....	63
26.5	Termination for convenience .....	63
26.6	Carrying out Project Services by PSA.....	64
<b>27.</b>	<b>Nature of engagement .....</b>	<b>64</b>
<b>28.</b>	<b>Wages, allowances, taxes and statutory charges of Contractor Personnel .....</b>	<b>65</b>
<b>29.</b>	<b>Indemnity.....</b>	<b>65</b>
<b>30.</b>	<b>Insurance.....</b>	<b>66</b>
30.1	Professional indemnity insurance .....	66
30.2	Public and products liability insurance .....	67
30.3	Workers' compensation insurance.....	68
30.4	Motor vehicle insurance.....	68
30.5	Construction plant and equipment insurance .....	68
30.6	Reputable Insurer .....	68
30.7	Evidence of policies.....	69
<b>31.</b>	<b>Disputes .....</b>	<b>70</b>
31.1	Notice of a Dispute .....	70
31.2	Executive negotiation .....	70
31.3	Expert determination .....	71
31.4	The expert .....	71
31.5	Not arbitration.....	71
31.6	Procedure for determination .....	72
31.7	Disclosure of interest.....	72

31.8	Costs.....	72
31.9	Conclusion of expert determination .....	72
31.10	Agreement with expert.....	72
31.11	Determination of expert .....	73
31.12	Arbitration.....	73
31.12A	Proportional Liability .....	74
31.13	Performance during Dispute resolution.....	74
31.14	Interlocutory relief.....	75
<b>32.</b>	<b>Assignment .....</b>	<b>75</b>
<b>33.</b>	<b>Change in Control.....</b>	<b>75</b>
<b>34.</b>	<b>Employment policy .....</b>	<b>75</b>
<b>35.</b>	<b>Policies .....</b>	<b>76</b>
35.1	Privacy .....	76
35.2	Code of Conduct .....	76
35.3	Protective Data Standards.....	77
35.4	Non-conforming cladding.....	78
35.5	Shared Reporting Process.....	79
<b>36.</b>	<b>Local Jobs First Policy .....</b>	<b>80</b>
36.1	Local Industry Development Plan .....	80
36.2	Revised LIDP .....	80
36.3	Reporting.....	80
36.4	Verification of Contractor's compliance with LIDP .....	81
36.5	Use of information .....	82
36.6	Subcontracting .....	82
36.7	Local Jobs First Commissioner.....	83
<b>37.</b>	<b>Social Procurement Framework .....</b>	<b>83</b>
37.1	Social Procurement Compliance Plan.....	83
37.2	Reports.....	84
37.3	Verification of Contractor's compliance with Social Procurement Compliance Plan .....	85
37.4	Use of Information .....	86
<b>38.</b>	<b>Health and safety .....</b>	<b>86</b>
38.1	Contractor's general OHS obligations.....	86
38.2	OHS Personnel .....	88
38.3	Principal Contractor.....	89
38.4	Health and Safety Management Plan .....	90
38.5	OHS Audits.....	92
38.6	Health and Safety Management Plan Audit .....	93
38.7	Health and Safety Compliance Audits.....	94
38.8	New WHS Regulations .....	95
38.9	Safety accreditation and safety management system .....	95
38.10	Rail safety .....	96
<b>39.</b>	<b>Access .....</b>	<b>97</b>
<b>40.</b>	<b>Building Code .....</b>	<b>97</b>
<b>41.</b>	<b>Security of Payment .....</b>	<b>98</b>
<b>42.</b>	<b>Probity .....</b>	<b>101</b>
42.1	Probity Requirements.....	101
42.2	Probity Events .....	101

42.3	Probity Investigation .....	102
42.4	State costs of Probity Events and Probity Investigation .....	102
<b>43.</b>	<b>General .....</b>	<b>102</b>
43.1	Applicable Law .....	102
43.2	Surviving obligations.....	102
43.3	Service of documents .....	102
43.4	Severability.....	103
43.5	Amendment of Contract.....	103
43.6	Further steps .....	103
43.7	Counterparts.....	103
43.8	Attorneys .....	103
	<b>Annexure A – Contract Details .....</b>	<b>106</b>
	<b>Annexure B – Project Services Brief.....</b>	<b>109</b>
	<b>Annexure C – Rates and Fees .....</b>	<b>110</b>
	<b>Annexure D – Methodology .....</b>	<b>111</b>
	<b>Annexure E – Confidentiality Deed .....</b>	<b>112</b>
	<b>Annexure F – Expert Determination Agreement .....</b>	<b>117</b>
	<b>Annexure G – Outline Health and Safety Management Plan .....</b>	<b>123</b>
	<b>Annexure H – Access Arrangements.....</b>	<b>124</b>
	<b>Annexure I Moral Rights Consent .....</b>	<b>125</b>
	<b>Annexure J Local Jobs First Policy .....</b>	<b>128</b>
	<b>Annexure K Social Procurement Compliance Plan.....</b>	<b>3</b>
	<b>Annexure L Form of Works Order .....</b>	<b>4</b>
	<b>Annexure M –Subcontractor Statutory Declaration .....</b>	<b>1</b>
	<b>Annexure N – Minimum Conditions – Underground Services.....</b>	<b>3</b>

Deed made at

on

**Parties**

The State of Victoria through the **[Insert the relevant MTIA Project]** (a division of the Major Transport Infrastructure Authority, an administrative office in relation to the Department of Transport) ABN 69 981 208 782 of **[Insert the address of the relevant MTIA Project]** (PSA)

**[Insert name of contractor]** ABN **[Insert ABN]** of **[Insert Address]** (Contractor)

**Recitals**

- A. The Victorian Government is developing **[insert brief description of the Project]** (**[Insert name of Project]** Project or the Project).
- B. PSA requires the provision of planning, engineering and engagement services for the Project.
- C. The Contractor has offered to supply the Project Services.
- D. PSA and the Contractor have each agreed that the Contractor will provide the Project Services upon the terms and conditions contained in this Contract.

**Operative provisions**

---

**1. Definitions and interpretation**

**1.1 Definitions**

In this Contract, unless the context otherwise requires:

**Access Arrangements** means such arrangements required, from time to time, by an Access Provider in order to obtain access to land for the purpose of carrying out the Project Services, as set out in Annexure H as at the date of this Contract;

**Access Providers** means any third party which provides access to land for the purpose of the Contractor performing the Project Services, including:

- (a) Victorian Rail Track ABN 55 047 316 805 established in accordance with section 116 of the *Transport Integration Act 2010* (Vic), in its capacity as the owner of rail land and infrastructure;
- (b) V/Line Pty Ltd ABN 29 087 425 369 a wholly owned subsidiary of V/Line Corporation, a corporation established in accordance with section 128 of the *Transport Integration Act 2010* (Vic) and declared a not-for-profit corporation under the *State Owned Enterprises Act 1992* (Vic), in its capacity as the operator of the regional passenger railway network of Victoria;

- (c) Metro Trains Melbourne Pty Ltd ABN 43 136 429 948, in its capacity as the franchise operator of the suburban passenger railway network of Melbourne;
- (d) Australian Rail Track Corporation Ltd ABN 75 081 455 754, a corporation established under the *Corporations Act 2001 (Cth)* in which the sole shareholder is the Commonwealth Government, in its capacity as the operator and manager of the Australian interstate rail network; and
- (e) KDR Victoria Pty Ltd (trading as Yarra Trams) ABN 42 138 066 074, in its capacity as the franchise operator of the suburban tram network of Melbourne;

**Agreed Health and Safety Management Plan** means the Health and Safety Management Plan agreed in accordance with clause 38.4(e);

**Apprentice** means a person whom an employer has undertaken to train under a Training Contract;

**Authority** means any government or any governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;

**Building Code** means the *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016 (Cth)*;

**Business Day** means a day that is not a Saturday, Sunday or a public holiday appointed under the *Public Holidays Act 1993 (Vic)* including any day appointed by the Minister under section 7(1)(a) of the *Public Holidays Act 1993 (Vic)* applicable to the Melbourne metropolitan area;

**Cadets** means those persons enrolled in a recognised tertiary level organisation and who receive structured learning opportunities as part of their engagement to a Local Jobs First project (e.g. cadets in architecture, quantity surveying, or engineering) but which is not under a Training Contract;

**Casual Staff** means an employee engaged as such who is paid a casual loading for each hour worked in lieu of entitlements including annual leave, personal leave, notice of termination and redundancy benefits;

**Change in Control** means, in relation to the Contractor, where:

- (a) a body corporate or entity that Controls the Contractor ceases to directly or indirectly have Control of the Contractor; or
- (b) a body corporate or entity that does not Control the Contractor at the Commencement Date, either alone or together with others, comes to directly or indirectly have Control of the Contractor;

**Claim** includes any claim proceeding, action, demand or suit (including by way of contribution or indemnity) at Law or in equity including for payment of

money (including damages) or for an extension of time, including by statute (to the extent permitted by Law), in tort for negligence or otherwise, including negligent misrepresentation or for strict liability or for restitution;

**Code of Conduct** means the Code of Conduct for Victorian Public Sector Employees 2015 (as amended from time to time) issued by the Victorian Public Sector Commissioner pursuant to section 61 of the *Public Administration Act 2004* (Vic);

**Code of Practice** means a code of practice as defined in, and approved under, the *Privacy and Data Protection Act 2014* (Vic) or the *Health Records Act 2001* (Vic) (as applicable);

**Commencement Date** means the date identified in the Contract Details;

**Commonwealth Government** means the Commonwealth of Australia;

**Completion** means:

- (a) completion of the Project Services as defined in the Contract;
- (b) if not defined in this Contract, it means when the Contractor has completed the delivery of the goods and/or services to be provided under this Contract (excluding administrative or regulatory obligations remaining to be fulfilled); or
- (c) in any case, such other reporting dates for the purposes of clause 36.3(d), as notified by PSA;

**Conditions of Contract** means these conditions of contract but does not include the Annexures attached;

**Confidential Information** means all Information which is either directly or indirectly disclosed, provided or made available by or on behalf of PSA to the Contractor, Contractor Personnel or Subcontractors or acquired by the Contractor, Contractor Personnel or Subcontractors from PSA, the Contract Administrator, a Government Party, or the State (whether orally, electronically, in writing or by any other means) in connection with the Project Services or the Project, whether before or after the execution of this Contract and includes information pertaining to or connected in any way with the Project Services, including:

- (a) Information about PSA or those involved in PSA's activities;
- (b) Information relating to the internal management and structure of PSA, the Department or the State;
- (c) Information concerning documentation, systems, technology and affairs, operations, processes, plans or inventions and product information (whether customers, suppliers or otherwise);
- (d) financial, technological, strategic or business information, concepts, plans, strategies, directions or systems;
- (e) research, development, operational, legal, marketing or accounting information, concepts, plans, strategies, directions or systems;



- (f) technology, source and object codes for computer software;
- (g) Information comprised in or relating to any Intellectual Property Rights of PSA, the State, or third parties to whom PSA owes a legal obligation; and
- (h) know-how relating to computer software, financial techniques and products of PSA,

including all other Information provided by or on behalf of PSA or otherwise being disclosed to or coming to the attention of the Contractor, Contractor Personnel or Subcontractors (or any employee, officer, agent or contractor of Subcontractors), before, in the course of, or otherwise in connection with the Project Services;

**Confidentiality Deed** means the deed in the form of Annexure E;

**Construction** includes “Works” and “Construction Services” as defined in the *Ministerial Directions for Public Construction Procurement in Victoria*;

**Contract** means the contractual relationship between the Parties constituted by the Conditions of Contract and the documents listed in the Contract Details;

**Contract Administrator** means the person nominated in the Contract Details or any other person appointed by PSA as the Contract Administrator and notified to the Contractor under clause 6.1(d);

**Contract Details** means the contract details set out in Annexure A;

**Contract Material** is all material provided or brought or required to be brought into existence by the Contractor, Contractor Personnel and Subcontractors or given to the Contractor, whether before or after the Commencement Date, as part of, or for the purpose of, performing the Project Services including Management Plans, Methodology, Geological Materials, documents, reports, all correspondence (including correspondence with any specialist advisory group established by PSA for the Project, stakeholders, community groups and any other relevant party), minutes of meetings, technical information, plans, charts, drawings, calculations, tables, schedules and Data (stored by any means);

**Contract Review Date** means the date which is 20 Business Days prior to each of the following dates (or such other date as may be agreed, in writing, by the Parties):

- (a) [two (2)] years after the Commencement Date;
- (b) [four (4)] years after the Commencement Date;
- (c) where PSA exercises its first option to renew under clause 7.2(b)(i), [six (6)] years after the Commencement Date; and PSA exercises its second option to renew under clause 7.2(b)(ii), [eight (8)] years after the Commencement Date;

**Contract Staff** means a person engaged under a contract for services rather than a contract of service or employment contract;

**Contractor** means the person so named in the description of the Parties at the Commencement Date;

**Contractor Personnel** means all employees, servants, officers, directors and agents of the Contractor employed or engaged in connection with the Project Services and includes Key People and Personnel;

**Contractor's Program** means a program for the delivery of the Project Services in respect of a Works Order which complies with the requirements of clause 7.4(a) and as updated in accordance with clause 7.4(b)(i);

**Contractor's Representative** means the person appointed by the Contractor to represent the Contractor for the purposes of this Contract and so identified in the Contract Details or such person as may subsequently be appointed by the Contractor and approved by PSA (acting reasonably) in writing;

**Control** has the meaning given to that term in section 50AA of the *Corporations Act 2001* (Cth);

**Data** means any data, datasets or databases containing information in a raw or pre-interpreted form, typically comprised of numbers or words or in electronic form, that does not contain an explicit narrative created by or on behalf of the Contractor in the course of providing the Project Services, including those specified in a Works Order (if any) but excluding:

- (a) the Contractor's internal working documents; and
- (b) any and all Intellectual Property Rights in any works, items or systems created by or the property of or licensed to the Contractor or PSA prior to the Commencement Date;

**Default** has the meaning given in clause 26.2(a);

**Default Notice** has the meaning given in clause 26.2(b);

**Department or DoT** means the Department of Transport;

**Dispute** means any dispute or difference between PSA and the Contractor which relates to, or arises in connection with this Contract or any of the Contractor's obligations under this Contract;

**Dispute Notice** has the meaning given in clause 31.1;

**Executive Negotiators** means the persons listed in the Contract Details, or any person nominated by the relevant Party to replace that person from time to time by notice in writing to the other Party;

**Fee** means the amount payable for the performance of the Project Services in accordance with Annexure C or clause 5;

**Foreground IP** means all Intellectual Property in all Information and material created under or in connection with the performance of this Contract;

**Full-Time Staff** means an employee who is engaged to work an average of forty (40) ordinary hours per week or any other amount specified by a contract of employment or agreement for a full time employee;

**Geological Materials** means any and all:

- (a) materials or samples extracted from the land for the purposes of or in connection with carrying out the Project Services or for any purpose reasonably necessary or incidental thereto, including any drill core, drill cuttings and associated materials; and
- (b) to the extent that they comprise Data, geological, geophysical, geotechnical and environmental information, reports, maps, images, recordings or survey results;

**Geological Survey of Victoria** means Geological Survey of Victoria a unit within the Resources Branch, Department of Jobs, Precincts and Regions;

**Government Party** means any of PSA and any other governmental, semi-governmental or local government Authority, the State, Minister, statutory corporation, instrumentality or government-owned corporation;

**GST** means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

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

**GST Law** means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;

**Guidelines** means Local Jobs First Supplier Guidelines, available at [www.localjobsfirst.vic.gov.au](http://www.localjobsfirst.vic.gov.au);

**Health and Safety Auditor** means an auditor engaged by the Contractor to perform the Health and Safety Management Plan Audits and/or the Health and Safety Compliance Audits in accordance with clause 38.5;

**Health and Safety Compliance Audits** has the meaning given in clause 38.5(a)(ii);

**Health and Safety Management Plan** or **HSMP** means the plan prepared and amended by the Contractor in accordance with clause 38.4;

**Health and Safety Management Plan Audit** has the meaning given in clause 38.5(a)(i);

**Health Information** has the meaning set out in section 3 of the *Health Records Act 2001* (Vic).

**Holding Company** has the meaning given in section 9 of the *Corporations Act 2001* (Cth);

**ICN Analytics** is a cloud based secure online platform that enables the collection, analysis and reporting of Local Content and jobs data, including supply chain monitoring and reporting;

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

**Indemnified Parties** means the State, PSA, the Contract Administrator and employees, officers, agents, and individual contracted personnel employed or engaged by PSA in connection with the Project Services;

**Information** includes information or data, whether:

- (a) written, graphical, electronic, oral or in any other form, irrespective of the form in which it was originally provided;
- (b) provided in writing, graphically, electronically, orally or in any other way; or
- (c) denoted as Confidential Information or not,

and for the avoidance of doubt includes all Contract Material;

**Insolvency Event** means any of the following:

- (a) the Contractor becomes, is declared to be, is taken under any applicable Law (including the *Corporations Act 2001* (Cth)) to be, admits to or informs PSA in writing or its creditors generally that the Contractor is insolvent, is insolvent under administration, bankrupt, unable to pay its debts or is unable to proceed with this Contract for financial reasons;
- (b) execution is levied against the Contractor by a creditor;
- (c) where the Contractor is an individual person or a partnership including an individual person, the Contractor:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the *Bankruptcy Act* (Cth);
- (d) where the Contractor is a corporation, any one of the following:
  - (i) the Contractor stops or suspends payment of all or a class of its debts;

- (ii) fails to comply with a statutory demand within the meaning of section 459F(1) of the *Corporations Act 2001* (Cth);
  - (iii) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
  - (iv) the corporation enters or resolves to enter a deed of company arrangement with its creditors generally, or any class of its creditors;
  - (v) a liquidator, controller, administrator or similar officer is appointed to the corporation;
  - (vi) an application is made to a court for the administration, dissolution or winding up of the corporation and not stayed within ten (10) Business Days;
  - (vii) an order is made for the administration, dissolution or winding up of the corporation;
  - (viii) the shareholders or directors of the corporation attempt to pass or pass a resolution which has as an object of the administration, dissolution or winding-up of the corporation (other than for a members' voluntary winding-up); or
  - (ix) the corporation goes into voluntary liquidation;
- (e) a mortgagee takes possession, or appoints an agent to take possession, of any property or assets of the Contractor; or
  - (f) any act is done or an event occurs under the laws from time to time of a country having jurisdiction in relation to the Contractor which has an analogous or similar effect to any of the events described in paragraphs (a) to (e) above;

**Intellectual Property** includes all proprietary rights in relation to Information including copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks (including service marks), registered and unregistered designs, Confidential Information (including trade secrets, know-how, Data, formulae, expertise, methodology, drawings, specifications, technology, processes of knowledge, discoveries and inventions) and circuit layouts, business names and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

**Intellectual Property Right** means any patent, registered design, trademark or name, copyright or other protected right;

**Key People** means those people:

- (a) listed in the Contract Details; or

- (b) that are determined by PSA to be a key person by the giving of written notice to the Contractor;

**Key Subcontract** means each contract entered into between the Contractor and a Key Subcontractor;

**Key Subcontractor** means a Subcontractor listed in the Contract Details or determined by PSA to be a Key Subcontractor under clause 19.1(c);

**Kinaway** means Kinaway Chamber of Commerce Victoria Limited (ABN 43 600 066 199).

**Law** means:

- (a) Commonwealth, Victorian or local government legislation, including statutes ordinances, instruments, codes (but excluding any building codes or Australian Standards), requirements, regulations, by-laws and other subordinate legislation;
- (b) common law; and
- (c) principles of equity;

**LIDP** means the plan of that name included in Attachment 1 of Annexure J, as may be updated from time to time in accordance with clause 36.2;

**LIDP Commitments** means the commitment that the Project Services are performed using at least [*insert Local Content percentage for the Project*] Local Content;

**LIDP Monitoring Table** means the table included at Attachment 2 to Annexure J;

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

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

**Local Jobs First Policy** or **LJF Policy** means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003* (Vic);

**Management Plans** means the plans (if any) to be prepared by the Contractor as identified in the Project Services Brief;

**Map for Impact** means the online map produced by the Victorian Social Enterprise Mapping Project (accessible at <https://mapforimpact.com.au/>), as amended from time to time;

**Material Form** in relation to Confidential Information includes any form (whether visible or not) of storage from which information can be reproduced and any form in which information is embodied or encoded;

**Methodology** means the methodology in respect of a Works Order, as amended from time to time in accordance with clause 10(a)(iii);

**[Minimum Conditions – Underground Services** means PSA’s Minimum Conditions – Underground Services as set out in Annexure N and amended and notified by PSA to the Contractor from time to time;]

**Minister** means a Minister of the Government of Victoria;

**Moral Rights** means moral rights granted to authors under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws;

**Moral Rights Consent** has the meaning given in clause 24.3;

**New WHS Regulations** means any work health and safety regulations replacing or amending the *Occupational Health and Safety Regulations 2017* (Vic) in line with the model Work Health and Safety Regulations as endorsed by the Workplace Relations Ministerial Council (Cth) in December 2009;

**Notice** means a notice given, delivered or served in accordance with this Contract;

**OHS** means occupational health and safety;

**OHS Legislation** means all Laws in connection with OHS, dangerous goods and electricity safety legislation and regulations made thereunder (including the *Occupational Health and Safety Act 2004* (Vic), the OHS Regulations and all other regulations made under the *Occupational Health and Safety Act 2004* (Vic) the *Work Health and Safety Act 2011* (Cth) (if applicable), the Rail Safety National Law, the Heavy Vehicle National Law, the *Dangerous Goods Act 1985* (Vic), the *Electricity Safety Act 1998* (Vic)), any directions on safety or notices issued by PSA and/or any relevant Authority or any code of practice or compliance code which may be relevant to the Project Services;

**OHS Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic);

**Other Service Provider** means any contractor, consultant, tradesperson or other person engaged directly by PSA to perform works or services relating to the Project other than the Contractor;

**Other Services** means the services procured or to be procured by Other Service Providers;

**Other State Project** includes:

- (a) any project or stage of a project delivered by or on behalf of the State, including PSA or any other "department" or "public body" (each as defined in section 3 of the *Project Development and Construction Management Act 1994* (Vic)) or any other public body (including an administrative office);
- (b) any project or stage of a project funded, whether directly or indirectly or in whole or in part, by the State and which PSA notifies the Contractor in writing is an Other State Project for the purposes of this Contract; or

- (c) without limiting paragraphs (a) or (b), any prospective, planned or actual project or stage of a project which is the subject of any project services performed or to be performed by the Contractor under a project services contract or similar contract with a Government Party;

**Part-Time Staff** means an employee who is engaged to work fewer than Full-Time Staff ordinary hours;

**Parties** means PSA and the Contractor and **Party** means either one of them as the context requires;

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

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

**Personnel** means the Full-Time Staff, Part-Time Staff, Casual Staff, Contract Staff or Temporary Staff or any other person employed or engaged by the Contractor to perform the roles identified in Annexure C or as approved by PSA, in writing, from time to time;

**Previous Disclosure** means a disclosure relating to a conflict of interest made by the Contractor in its Proposal;

**Principal Contractor** has the meaning given in the OHS Legislation;

**Privacy Principles** means the:

- (a) "information privacy principles" so identified and set out in the *Privacy and Data Protection Act 2014* (Vic); and
- (b) "health privacy principles" so identified and set out in the *Health Records Act 2001* (Vic),

as applicable;

**Probity Event** includes any event or thing which occurs before or after the Commencement Date and which:

- (a) has or may have a material adverse effect on, or on the perception of, the character, integrity or honesty of the Contractor;
- (b) relates to the Contractor and has or may have a material adverse effect on the public interest, or public confidence, in the Project;  
or
- (c) without limiting paragraphs (a) and (b), involves a material failure of the Contractor to achieve or maintain:
  - (i) reasonable standards of ethical behaviour;



- (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the Contractor to carry out and observe its obligations in connection with the Project; or
- (iii) other standards of conduct that would otherwise be expected of a party involved in a State government project;

**Probity Investigation** means any probity or criminal investigations to report on the character, integrity or honesty of a person or entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation;

**Project** has the meaning given in background recital A;

**Project Fee** means the amount payable for the performance of the Project Services in accordance with this Contract;

**Project Services** means:

- (a) subject to clause 4, the services described in, or reasonably to be inferred from, the Project Services Brief, as adjusted in accordance with this Contract;
- (b) any services described in a Works Order issued or amended in accordance with clause 5;
- (c) all other obligations the Contractor must fulfil in order to comply with this Contract; and
- (d) without limiting paragraph (a), (b) or (c), all other things and tasks, not described in this Contract, if those things and tasks should have been reasonably anticipated by an experienced and competent professional provider of services of a similar nature or scope of the services described in the Project Services Brief as being necessary for the performance of the services described in the Project Services Brief or which are otherwise capable of inference from this Contract;

**Project Services Brief** means the brief for the Project Services set out in Annexure B;

**Proposal** means the proposal submitted by the Contractor in response to the Request for Proposal;

**Public Audit** means any audit, investigation or enquiry conducted by a Public Auditor or pursuant to any Public Audit Legislation;

**Public Audit Legislation** means section 94A of the *Constitution Act 1975* (Vic) and the *Audit Act 1994* (Vic) or any other applicable legislation;

**Public Auditor** means any auditor or officer appointed under any Public Audit Legislation or any authorised nominee or representative of such auditor or officer;

**Public Disclosure** means all disclosures, announcements and statements (including study newsletters, fact sheets, media releases, branding, information displays and other information) to be publicly released;

**Public Disclosure Requirements** means the disclosure of information in relation to the Contract, the Proposal or the Project Services where that disclosure is required by the *Freedom of Information Act 1982* (Vic), is mandatory by reason of PSA being a public entity, where disclosure is prudent or desirable in order to facilitate and support transparent open governance, or where a Minister of the State (or a representative of a Minister of the State) is required to or considers it prudent or desirable to disclose the information;

**Public Sector Data Incident** means any actual or potential:

- (a) collection, holding, management, use, disclosure or transfer of Public Sector Data not authorised by this Contract;
- (b) breach of clause 35.3;
- (c) request, complaint or enquiry made by the Commissioner for Privacy and Data Protection or any other regulatory authority in relation to collection, holding, management, use, disclosure or transfer of Public Sector Data under or in connection with this Contract; or
- (d) requirement of Law which conflicts with the Contractor's obligations under clause 35.3;

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

**Rail Safety National Law** means the *Rail Safety National Law Application Act 2013* (Vic), the *Rail Safety National Law National Regulations 2012* (Vic), *Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014* (Vic) and the *Rail Safety (Local Operations) Act 2006* (Vic);

**Rail Transport Operator** means a rail infrastructure manager, a rolling stock operator or a person who is both a rail infrastructure manager and a rolling stock operator, as defined under the *Rail Safety Act 2006* (Vic) or the Rail Safety National Law;

**Railway Land** means any land where rights of access are required to be obtained by the Contractor from an Access Provider;

**Rates** means the Contractor's rates set out in Annexure C which will be used for the purposes of:

- (a) calculating the Fee in accordance with clause 13;
- (b) calculating the value of a Variation under clause 12; and
- (c) adjusting the Fee in accordance with clause 15,

unless otherwise agreed in a Works Order (including in respect of the use of resources located outside of Australia);

**Rates and Fees** means the rates and fees set out in Annexure C;

**Request for Proposal** means the request for proposals to perform the Project Services, issued by PSA on or about **[insert date]**, as amended or supplemented from time to time;

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

**Risk Assessment** has the meaning given in clause 38.1(d)(i);

**Shared Reporting Contract** has the meaning given in clause 35.5(a).

**Shared Reporting Information** has the meaning given in clause 35.5(b). This definition applies if the Contract is a Shared Reporting Contract.

**Shared Reporting Process** has the meaning given in clause 35.5(b). This definition applies if the Contract is a Shared Reporting Contract;

**Social Benefit Supplier** means a business that operates and has business premises in Victoria and meets one or more of the following criteria:

- (a) it is a Social Enterprise;
- (b) it provides "supported employment services" as defined in section 7 of the *Disability Services Act 1986* (Cth); or
- (c) it is verified by Supply Nation, Kinaway and/or Small Business Victoria (in consultation with Kinaway) to meet the definition of "Victorian Aboriginal business" under the Social Procurement Framework;

**Social Enterprise** means an organisation that is certified by Social Traders or listed on the Map for Impact;

**Social or Sustainable Outcome** means an outcome listed in Tables 1 and 2 of the Social Procurement Framework;

**Social Procurement Commitment** means a commitment to deliver a Social or Sustainable Outcome through an individual procurement activity, as identified in the Social Procurement Compliance Plan;

**Social Procurement Compliance Plan** means the plan included at Annexure K to this Contract which sets out:

- (a) the relevant Social Procurement Commitments;

- (b) how the Contractor will achieve those Social Procurement Commitments; and
- (c) the Contractor's approach to reporting on and verifying compliance with Social Procurement Commitments;

**Social Procurement Framework** means 'Victoria's Social Procurement Framework' published 26 April 2018 by the Victorian Government, as amended from time to time;

**Social Procurement Information Schedule** means a template, checklist, declaration (or equivalent) or other document in respect of the Social Procurement Framework, provided by the Contractor with a Works Order;

**Social Procurement Performance Report** means a report submitted by a Contractor to the Contract Manager of the Department/PSA, which details the Contractor's performance against the Social Procurement Commitments made within the Contractor's Social Procurement Compliance Plan;

**Social Traders** means Social Traders Limited (ABN 132 665 804);

**SoP Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic);

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

**State Functions** includes any power, discretion, authority or duty of the State or PSA, the State or any other "department" or "public body" (each as defined in section 3 of the *Project Development and Construction Management Act 1994* (Vic)) or any other public body (including an administrative office);

**Subcontract** means a contract which is entered into by the Contractor with a Subcontractor to perform any part of the Project Services, including Key Subcontracts;

**Subcontractor** means any person (including a consultant, subcontractor or supplier) engaged by the Contractor under clause 19, or otherwise in accordance with this Contract, to perform any part of the Project Services and includes Key Subcontractors;

**Tax Invoice** has the same meaning as in the GST Act;

**Temporary Staff** means an employee engaged as such for a specified period of time or for a specified task;

**Term** means the term of this Contract from the Commencement Date to the earliest to occur of:

- (a) where PSA does not exercise its first option to renew under clause 7.2(b)(i), [six (6)] years from the Commencement Date;
- (b) where PSA exercises its first option to renew under clause 7.2(b)(i), [eight (8)] years from the Commencement Date;

- (c) where PSA exercises its second option to renew under clause 7.2(b)(ii), [ten (10)] years from the Commencement Date; and
- (d) [insert expiry date]; and
- (e) the date of termination of this Contract under clause 26;

**Total Fixed Remuneration or TFR** means the full time equivalent salary or contract amount payable to each of the Personnel by their employer which for:

- (a) Full-Time Staff and Part-Time Staff, is exclusive of any employment on cost, allowance or accrual;
- (b) Casual Staff, is exclusive of any employment on cost, allowance or accrual other than the applicable casual loading for annual leave, personal leave, notice of termination and redundancy benefits;
- (c) Contract Staff, is the cost or rate as set out in the applicable contract for services and exclusive of any other on cost, allowance or accrual; and
- (d) Temporary Staff, is exclusive of any employment on cost, allowance or accrual,

on the basis stated in the applicable letter of engagement or agreement, as validated by a financial auditor appointed by PSA;

**Trainee** means a person (other than an Apprentice) employed under a Training Contract;

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

**Variation** means a change to the Project Services directed by the Contract Administrator pursuant to clause 12, including any addition, increase, decrease, omission, deletion or removal to or from the Project Services (including in respect of any works that, after the Commencement Date, PSA becomes responsible for delivering);

**Variation Notice** has the meaning given in clause 12(a)(ii);

**VPDSS** means any standards issued by the Commissioner for Privacy and Data Protection in accordance with section 86 of the PDP Act.

**Wage Price Index** means the Australian Bureau of Statistics Catalogue 6345.0 (Wage Price Index), Table 5a, Private – Professional, Scientific and Technical Services;

**Variation Proposal** has the meaning given in clause 12(a)(i);

**Works Order** means a document in or substantially in the form of Annexure L, confirming the Project Services to be performed by the Contractor;

**Works Order Effective Date** has the meaning in clause 5.2(j); and

**Works Order Modification Request** has the meaning given to that term in clause 5.3(a)(i).

## **1.2 Interpretation**

- (a) A recital, schedule, annexure or a description of the Parties forms part of this Contract.
- (b) In this Contract, unless a contrary intention appears, words importing a gender include any other gender and words in the singular include the plural and vice versa.
- (c) In this Contract, unless a contrary intention appears, a reference to:
  - (i) "dollars" or "\$" is a reference to the lawful currency of Australia;
  - (ii) any legislation includes any Act of Parliament and any subordinate legislation, rule, regulation, order or instrument made under it and includes any statutory modification, substitution or re-enactment of that legislation;
  - (iii) an individual or person includes a corporation, partnership, joint venture, association, governments, local government Authorities and agencies;
  - (iv) a recital, clause, Schedule or Annexure is a reference to a recital, clause, schedule or annexure to this Contract; and
  - (v) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns.
- (d) "Includes" or "including" will be read as if followed by the phrase "(without limitation)".
- (e) Clause headings in this Contract are for convenience of reference only and have no effect in limiting or extending the language of the provisions to which they refer.
- (f) In this Contract, if a word is defined, cognate words and phrases have corresponding definitions.
- (g) If a Party to this Contract consists of more than one (1) person those persons are jointly and severally bound under this Contract.

## **1.3 No liability for review**

No:

- (a) review of, comments upon, acceptance, approval or certification of any Contract Material by (or on behalf of) PSA;

- (b) inspection or review of the Project Services by (or on behalf of) PSA; or
  - (c) failure by (or on behalf of) PSA, to detect any non-compliance by the Contractor with its obligations in accordance with this Contract or any Laws,
- will:
- (d) relieve the Contractor from, or alter or affect, its liabilities, obligations or responsibilities whether in accordance with this Contract or otherwise according to Law;
  - (e) prejudice PSA's rights against the Contractor whether under this Contract or otherwise according to Law; or
  - (f) constitute an approval by PSA of the Contractor's performance of its obligations in accordance with this Contract.

---

## **2. Entire agreement**

- (a) This Contract constitutes the entire agreement between PSA and the Contractor in relation to the Project Services and supersedes all tendered offers and Proposals and prior representations, communications, agreements, statements and understandings, whether oral or in writing.
- (b) PSA and the Contractor each declare that there are no extraneous agreements, representations or undertakings either express or implied or collateral, which affect this Contract.

---

## **3. Resolution of ambiguities in or between parts of this Contract**

If there is any ambiguity, discrepancy or inconsistency in or between the documents which make up this Contract that ambiguity, discrepancy or inconsistency must be resolved having regard to the following:

- (a) to the extent that any part of the various documents comprising this Contract imposes a greater or higher requirement, standard, quality, level of service, quantum or scope than any other part of the various documents comprising this Contract, in which case, except and subject to where the context otherwise expressly requires, that greater or higher requirement, standard, quality, level of service, quantity or scope will prevail; and
- (b) if clause 3(a) does not resolve the ambiguity, discrepancy or inconsistency, the order of precedence (in descending order of precedence) stated in the Contract Details will apply.

---

## **4. No commitment to proceed**

### **4.1 No commitment to proceed**

The Parties acknowledge and agree that:

- (a) PSA may issue Works Orders in its sole discretion to confirm the portion(s) of the Project Services required to be performed by the Contractor in accordance with this Contract from time to time; and
- (b) the Project or any part of the Project or the Project Services:
  - (i) subject to clause 5.2(b), may not proceed at all; and
  - (ii) without limiting clauses 4.1(a) and 4.1(b)(i), may proceed in a different form, at different times or sequences and otherwise in a form that varies from that set out in the Project Services Brief.

### **4.2 Other work**

Without limiting clause 12, PSA may (at its sole discretion) at any time prior to the end of the Term extend the scope of services to be provided under this Contract to include providing the Project Services:

- (a) in respect of any other works that PSA becomes responsible for delivering; or
- (b) to any Government Party responsible for delivering any aspect of the Project (including any State projects that interface with the Project).

### **4.3 No Exclusivity**

The Contractor acknowledges and agrees that:

- (a) it may not be the exclusive provider of the Project Services or any work or services the same as or similar to the Project Services, to PSA;
- (b) without limiting the Contractor's obligations under this Contract, it must not accept any other engagement to provide services (whether of a similar nature to the Project Services or otherwise) in respect of the Project without obtaining the prior consent of PSA (which may be subject to conditions); and
- (c) nothing in this Contract obliges PSA to:
  - (i) require the Contractor perform any Project Services; or
  - (ii) issue or accept any Works Order; and
  - (iii) nothing in this Contract confers on the Contractor any right to be a sole or exclusive supplier of any work or services in respect of any Project Services.



---

## **5. Works Orders**

### **5.1 Rates**

- (a) The Rates are the maximum rates which the Contractor may charge PSA for the provision of the Project Services.
- (b) Subject to any change (including indexation) in the Rates for the Project Services resulting from the application of any express provision of this Contract, the Rates are fixed for the Term.
- (c) Nothing in this Contract prevents the Contractor from charging PSA less than the Rates with respect to any Works Order.

### **5.2 Acceptance of Works Orders**

- (a) PSA may, from time to time during the Term, confirm a portion of the Project Services to be carried out by the Contractor under this Contract by issuing a Works Order in accordance with this clause 5.2.
- (b) Unless otherwise agreed by PSA, the Contractor is not authorised to perform (and PSA shall not be liable to pay for) any Project Services under this Contract in respect of a Works Order until the relevant Works Order Effective Date.
- (c) From time to time PSA may:
  - (i) issue a completed Works Order to the Contractor; or
  - (ii) request the Contractor to prepare and submit a draft Works Order for PSA's review and confirmation.
- (d) If PSA requests the Contractor to prepare a Works Order under clause 5.2(c)(ii), the Contractor must submit a completed draft Works Order to PSA within five (5) Business Days (or such other time as may be specified by PSA) of the request and include the following details in respect of that Works Order:
  - (i) the proposed Methodology;
  - (ii) the Contractor's Program (if required);
  - (iii) unless otherwise agreed with PSA:
    - A. estimated time and Rates of Contractor Personnel providing the Project Services calculated in accordance with the Rates and Fees; and
    - B. estimated disbursements or expenses likely to be incurred in relation to the Project Services calculated in accordance with the Rates and Fees;

- (iv) include confirmation that any Key People required to undertake the work are available or, if they are not available, details of any replacement Personnel which the Contractor proposes will provide the Project Services;
  - (v) a LIDP (if specified in the request);
  - (vi) a Social Procurement Information Schedule (if specified in the request); and
  - (vii) any other information required by PSA, as specified in the request.
- (e) The Contractor must prepare any Works Order under clause 5.2(c)(ii) having regard to the paramount importance to PSA of the following objectives:
- (i) to capitalise on opportunities for cost savings which a prudent, competent and experienced consultant could implement without derogating from the achievement of the Project Services;
  - (ii) to obtain certainty of pricing;
  - (iii) to create value for money;
  - (iv) to ensure the efficient, effective and economical provision of the Project Services; and
  - (v) to ensure accountability and transparency in managing budget limitations.
- (f) PSA may require changes to a draft Works Order submitted under clause 5.2(d), including changes to the estimated Fee or its calculation, in which case the Contractor must co-operate with PSA to negotiate in good faith and agree any changes PSA requires. The Contractor must promptly submit a revised completed draft Works Order to reflect the agreed changes on request by PSA.
- (g) If PSA accepts a draft Works Order under clause 5.2(d) or 5.2(e), PSA may issue a completed Works Order to the Contractor.
- (h) A completed Works Order must be in the form of Annexure L as amended from time to time (where the Contract Administrator notifies the Contractor of such amendments) and must:
- (i) detail the Project Services required by PSA;
  - (ii) set out the basis for determining the Fees, whether that is on the basis of a lump sum, schedule rates with a maximum fee or schedule of rate;

- (iii) specify any time by which the Project Services must commence and be completed, including any applicable milestones;
  - (iv) specify any Key People who must undertake the work, or the work to be performed by them, or, if the Contractor has already informed PSA that such Key People are not available, specify any replacement Personnel approved by PSA; and
  - (v) require the Contractor to confirm that the Contractor has no conflict of interest in providing the Project Services.
- (i) Within five (5) days of receipt of a Works Order under clause 5.2(c)(i) or 5.2(g), the Contractor must sign and return to PSA that completed Works Order. If the Contractor fails to do so, the Contractor will be deemed to have accepted the Works Order on the expiration of that five (5) day period.
  - (j) A Works Order received or accepted under clause 5.2(h) becomes effective on:
    - (i) the date on which the Contractor counter-signs that Works Order;
    - (ii) the date on which the Contractor is deemed to have accepted that Works Order under clause 5.2(h); or
    - (iii) such other date as may be specified in the relevant Works Order,

**(Works Order Effective Date)** and continues until the earlier of:

    - (iv) the expiry of any term specified in the Works Order;
    - (v) where no term is specified in the Works Order, the date on which both Parties have completed all obligations under the Works Order and PSA notifies the Contractor that the Works Order has expired; or
    - (vi) the expiry of the Term or early termination of this Contract.
  - (k) The Contractor must:
    - (i) not refuse to perform any Project Services in a Works Order issued by PSA in accordance with this clause 5; and
    - (ii) comply, at its cost, with the requirements of this clause 5.

### 5.3 Revisions to Works Orders

- (a) PSA may require changes to the Project Services the subject of a Works Order after the Works Order Effective Date, in which case:

- (i) PSA may issue a request or may request the Contractor to prepare and submit to PSA for its review a draft request entitled "Works Order Modification Request" (**Works Order Modification Request**); and
  - (ii) the process in clause 5.1 for the issue, negotiation and acceptance of a Works Order will apply to that Works Order Modification Request as if it were a Works Order.
- (b) A Works Order Modification Request once accepted or deemed to be accepted under clause 5.1 will vary the initial Works Order with effect from the date the Works Order Modification Request takes effect in accordance with clause 5.2(j)(i), 5.2(j)(ii) or 5.2(j)(iii) (as applicable).
  - (c) The acceptance or deemed acceptance of a Works Order Modification Request does not affect any right or obligation of either of the Parties that arises prior to the date the Works Order Modification Request takes effect.
  - (d) The Contractor acknowledges that PSA may issue more than one Works Order Modification Request in respect of a Works Order.

## **6. Contract administration**

### **6.1 Contract Administrator**

- (a) The Contract Administrator will give directions or notices and carry out all its other functions under this Contract as the agent of PSA (and not as an independent certifier, assessor or valuer).
- (b) The Contractor must comply with any direction by the Contract Administrator given or purported to be given under a provision of this Contract.
- (c) Except where this Contract otherwise provides, the Contract Administrator may give a direction orally but will as soon as practicable confirm it in writing.
- (d) PSA may, at any time, replace the Contract Administrator, in which event PSA will appoint another person as the Contract Administrator and notify the Contractor of that appointment.
- (e) Any substitute Contract Administrator appointed under clause 6.1(d) will be bound by anything done by the former Contract Administrator to the same extent as the former Contract Administrator would have been bound.
- (f) The Contract Administrator:
  - (i) may, by written notice to the Contractor appoint persons to exercise any of the Contract Administrator's functions under the Contract;

- (ii) may not appoint more than one (1) person to exercise a specific function under the Contract; and
  - (iii) may revoke any appointment under clause 6.1(f)(i) by notice in writing to the Contractor.
- (g) All references in the Contract to Contract Administrator include a reference to a representative appointed under clause 6.1(f).

## 6.2 Review and comments

- (a) Neither PSA nor the Contract Administrator is under any obligation to review, comment, approve or reject any documentation provided by the Contractor (including the Methodology or Contractor's Program).
- (b) Any review of, comments upon, approval of or rejection of or any failure to review or reject, comment upon or approve any documentation provided by the Contractor under this Contract (including the Contractor's Program and Methodology) by the Contract Administrator or PSA will not:
  - (i) relieve the Contractor from or alter or affect the Contractor's liabilities or responsibilities under this Contract, at Law or otherwise;
  - (ii) prejudice PSA's rights against the Contractor under this Contract or at Law;
  - (iii) affect the warranties and acknowledgements given by the Contractor under clause 10(a) or clause 16; or
  - (iv) impose any obligation on PSA.

## 6.3 Performance Review

- (a) Without limiting anything in clause 7.2, PSA may at any time carry out a performance review, during which PSA will assess the Contractor's performance in any or all of the Project Services undertaken during any period (**Performance Review**).
- (b) The Contractor will co-operate fully with any Performance Review. Without limitation, the Contractor may be required by PSA to:
  - (i) complete reviews provided by PSA as part of the review process and any questionnaires;
  - (ii) discuss with PSA, any reports produced by PSA as part of each Performance Review;
  - (iii) discuss with PSA, the Contractor's strengths and weaknesses based on the Contractor's performance in undertaking those Project Services;

- (iv) discuss with PSA, PSA's assessment of the Contractor's satisfaction of the Project Services undertaken by the Contractor to date; and
  - (v) implement any measures that PSA reasonably requires arising out of the Performance Review.
- (c) The Contractor must comply with any Performance Review carried out under this clause 6.3 at no additional cost or expense to PSA.
  - (d) Without limiting the generality of clause 6.3(a), the Contractor acknowledges that PSA is likely to carry out Performance Reviews on or prior to each of the Contract Review Dates.

---

## **7. Time for performance**

### **7.1 Commencement**

The Contract commences on the Commencement Date. The Contractor must not perform any stage of the Project Services unless it is authorised to do so under the terms of a Works Order issued pursuant to clause 5.

### **7.2 Contract expiry and option to renew**

- (a) This Contract expires at the end of the Term unless PSA exercises an option to renew the Term under clause 7.2(b) or it is terminated earlier in accordance with clause 26.
- (b) The Contractor acknowledges and agrees that PSA has [**two (2)**] options to renew the Term, each for an additional [**two (2) years**], which may be exercised in PSA's absolute discretion by giving the Contractor written notice no later than [**three (3)**] calendar months (or such other time as may be agreed by the Parties in writing) prior to the date which is:
  - (i) [**six (6) years**] after the Commencement Date; and
  - (ii) [**eight (8) years**] after the Commencement Date.
- (c) Without limiting clause 26.5, within twenty (20) Business Days after each Contract Review Date, PSA:
  - (i) will consider whether it seeks to continue the engagement of the Contractor under the Contract; and
  - (ii) if it determines that it does not seek to continue the engagement of the Contractor under the Contract, will give written notice to the Contractor to that effect. Any such notice will constitute a notice of termination for convenience under clause 26.5(a).

### **7.3 Progress**

- (a) The Contractor must perform the Project Services during the Term:
    - (i) regularly and diligently and in a timely manner in accordance with this Contract and the requirements of any directions issued by the Contract Administrator in accordance with this Contract; and
    - (ii) in accordance with the times stated in:
      - A. the Project Services Brief; and
      - B. the Contractor's Program,
- as extended (if at all) by PSA under clause 7.6(a).

### **7.4 Programming**

- (a) The Contractor acknowledges that there will be a separate Contractor's Program for the Project Services which are the subject of each Works Order.
- (b) The Contractor must:
  - (i) update the Contractor's Program to take account of:
    - A. any Works Order Modification Request;
    - B. changes to the Project Services;
    - C. delays which may have occurred;
    - D. any unilateral extensions of time granted by PSA under clause 7.6(a); and
    - E. emerging issues, process and progress of the Project Services,
  - and in any event at least monthly;
  - (ii) give the Contract Administrator copies of all updated Contractor's Programs for approval;
  - (iii) ensure that it and its Subcontractors adhere to the approved Contractor's Program; and
  - (iv) provide the Contractor's Program (and all updates) in a format compatible with any system or software requirements notified by PSA.

### **7.5 Notice of matters impacting on the Project Services**

- (a) Without relieving the Contractor of its obligations under this Contract, if the Contractor becomes aware of any matter which:

- (i) could change or which has changed the scope or timing of the Project Services; or
- (ii) could affect or which has affected the performance of the Project Services in accordance with the requirements of this Contract,

the Contractor must promptly give written notice of that matter to the Contract Administrator containing, as far as practicable in the circumstances:

- (iii) particulars of the matter;
  - (iv) its likely impact; and
  - (v) the Contractor's recommendation as to how to minimise its impact upon the scope, timing or performance generally of the Project Services.
- (b) If the Contract Administrator considers that the Contractor's recommendations in a notice in accordance with clause 7.5(a) are inadequate, it may direct the Contractor to resolve the issue in a manner directed by the Contract Administrator. If the Contractor is unable or unwilling to resolve the issue in the required manner, PSA may give the Contractor a Default Notice in accordance with clause 26.2(b).

## **7.6 Unilateral extensions**

- (a) To the extent that there are any time periods or dates for completion of an obligation by the Contractor under this Contract, PSA may, in its sole discretion at any time or date and from time to time, by written notice to the Contractor, unilaterally extend any time for completion of an obligation by the Contractor.
- (b) The Parties acknowledge that:
- (i) PSA is not required to exercise PSA's discretion under clause 7.6(a) for the benefit of the Contractor;
  - (ii) clause 7.6(a) does not give the Contractor any rights; and
  - (iii) the exercise or failure to exercise PSA's discretion under clause 7.6(a) is not capable of being the subject of a Dispute for the purposes of clause 31 or otherwise subject to review.

## **7.7 Suspension**

- (a) The Contract Administrator:
- (i) may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, all or a part of the Project Services; and



- (ii) is not required to exercise the Contract Administrator's power under clause 7.7(a)(i) for the benefit of the Contractor.
- (b) If a suspension under this clause 7.7 arises as a result of the Contractor's failure to carry out its obligations in accordance with this Contract, the Contractor will not be entitled to make any Claim against PSA arising in connection with the suspension.
- (c) If a suspension under this clause 7.7 arises as a result of a cause other than the Contractor's failure to carry out its obligations in accordance with this Contract:
  - (i) an instruction to suspend under this clause 7.7 will entitle the Contractor to be paid by PSA the extra costs as are reasonably and necessarily incurred by it by reason of the suspension as determined by the Contract Administrator;
  - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
  - (iii) the Contractor will not be entitled to make any Claim against PSA arising out of, or in any way in connection with, the suspension other than under this clause 7.7(c).
- (d) Any entitlement of the Contractor to payment by PSA pursuant to clause 7.7(c)(i) is subject to the Contractor providing evidence of such costs to PSA's reasonable satisfaction.

## **7.8 Co-location**

- (a) Subject to clause 7.8(b), PSA may at any time during the Term, by written notice, request the Contractor to co-locate some or all of the Contractor Personnel to PSA's project office for the purpose of carrying out the Project Services.
- (b) If PSA requests that the Contractor co-locate in accordance with clause 7.8(a), the Parties acknowledge and agree that such a direction is not of itself a Variation.

---

## **8. The Project Services**

### **8.1 Performance of the Project Services**

- (a) The Contractor must perform the Project Services in accordance with:
  - (i) the Project Services Brief, the Methodology and otherwise in accordance with this Contract;
  - (ii) all applicable Laws, including Laws relating to the environment and work health and safety; and

- (iii) all environmental safety and access requirements of PSA and, if applicable, an Access Provider in accordance with clause 39, as advised to the Contractor from time to time.
- (b) The Contractor must carry out its obligations and duties and provide the Project Services in order to complete the provision of the Project Services to the reasonable satisfaction of the Contract Administrator.
- (c) The Contractor:
  - (i) must exercise the standard of skill, care and diligence in the performance of the Project Services that would be expected of a professional and experienced provider of services similar to the Project Services; and
  - (ii) warrants that each of its Subcontractors will exercise the standard of skill, care and diligence that would be expected of an experienced professional provider of the services being provided by the Subcontractor.
- (d) The Contractor must have regard to any requirements conveyed to it by the Contract Administrator and must comply with all reasonable directions of the Contract Administrator.
- (e) The Contractor must permit the Contract Administrator to inquire of and to confer with the Contractor Personnel and Subcontractors (including employees, officers, agents, or contractors of Subcontractors), and must do all that is within its power to facilitate any and all appropriate enquiries, conferences and counselling.
- (f) The Contractor must provide the Contract Administrator with information and written reports about the Project Services as the Contract Administrator may from time to time reasonably require, including such reports and information as are set out in the Project Services Brief.

## **8.2 Non-complying Project Services**

- (a) If the Contract Administrator discovers or believes that any Project Services have not been performed in accordance with this Contract, the Contract Administrator may give the Contractor a written notice specifying the non-complying Project Services and doing one or more of the following:
  - (i) requiring the Contractor to:
    - A. re-perform the Project Services which are non-complying and specifying the time within which this must occur; and
    - B. take all such steps as are reasonably necessary to:

- 1) mitigate the effect on PSA of the failure to carry out the Project Services in accordance with this Contract; and
  - 2) put PSA (as closely as possible) in the position in which it would have been if the Contractor had carried out the Project Services in accordance with this Contract; and
- (ii) advising the Contractor that PSA will accept the non-complying Project Services despite the non-compliance.
- (b) If a direction is given under clause 8.2(a)(i), the Contractor must re-perform the non-complying Project Services within the time specified in the Contract Administrator's instruction.
- (c) The Contractor will have no entitlement to payment for any part of the cost of carrying out the Project Services requiring re-performance under this clause 8.2.

---

## 9. Quality

- (a) The Contractor:
- (i) must implement the quality assurance system specified in the relevant Methodology and consistent with the Project Services Brief;
  - (ii) must allow the Contract Administrator access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing;
  - (iii) must audit the provision of the Project Services for compliance with its quality assurance system every 6 months and provide PSA with a copy of the audit report; and
  - (iv) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under this Contract or otherwise according to Law as a result of:
    - A. the implementation of, and compliance with, the quality assurance requirements of this Contract;
    - B. any direction by the Contract Administrator concerning the Contractor's quality assurance system or its compliance or non-compliance with that system;

- C. any audit or other monitoring by the Contract Administrator of the Contractor's compliance with the quality assurance system; or
  - D. any failure by the Contract Administrator, or anyone else acting on behalf of PSA, to detect any Project Services which are not in accordance with the requirements of this Contract including where any such failure arises from any negligence on the part of the Contract Administrator or other person.
- (b) Any such quality system shall be used only as an aid to achieving compliance with this Contract and to document such compliance. Such system shall not discharge the Contractor's other obligations under this Contract.

---

## 10. Contractor's Methodology

- (a) The Contractor:
- (i) warrants that:
    - A. the Methodology complies with the requirements of this Contract; and
    - B. carrying out the Project Services in accordance with the Methodology will enable the Contractor to discharge its obligations under this Contract;
  - (ii) acknowledges that:
    - A. the Methodology does not limit the Contractor's obligations under this Contract; and
    - B. the Methodology or any part of the Methodology, may require amendment throughout the Term:
      - 1) to the extent that it does not reflect all the tasks, activity durations, sequencing of the Project Services and other things to be done or provided to perform the Project Services in accordance with this Contract;
      - 2) without limiting clause 10(a)(ii)B.1), on account of any Works Order Modification Request, Variation or extension of time;

- 3) on account of any Project Services requested by PSA from time to time;
  - 4) if the Methodology fails to comply with all applicable Laws; and
  - 5) if the Methodology no longer represents current or appropriate practice;
- (iii) must amend the Methodology as required by clause 10(a)(ii)B with the written approval of PSA; and
  - (iv) will not be entitled to bring any Claim against PSA arising in connection with any work which the Contractor is required to carry out arising out of or in connection with clause 10(a)(ii)B.
- (b) The Contractor must, unless otherwise agreed with PSA, comply with the Methodology.
  - (c) Within five (5) Business Days of amending the Methodology in accordance with clause 10(a)(iii), the Contractor must issue a copy of the amended Methodology to the Contract Administrator.
  - (d) The Contract Administrator or PSA may (but is under no obligation to) review and comment on any amendments made to the Methodology in accordance with clause 10(a)(ii)B.
  - (e) PSA does not warrant, guarantee or make any representation as to whether:
    - (i) the Methodology or any comments on or amendments to the Methodology provided in accordance with this clause 10 comply with this Contract; or
    - (ii) the Contractor performing activities in accordance with the Methodology will ensure that the Project Services will comply with this Contract or that the Contractor otherwise discharges or will be able to discharge its obligations under this Contract.

---

## **11. Compliance with Commonwealth funding conditions**

- (a) The Contractor acknowledges that the Commonwealth Government may contribute to the funding for the Project or one or more activities under a Works Order.
- (b) The Contractor must comply with all relevant conditions of Commonwealth funding unless otherwise directed by PSA.
- (c) Without limiting clause 40, the Contractor must comply with the Building Code, if required to do so by clause 40.

---

## 12. Variations

- (a) The Contract Administrator may give the Contractor:
  - (i) a written document titled **Variation Proposal** giving notice of a proposed Variation and requiring the Contractor to provide the details referred to in clause 12(b); or
  - (ii) whether or not the Contract Administrator has previously issued a Variation Proposal, a written document titled **Variation Notice** directing the Contractor either:
    - A. to perform a Variation; or
    - B. to perform a Variation in accordance with a Works Order or revised Works Order confirming the Variation (as the case may be).
- (b) The Contractor must within ten (10) Business Days, or other time as agreed between the Parties, of receipt of a Variation Proposal under clause 12(a) provide the Contract Administrator with a detailed written proposal:
  - (i) setting out any adjustments in the Personnel and other resources required to undertake the Variation;
  - (ii) providing a new or adjusted Methodology required to undertake the Variation (as applicable);
  - (iii) providing a proposed Contractor's Program or specifying the time impact, including any adjustments to the relevant Contractor's Program (as applicable), involved in carrying out the Variation; and
  - (iv) detailing the estimated increase or decrease in costs associated with the Variation having regard to the objectives set out in clause 12(f), at rates no greater than the applicable Rates or, if the Rates are not applicable, the reason why they are not applicable, in which case the Contractor must submit to the Contract Administrator a proposal based on reasonable rates and prices which will apply in connection with the Variation.
- (c) If the Contract Administrator agrees with the details set out in the Contractor's proposal under clause 12(b), the Contract Administrator may give the Contractor a Variation Notice in accordance with clause 12(a)(ii) requiring the Contractor to perform the Variation.
- (d) If the Contract Administrator does not agree with any details set out in the Contractor's proposal under clause 12(b), the Contract Administrator may:

- (i) give the Contractor a written notice rejecting the proposal and requiring the Contractor to resubmit a revised proposal within the time specified in the notice addressing the matters raised in the notice;
  - (ii) give the Contractor a Variation Notice in accordance with clause 12(a)(ii) requiring the Contractor to perform the Variation; or
  - (iii) carry out the services the subject of the Variation itself or have the services performed by a third party.
- (e) If the Contractor is given a notice under clause 12(d)(i):
- (i) it must submit a revised proposal within the time specified in the notice; and
  - (ii) the revised proposal will be deemed to have been given under clause 12(b).
- (f) In preparing a proposal in accordance with clause 12(b)(iv) or a revised proposal in accordance with clause 12(e), the Contractor must have regard to the paramount importance to PSA of the following objectives:
- (i) to capitalise on opportunities for cost savings which a prudent, competent and experienced contractor could implement without derogating from the achievement of the Project Services;
  - (ii) to obtain certainty of pricing;
  - (iii) to create value for money;
  - (iv) to ensure the efficient, effective and economical provision of Project Services; and
  - (v) to ensure accountability and transparency in managing budget limitations.
- (g) The Contractor must use reasonable endeavours to mitigate all loss, costs and expenses in connection with implementing a Variation.
- (h) To the extent that the Fee for Project Services the subject of a Works Order is determined on the basis of a lump sum or maximum fee, the Fee will be adjusted (whether upwards or downwards) on account of the Variation from the date stated in the Variation Notice issued by the Contract Administrator under clause 12(a)(ii) by:
- (i) an amount or amounts agreed between the Contract Administrator and the Contractor including, where the Contract Administrator states in the Variation Notice that it agrees with the adjustment notified by the Contractor in its proposal under clause 12(a)(ii)A, that amount; or

- (ii) failing agreement, a reasonable amount determined by the Contract Administrator using:
  - A. any applicable Rates; or
  - B. if there are no applicable Rates, reasonable rates and prices, as reasonably determined by the Contract Administrator.
  
- (i) Where the Contractor is of the reasonable opinion that a direction given by PSA or the Contract Administrator will result in a Variation (had a Variation Notice been issued) it must notify PSA prior to complying with the direction. The Contractor must not commence any work or services relating to such a direction unless the Contract Administrator has issued a Variation Notice or has confirmed that the direction does not constitute a Variation and the Contractor should comply with the direction. A notice from the Contractor under this clause:
  - (i) must be given within five (5) Business Days of receipt of the direction; and
  - (ii) must include the reasons why the Contractor believes the direction will result in a Variation (had a Variation Notice been issued).
  
- (j) If the Contract Administrator determines that the direction, the subject of the Contractor's notice under clause 12(i), constitutes a Variation, it may:
  - (i) retract the direction; or
  - (ii) give the Contractor a Variation Proposal under clause 12(a)(i) and clauses 12(b) to 12(f) will apply.
  
- (k) PSA will not be liable for any adjustment to the Fee under clause 12(i) or upon any other Claim (insofar as is permitted by Law) arising in connection with a Variation unless:
  - (i) the Contractor has complied strictly with clauses 12(b) or 12(i) (as the case may be); and
  - (ii) the Contract Administrator has issued a Variation Notice under clause 12(d)(ii).
  
- (l) If a Variation the subject of a direction by the Contract Administrator omits any part of the Project Services, PSA may thereafter carry out this omitted work either itself or by engaging a third party.



---

## 13. Fees and expenses for Project Services

### 13.1 Project Fee

- (a) In consideration of the Contractor satisfactorily performing the Project Services in accordance with this Contract, PSA will pay the Fee to the Contractor.
- (b) The Fee is inclusive of all profit, overheads, costs, disbursements and other expenses of the Contractor whether foreseen or unforeseen, including travel time, insurance, duties, imposts and taxes and the GST (if any) which will be paid by the Contractor.
- (c) The Contractor is entitled to be reimbursed the cost of disbursements where:
  - (i) such expenses are reasonable and are directly and necessarily incurred by the Contractor; and
  - (ii) the prior written approval of PSA has been obtained.
- (d) Where the Fees for a Work order are a lump sum, the Contractor warrants that those Fees are sufficient to carry out the whole of the Project Services for that Project and the Contractor shall not be entitled to any adjustment to the Fees other than where it has an express right to do so under this Contract.

### 13.2 Not used

---

## 14. Indexation of Rates

- (a) Effective from 1 July immediately following the Commencement Date, the Rates will be adjusted annually in accordance with the following formula:

**Adjusted amount** = Payment Multiplier x Original Amount

where:

**Payment Multiplier** = the relevant Wage Price Index (Private Sector) published by the Australian Bureau of Statistics immediately before the relevant 1 July divided by the Wage Price Index for the equivalent quarter in the previous year; and

**Original Amount** = the amount (whether previously adjusted or not) applicable immediately prior to the relevant 1 July (disregarding rounding (if any) applied to that at the previous 1 July).

Provided that where the Payment Multiplier results in an index less than 1.0, the Payment Multiplier will be deemed to be 1.0 for the relevant year.

- (b) If the Index ceases to be published and the Australian Bureau of Statistics publishes another index which is:
  - (i) a replacement of that Index; and
  - (ii) linked to the Index,the defined term must be re-calculated to the same reference base as the replacement.
- (c) If the Index ceases to be published and the Australian Bureau of Statistics does not publish another index which is linked to or replaces the Index, the Parties must request the President of the Actuaries Institute (or the President's nominee) to calculate a revised index or determine a replacement index for use in this Contract in place of the Index, and that calculation or determination is final and binds the Parties.
- (d) For the purposes of this clause 14, Index means the Wage Price Index.

---

## **15. Invoicing and payment**

### **15.1 Invoicing and payment**

- (a) Subject to clause 15.1(i) and to any other right to set off which PSA may have, PSA will pay the Contractor:
  - (i) the Fee; and
  - (ii) any other amounts which are payable by PSA to the Contractor under this Contract.
- (b) The Contractor must monthly, within five (5) Business Days of the end of each month, provide to the Contract Administrator a payment claim in a form agreed with PSA for the Project Services performed in accordance with this Contract during the previous month, which sets out the amount payable to the Contractor on account of:
  - (i) the Fee for the relevant Project Services (including details of the Contractor Personnel, Subcontractors and Rates and Fees applicable to any relevant Project Services); and
  - (ii) any other amounts which are payable by PSA to the Contractor under this Contract.

The Contractor will submit only one single, consolidated payment claim per month for all Fees claimed (including those of any Subcontractors).

- (c) Each payment claim provided by the Contractor under clause 15.1(b) must:

- (i) state the Contractor's Australian Business Number;
  - (ii) specify the component of the Fee due under this Contract to the Contractor and the basis for calculation including:
    - A. the percentage of each Project Services completed (up to the applicable Fee estimate, lump sum or maximum payment as may be applicable to such Project Services); and
    - B. all other amounts then payable by PSA to the Contractor under this Contract;
  - (iii) state the amount of any GST paid or payable by the Contractor with respect to the component of the Fee;
  - (iv) state the date of delivery of the Project Services to which the payment claim relates;
  - (v) state the Contractor's address for payment;
  - (vi) provide PSA's Work Order or other reference number;
  - (vii) set out or attach sufficient details, calculations, supporting documentation and other information in connection with all amounts claimed by the Contractor, including invoices from Subcontractors for Project Services performed in that previous month;
  - (viii) enable PSA to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by PSA to the Contractor under the Contract; and
  - (ix) include any such documentation or information which PSA may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment claim or all payment claims generally.
- (d) The Contract Administrator:
- (i) must, within ten (10) Business Days of receiving a payment claim submitted or purported to be submitted in accordance with clause 15.1(b); or
  - (ii) may, if the Contractor fails to submit any such payment claim in accordance with clause 15.1(b), at any time,
- give the Contractor (with a copy to PSA), on behalf of PSA, a payment statement which states:
- (iii) the payment claim to which it relates (if any);
  - (iv) the amount already paid to the Contractor under the Contract;

- (v) the amount (if any) which the Contract Administrator believes to be then payable by PSA to the Contractor on account of the Fee and otherwise in accordance with the Contract and which PSA proposes to pay to the Contractor; and
- (vi) if the amount referred to in clause 15.1(d)(v) is less than the amount claimed in the payment claim:
  - A. the reason why the amount referred to in clause 15.1(d)(v) is less than the amount claimed in the payment claim; and
  - B. if the reason for the difference is that PSA has retained, deducted, withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off.
- (e) Any evaluation, or issue of a payment statement, by the Contract Administrator will not:
  - (i) constitute approval of any Project Services nor will it be taken as an admission or evidence that the part of the Project Services covered by the payment statement has been satisfactorily carried out in accordance with the Contract; or
  - (ii) constitute a waiver of the requirements of clauses 15.1(b) and 15.1(c) in relation to any payment claim other than to the extent (if any) to which PSA expressly waives such requirements in respect of the payment claim the subject of the payment statement.
- (f) Within five (5) Business Days of receipt of a payment statement under clause 15.1(d), the Contractor must issue an invoice in the name of PSA to the Contract Administrator for the amount stated as then payable in the payment statement. Each invoice provided by the Contractor under this clause 15.1(f) must comply with the requirements of the GST Law (as a Tax Invoice).
- (g) Within fifteen (15) Business Days of PSA receiving an invoice under clause 15.1(f), PSA will pay the Contractor the amounts set out as then payable in the payment statement.
- (h) Payment of an invoice is only a payment on account and is not:
  - (i) evidence of the value of the Project Services provided;
  - (ii) an admission that the Project Services invoiced were satisfactorily performed or expenses properly incurred;
  - (iii) an admission of liability; or
  - (iv) acceptance or approval of the Contractor's performance.

- (i) PSA may, in any payment statement, do any one or more of:
  - (i) correct any error in any previous payment statement; and
  - (ii) modify any previous payment statement.
- (j) PSA must pay simple interest at the rate stated in the Contract Details on any:
  - (i) amount which is payable by PSA, but which is not paid by PSA within the time required by the Contract; and
  - (ii) damages.

This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.
- (k) PSA may set off any amount owing by the Contractor to PSA against any sum owing to the Contractor by PSA.
- (l) If, on completion of any inspection and audit it is discovered that the total payments made to the Contractor are greater than the Contractor's entitlement to payment under this Contract, PSA may either:
  - (i) deduct an amount equal to the excess from moneys due or becoming due to the Contractor under or in connection with this Contract; or
  - (ii) require the Contractor to reimburse the excess to PSA.
- (m) Clause 15.1(l) applies whether any inspection and audit was carried out or otherwise.
- (n) If the Contractor is required to make a payment under clause 15.1(l), the Contractor must make that payment within twenty (20) Business Days of a written request for payment being made.

## **15.2 Payment of workers and Subcontractors**

- (a) The Contractor must, with each payment claim, give to PSA:
  - (i) a statutory declaration (together with any supporting evidence that may reasonably be required by PSA) regarding payment to Contractor Personnel engaged by the Contractor in connection with the Project Services and Subcontractors, in the form in or substantially in Annexure M;
  - (ii) documentary evidence that, as at the date of the payment claim, all moneys then due and payable to workers of Subcontractors have been paid in respect of their employment in respect of the Project Services; and

- (iii) copies of all relevant certificates of currency in respect of workers compensation insurance which the Contractor has in place in connection with the Project Services.
- (b) The Contractor acknowledges and agrees that:
  - (i) the portion of each payment made by PSA to the Contractor on account of the Fee and any expenses which are for amounts payable to Subcontractors under their Subcontracts are held by the Contractor on trust for those Subcontractors; and
  - (ii) the Contractor must pay all Subcontractors promptly in accordance with the relevant Subcontracts.

---

## **16. Contractor's warranties**

- (a) The Contractor warrants that:
  - (i) it has the power to execute, deliver and perform its obligations under this Contract and each Works Order and all necessary action has been taken to authorise that execution, delivery and performance;
  - (ii) all Information in a report it prepares in connection with the Project Services will be:
    - A. if of a factual nature, complete, accurate and not misleading (including by omission); or
    - B. if an opinion or belief, prepared in good faith and on a reasonable basis and will be fairly qualified;
  - (iii) the execution, delivery and performance of its obligations under this Contract and each Works Order does not and will not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
  - (iv) each of its obligations under this Contract is valid and legally binding on it in accordance with its terms;
  - (v) it has the resources, commitment and appropriately qualified, skilled and experienced personnel available and shall at all times utilise only appropriately qualified, skilled and experienced personnel to carry out its obligations under this Contract;
  - (vi) it will provide any Information in relation to the provision of the Project Services as reasonably required by PSA;
  - (vii) Information contained in any representation to PSA, as to the structure, viability, reliability, insurance cover,

capacity, experience and expertise of the Contractor, Contractor Personnel or Subcontractors, is correct;

- (viii) it has established and will comply with and maintain during the Term, the quality assurance arrangements set out in clause 9;
- (ix) it did not in any way rely upon:
  - A. any Information, data, representation, statement or document made by or provided to the Contractor by PSA or anyone on behalf of PSA; or
  - B. the accuracy or adequacy of any such Information, data, representation, statement or document,

for the purposes of entering into this Contract, except to the extent that any such Information, data, representation, statement or document forms part of this Contract; and

- (x) it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations.

(b) To the extent the Project Services include any design work, the Contractor further warrants that:

- (i) it will carry out and complete the design in accordance with the requirements of the Project Services Brief and any applicable Works Order so that the Contract Material, when completed, will:
  - A. subject to the Contractor exercising the level of skill and care required under this Contract, be fit for the purpose(s) referred to in the Project Services Brief or the applicable Works Order or reasonably inferred therefrom; and
  - B. comply with all requirements of this Contract, all Laws and the Project Services Brief;
- (ii) all Contractor Personnel and Subcontractors carrying out such design are suitably qualified and experienced;
- (iii) the design, design development and documentation of the applicable Contract Materials will proceed in a good, commercially prudent and reasonable manner and in accordance with all suitable methods and practices; and
- (iv) subject to the Contractor exercising the level of skill and care required under this Contract, all designs, types of materials, methods or systems of proceeding or working

proposed, used or specified by the Contractor are suitable in all respects for their intended purposes and comply with all relevant Authorities' requirements, save and except that this warranty shall not apply to proprietary products if the Contractor has made all reasonable enquiries and investigations to satisfy itself that the proprietary products are suitable for their intended purposes.

Acceptance by the Contract Administrator or PSA of any Contract Material will not be considered as an acknowledgement that the same comply with the warranties given in this clause 16(b).

- (c) The Contractor acknowledges that it is aware that PSA has entered into this Contract relying on the warranties provided under clauses 10(a), 16(a), 16(b) and 22(a).
- (d) The Contractor repeats the warranties and representations in clauses 10(a), 16(a), 16(b) and 22(a) with respect to the facts and circumstances at the time, each day during the Term.

---

## **17. Records**

### **17.1 Records maintained by the Contractor**

- (a) The Contractor must:
  - (i) maintain (in accordance with, where applicable, good accounting practices, standards and procedures) full and proper records and other documentation referred to in this Contract relating to the Project Services provided, including information about the Contractor's OHS systems and its Subcontractors, its record of on-site incidents, safe working practices and procedures (including safe work method statements) and OHS policies, procedures, training, induction, auditing and performance monitoring;
  - (ii) provide copies of these records to the Contract Administrator when requested and allow the authorised representatives of PSA to have access to and to inspect the relevant records at all reasonable times; and
  - (iii) maintain such records for not less than six (6) years after expiry of the Term.
- (b) The Contractor acknowledges and agrees that:
  - (i) it is committed to developing a 'culture of open communication' and being transparent in all of its dealings with PSA; and
  - (ii) it must permit an accountant or auditor on behalf of PSA or a Public Auditor or any authorised nominee or representative of such auditor or officer from time to



time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this Contract (including Subcontractor invoices) and the Contractor must give, and must ensure that Contractor Personnel, Subcontractors and any employee, officers, agents and contractors of Subcontractors give, all reasonable assistance to any person authorised to undertake such audit or inspection. PSA must ensure that any information provided to an accountant or auditor or which an accountant or auditor has access to under this clause 17.1(b) must be treated as Confidential Information and must not be used by the accountant or auditor other than for the purposes of this Contract or where disclosure is required by Law or to meet any governmental or judicial requirements;

- (c) The Contractor further acknowledges and agrees that the following provisions apply in relation to a Public Audit:
  - (i) the Contractor must, at its cost and without any additional entitlement under this Contract:
    - A. permit a Public Audit required by any Public Auditor;
    - B. procure that the Contractor's Subcontractors and Contractor Personnel permit a Public Audit required by any Public Auditor;
    - C. comply with the requirements or requests of, and cooperate with any Public Auditor during the conduct of a Public Audit;
    - D. procure that the Contractor's Subcontractors and Contractor Personnel comply with the requirements or requests of, and cooperate with any Public Auditor during the conduct of a Public Audit; and
    - E. provide to the Public Auditor reasonable working accommodation and associated facilities and services required by the Public Auditor for the purposes of undertaking a Public Audit; and
  - (ii) any obligations of confidence which one Party has to the other under this Contract or by reason of the entering into of this Contract or the performance of this Contract are subject to the obligations, duties, rights and entitlements of the parties in relation to any Public Audit.
- (d) In addition to the exceptions listed in clause 17.1(b), the confidentiality obligations of PSA in clause 17.1(b) do not extend to:

- (i) information already in the public domain other than due to a breach of this Contract by PSA;
- (ii) any disclosure agreed by the Parties;
- (iii) any disclosure required by Law;
- (iv) any disclosure required by any recognised stock exchange or a Victorian or Commonwealth regulator;
- (v) any disclosure reasonably required in order to comply with a request for information made by the Auditor-General for Victoria;
- (vi) information reasonably required in order to publish appropriate and comprehensive performance data relating to the Project Services;
- (vii) disclosure for the purposes of an external audit of the Project Services;
- (viii) disclosure to legal or other advisers of PSA in order to comply with management, reporting or auditing functions or requirements; and
- (ix) disclosure by PSA to enable a determination to be made under the dispute resolution procedures in clause 31.

## **17.2 Return of Contract Material**

- (a) Subject to clause 17.2(c), the Contractor must deliver to PSA such copies of the Contract Material and all other information concerning the Project Services and/or the Project in its possession, power or control on the earlier of:
  - (i) a demand by PSA;
  - (ii) the time the Contract Material or other information is no longer required for the purposes of this Contract; and
  - (iii) completion of the Project Services or earlier termination or cessation of this Contract.
- (b) After the Contractor provides the Contract Material in accordance with clause 17.2(a), any further Contract Material that becomes available to the Contractor must be provided to PSA as soon as reasonably possible.
- (c) Where the Contractor is required to return Information, including Contract Material, to PSA it may keep one (1) file copy of such Information, including Contract Materials, if required by Law or, with PSA's consent, for insurance purposes. Retention of Information by the Contractor in accordance with this clause 17.2(c) will be subject to the obligations of the Contractor under clause 21(d).

---

## 18. Key People and Resources

### 18.1 Key People

- (a) In respect of the Key People, the Contractor must:
- (i) employ the Key People, including the Contractor's Representative, in the roles specified in the Contract Details or as otherwise notified by PSA;
  - (ii) ensure that the Key People:
    - A. perform the functions specified in the Contract Details or as otherwise agreed by the Parties to be performed by those Key People; and
    - B. are committed to the provision of the Project Services in accordance with the minimum resource allocation identified in the Contract Details and as otherwise required to fulfil the requirements of this Contract, unless otherwise agreed by PSA, up to the completion of the Project Services; and
    - C. are otherwise available for consultation with PSA when reasonably required;
  - (iii) subject to clause 18.1(a)(iv), not replace or remove (either permanently or temporarily) Key People from the Project Services unless:
    - A. the Contractor has obtained the Contract Administrator's prior written approval, which will not be unreasonably withheld; and
    - B. the Contractor provides a replacement of at least equivalent experience, ability and expertise to the reasonable satisfaction of the Contract Administrator, at no additional charge and at the earliest opportunity,and if any Key People are removed from or replaced (either permanently or temporarily) in the performance of the Project Services, then unless PSA requested the removal or replacement, the Contractor will provide Personnel to replace any Key People in the performance of the Project Services free of charge (as if the Rates for each of those Personnel was zero) for one calendar month (unless otherwise agreed with the Contract Administrator); and
  - (iv) use its best endeavours to ensure that none of the Key People resign or terminate their employment contract (as the case may be) or otherwise become unavailable to perform their functions under this clause 18.1(a); and

- (v) if any of the Key People die, become seriously ill, do resign or terminate their employment contract (as the case may be) or otherwise become unavailable to perform their functions under this clause 18.1(a), notify PSA and the Contract Administrator as soon as possible and in any event within 30 days of the resignation or termination.
- (b) Where any Key People are unable to perform the role or function allocated to them, the Contractor must notify the Contract Administrator immediately. The Contractor must, subject to clause 18.1(a)(iii), replace the relevant Key People.

---

## **19. Subcontracting**

### **19.1 Subcontracting**

- (a) The Contractor must not subcontract the whole of the Project Services.
- (b) The Contractor must not subcontract any part of the Project Services:
  - (i) if the proposed Subcontractor, is in the reasonable opinion of PSA:
    - A. not capable of providing the relevant Project Services in accordance, or otherwise complying, with this Contract;
    - B. not reputable; or
    - C. not relevantly experienced or qualified in successfully providing the relevant Project Services the subject of the relevant subcontract;
  - (ii) unless the proposed Subcontract is on terms fully consistent with the terms of this Contract, unless otherwise agreed in writing by the Contract Administrator;
  - (iii) unless the Contractor has, at the request of the Contract Administrator, given full particulars to the Contract Administrator of:
    - A. the Project Services it wishes to subcontract;
    - B. the proposed Subcontractor, including:
      - 1) if required by Law, evidence that the proposed Subcontractor is registered or licensed to carry out the work proposed to be subcontracted;

- 2) evidence of the ability of the proposed Subcontractor to comply with the requirements of this Contract; and
  - 3) where required by the Contract Administrator, the proposed terms of the Subcontract and the levels of insurances to be maintained by the Subcontractor;
- (iv) unless, where required by PSA, it includes provision reasonably acceptable to PSA to allow the Subcontract to be novated in accordance with clause 19.2; and
  - (v) unless it has obtained the Contract Administrator's prior written consent, which it may withhold, in its absolute discretion, to that subcontracting.
- (c) PSA may in its sole discretion when consenting to any subcontract under clause 19.1(b), determine a Subcontract to be a Key Subcontract.
  - (d) The Contractor must ensure that its Subcontractors do not subcontract any part of their services without the Contract Administrator's prior written consent.
  - (e) The Contractor acknowledges and agrees that in subcontracting any of the Project Services:
    - (i) it will not be relieved from any of its liabilities or obligations under this Contract; and
    - (ii) it will remain responsible for all Subcontractors as if it was itself executing the Project Services, whether or not any Subcontractors default or otherwise fail to observe any of the requirements of the relevant Subcontract.
  - (f) Without limiting clause 19.1(b)(ii), the Contractor must, in each Subcontract:
    - (i) secure the right of termination for convenience and terms for compensation equivalent to that of PSA under clause 26.5(c);
    - (ii) ensure that the Subcontract contains that will enable the Contractor to meet its obligations under clauses 7.4(b)(iii), 8.1(c)(ii), 8.1(e), 9(a)(ii), 17.1(b)(ii), 30, 36.4(b)(iii), 36.6 and 38.1(c)(i); and
    - (iii) ensure that the Subcontract contains the terms required under clause 22(b).
  - (g) In respect of the Key Subcontractors, the Contractor must ensure that the Key Subcontractors:

- (i) perform the functions specified in the Contract Details or as otherwise agreed by the Parties to be performed by those Key Subcontractors; and
  - (ii) are committed to the provision of the Project Services in accordance with the minimum resource allocation identified in the Contract Details and as otherwise required to fulfil the requirements of this Contract, unless otherwise agreed by PSA, up to the completion of the Project Services.
- (h) PSA may give a written notice under clause 19.1(i) to the Contractor if PSA forms the reasonable opinion that a Subcontractor or an employee of a Subcontractor is not performing the Project Services to the standard of skill, care and diligence that would be expected of an experienced professional provider of the services being provided by the Subcontractor (**Subcontractor Event**).
- (i) A notice under this clause must state:
  - (i) that it is a notice under clause 19.1(i);
  - (ii) the Subcontractor Event relied upon; and
  - (iii) that PSA requires the Contractor to remedy the Subcontractor Event within the number of days set out in the notice.
- (j) If the Contractor does not remedy the Subcontractor Event within the number of days set out in the notice under clause 19.1(i) and PSA is of the reasonable opinion that the Subcontractor Event persists, it may direct that the Contractor either:
  - (i) request from the Subcontractor that the employee cease to perform the Project Services; or
  - (ii) cease to permit the Subcontractor to perform the Project Services.
- (k) The Contractor must comply with any direction made under clause 19.1(j) as soon as reasonably practicable, having regard to the continued provision of the Project Services.

## **19.2 Subcontract novation**

Within ten (10) Business Days of a written direction by PSA, the Contractor must novate any Subcontractor to PSA or its nominee (being a nominee who is either a Government Party or a subcontractor of any tier of any Government Party), such novation to be on commercially available terms (as agreed with PSA acting reasonably).

### **19.3 Amendments to Key Subcontracts**

The Contractor must not make or permit to be made, without the prior written consent of PSA, any material amendment to the terms of any Key Subcontract.

---

## **20. Other Service Providers**

- (a) The Contractor acknowledges that PSA may engage Other Service Providers for the provision of the Other Services throughout the Term.
- (b) The Contractor must, in carrying out the Project Services:
  - (i) permit Other Service Providers and employees of PSA to carry out their work;
  - (ii) fully co-operate with Other Service Providers and employees of PSA;
  - (iii) carefully co-ordinate and interface the Project Services with the work carried out or to be carried out by Other Service Providers and employees of PSA; and
  - (iv) carry out the Project Services so as to avoid interfering with, disrupting or delaying the work of Other Service Providers and employees of PSA.

---

## **21. Confidentiality**

- (a) The Contractor consents to PSA publishing (on the internet or otherwise) the name of the Contractor and the contract value together with the conditions of this Contract generally.
- (b) Without limiting PSA's rights under clause 24.2, the Contractor agrees that PSA may disclose, copy, use, adapt, modify, sublicense or reproduce the whole or any portion of any Contract Material provided for any purpose in connection with the Project Services or the Other State Projects.
- (c) PSA will, for the purposes of provision of the Project Services, disclose, provide or make available Confidential Information to the Contractor.
- (d) In consideration of this engagement by PSA of the Contractor and the disclosure, provision or making available by PSA to the Contractor of Confidential Information, the Contractor covenants and agrees:
  - (i) to hold the Confidential Information in strict confidence and undertake to use the Confidential Information only for the purposes of providing the Project Services and will not use the Confidential Information for any other purpose except with the prior written consent of the Contract Administrator;

- (ii) not to disclose, or permit to be disclosed, any Confidential Information to any third party without obtaining the prior written consent of the Contract Administrator, which, if given, will be on the basis that the third party receiving the Confidential Information must first be bound to maintain the same in confidence. The Contractor is responsible for any breach of confidence by the person to whom the Confidential Information is disclosed;
- (iii) not to copy, reproduce, reduce to writing or in any other Material Form, electronically store, any part of the Confidential Information except as may be reasonably necessary for the purposes of this Contract and agrees any copies or reductions to writing or other materials are the property of PSA;
- (iv) to maintain the Confidential Information with at least the same degree of care and skill as it uses to maintain its own Confidential Information;
- (v) to notify the Contract Administrator immediately upon the discovery of any apparent unauthorised use or disclosure of any Confidential Information and take all reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this clause 21 including making all reasonable efforts to assist PSA to regain possession of the Confidential Information and prevent any further unauthorised disclosure or use;
- (vi) that the Contractor or its Contractor Personnel, partners, shareholders or Subcontractors (or any employees, officers, agents, or contractors of Subcontractors) must not disclose to any person, any Confidential Information or documentation relating to PSA or the affairs of others which may have come to its or their knowledge as a result of this Contract or performance of the Project Services and must take all necessary precautions to prevent unauthorised access to such information or documentation;
- (vii) that all Confidential Information is and will at all times remain the property of PSA;
- (viii) not to divulge any Information regarding the nature or progress of the Project Services or give any publicity to the Project Services except with the written consent of the Contract Administrator;
- (ix) PSA is entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Contractor, its Contractor Personnel, partners, shareholders or Subcontractors (or any employee,



officer, agent or contractor of Subcontractors) of this clause 21 and without the need on the part of PSA to prove any special damage;

- (x) prior to disclosing any Confidential Information to any person to whom Confidential Information will be disclosed, the Contractor will procure the execution by such entity or person of a Confidentiality Deed at the cost of the Contractor, and then only on a need-to-know basis. Such Confidentiality Deeds must be provided to PSA at the request of the Contract Administrator or other authorised representative of PSA
  - (xi) to be responsible for the performance of the obligations contained in this clause 21 on the part of any entity or person to whom Confidential Information is disclosed and to indemnify PSA against any damage resulting directly or indirectly from a breach of the obligations contained in this clause 21 by such entity or person; and
  - (xii) to maintain an up-to-date record of the names and addresses of each person who the Contractor has disclosed Confidential Information to, verifying that they have executed a Confidentiality Deed, and provide a copy of the record to the Contract Administrator whenever it is requested.
- (e) The obligations contained in this clause 21 do not extend to any Confidential Information which:
- (i) is in the public domain, or which becomes part of the public domain other than as a result of a breach of this clause 21 by the Contractor, Contractor Personnel, partners, shareholders or Subcontractors (or any employee, officer, agent, or contractor of Subcontractors);
  - (ii) is already in the possession or knowledge of the Contractor and was not obtained from PSA and is not otherwise subject to obligations of secrecy;
  - (iii) becomes lawfully available to the Contractor independently of PSA without being subject to obligations of secrecy;
  - (iv) is agreed by the Parties not to be confidential;
  - (v) the Contractor can prove was independently developed by the Contractor in the course of work by Contractor Personnel to whom the Confidential Information has not been disclosed or otherwise made available;
  - (vi) is required to be disclosed by Law;

- (vii) is disclosed pursuant to governmental, or judicial requirements or the rules of a recognised stock exchange, subject to the Contractor notifying PSA as soon as possible in advance of its intention to disclose such information.
- (f) If the Contractor makes a disclosure, the Contractor has the onus of proving that one or more of the exceptions in clause 21(e) apply.
- (g) The Contractor acknowledges that any Confidential Information which may have been disclosed to it in connection with this Contract before the Commencement Date is deemed to have been disclosed under the provisions of this Contract.
- (h) Without limiting the Contractor's obligations under clause 17.2, upon completion of the Project Services or sooner termination of this Contract or upon the request of PSA (which may be made at any time), the Contractor must:
  - (i) return to PSA promptly all documents and materials (and all copies and any reproductions made thereof) containing Confidential Information; and
  - (ii) certify in writing to the Contract Administrator that it has to the best of its knowledge complied with this clause 21,

except that the Contractor may retain a copy of all documents and material to comply with its record keeping and audit requirements, subject to the continuing obligations under clause 21.

- (i) The provisions of this clause 21 continue to have effect indefinitely notwithstanding completion of the Project Services or cessation or termination of this Contract.
- (j) The Contractor must:
  - (i) not have any contact with media representatives about the Project Services or the Project and must refer any media approach to PSA;
  - (ii) not, and must ensure that Contractor Personnel, parties shareholders and Subcontractors (and the employees, officers, agents and contractors of Subcontractors) do not, make any Public Disclosures in relation to the Project Services or the Project or PSA's involvement in the Project without PSA's prior written consent (including consent with respect to the timing of such Public Disclosure) and, if such disclosure, announcement or statement is required as a matter of Law, such consent will not be unreasonably withheld; and

- (iii) as soon as practicable, give to PSA a copy of any Public Disclosure approved by PSA under this clause 21(j).
- (k) The Contractor acknowledges and consents to PSA, or a representative of PSA, disclosing any information (including any Confidential Information) if such disclosure is required by or is consistent with the Public Disclosure Requirements.

---

## **22. Conflict of interest and exclusivity**

- (a) The Contractor warrants that, subject to any Previous Disclosures:
  - (i) as at the Commencement Date, it does not hold any office or possess any property, is not engaged in any business, trade or calling and does not have any obligations by virtue of any contract whereby, directly or indirectly, its duties or interests are in conflict with its duties and interests under this Contract;
  - (ii) as at the Commencement Date there is no conflict of interest which may arise in respect of any expression of interest or request for proposal PSA may issue in relation to the Project;
  - (iii) it will notify PSA promptly in writing upon becoming aware of any circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual, potential or perceived conflict of interest with the Contractor's obligations under this Contract;
  - (iv) it will not place itself in a position which may, or will, give rise to an actual, potential or perceived conflict of interest under this Contract;
  - (v) it will not at any time while providing the Project Services or subsequently, provide services to any other party in respect of the Project except to the extent that PSA provides written consent for the Contractor to do so; and
  - (vi) no conflict of interest will arise in respect of the performance by the Contractor of its duties and the acceptance by the Contractor of its interests under this Contract.
- (b) The Contractor must ensure that each Subcontractor provides equivalent warranties to those set out in clauses 22(a) as if references to:
  - (i) the Contractor were references to the Subcontractor; and
  - (ii) this Contract were references to the relevant Subcontract,

and must ensure that the terms of the relevant Subcontract require the Subcontractor to:

- (iii) notify PSA and the Contractor promptly in writing upon becoming aware of any circumstances, arrangements or understandings which constitute, or may reasonably be considered to constitute, an actual, potential or perceived conflict of interest under the Subcontract; and
  - (iv) seek written consent of PSA prior to providing services to any party other than the Contractor in respect of the Project.
- (c) The Contractor must immediately inform the Contract Administrator of any matter which may give rise to a conflict of interest or if any of the warranties provided in clause 22(a) is no longer correct at any time during the Term. PSA may at its sole discretion:
- (i) direct the Contractor to take particular action in respect of the actual, potential or perceived conflict of interest. If the Contractor is unable or unwilling to comply with any such direction, PSA may terminate this Contract in accordance with clause 26; or
  - (ii) regard a conflict of interest as a breach of a fundamental term of this Contract and elect to terminate this Contract under the provisions of clause 26.

---

## **23. Waiver**

- (a) No right or obligation under this Contract is deemed to be waived except upon written acknowledgment signed by each Party.
- (b) A waiver by PSA or the Contract Administrator will not prejudice any of PSA's rights in respect of any subsequent breach of this Contract by the Contractor.
- (c) Subject to clause 23(a), any failure by PSA or the Contract Administrator to enforce any clause of this Contract, or any forbearance, delay or indulgence granted by the Contract Administrator to the Contractor, is not to be construed as a waiver of PSA's rights under this Contract.

---

## **24. Intellectual Property and Moral Rights**

### **24.1 Warranty by Contractor**

The Contractor warrants that it is entitled to use any Intellectual Property which may be used by it in connection with the provision of Project Services under this Contract.

## **24.2 Licence to the State**

- (aa) This clause 24.2 does not apply to any Geological Materials. Ownership of all Geological Materials vests or must be transferred to PSA in accordance with clause 25.
- (a) The Contractor grants to the State a royalty-free, irrevocable, non-exclusive, worldwide, perpetual, transferable licence (including the right to sub-license) to use, maintain, refurbish, adapt, integrate and develop all Foreground IP and Intellectual Property that is used or developed by the Contractor for the Project Services or which subsists in the Contract Materials.
- (b) The licence granted by the Contractor to the State pursuant to clause 24.2(a):
  - (i) is to the State, PSA and their respective employees, officers, contractors and agents;
  - (ii) includes the right to use, reproduce, adapt and modify the information or material, including the right to use any Intellectual Property and Foreground IP to the extent necessary for PSA to access, use, publish or store any Data vested in PSA in accordance with clause 24.5;
  - (iii) is at no cost to the State, PSA, or its employees, officers, contractors and agents; and
  - (iv) is for purposes related to the Project Services, the Project, Other State Projects and/or State Functions.
- (c) This Contract does not change the Intellectual Property ownership in information and material that is used by the Contractor for the Project Services or Foreground IP.
- (d) Without limiting the generality of anything in this clause 24, the Contractor acknowledges and agrees that for the purposes of this clause 24 State Functions may include:
  - (i) carrying out the research, investigative, reference and associated functions of the Geological Survey of Victoria;
  - (ii) making available to the public the Geological Materials (including any Data contained or referred to therein); and
  - (iii) delivery of an Other State Project.

## **24.3 Moral Rights**

- (a) In this clause 24.3, 'Moral Rights Consent' is a consent in the form set out in Annexure I.

- (b) The Contractor must, in respect of Contract Materials brought into existence by the Contractor, Contractor Personnel and Subcontractors:
- (i) in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of any Contract Materials, obtain from that person, before he or she creates any Contract Materials, a duly completed and executed Moral Rights Consent;
  - (ii) ensure that no person creates any Contract Material before that person has duly completed and executed a Moral Rights Consent;
  - (iii) not coerce any person to complete or execute a Moral Rights Consent;
  - (iv) pay to each person who executes a Moral Rights Consent in accordance with this clause 24.2(d) the sum of \$1 on behalf of PSA;
  - (v) within seven (7) days of a Moral Rights Consent having been executed in accordance with this clause 24.2(d), provide that Moral Rights Consent to the Contract Administrator; and
  - (vi) maintain an up-to-date record of the names and addresses of each person who is an author of any Contract Materials, and the Contract Material of which each such person is an author, and provide a copy of the record to the Contract Administrator whenever it is updated.

#### **24.4 IP Indemnity**

- (a) The Contractor must indemnify PSA and the Indemnified Parties against any liability, loss, damage, costs, compensation and expenses which they may incur or sustain (including the cost of any settlement of legal costs and expenses on a full indemnity basis) arising from or in connection with:
- (i) any breach of the warranty in clause 24.1; or
  - (ii) any infringement or alleged infringement of a third party's rights (including Intellectual Property Rights, rights in relation to Confidential Information and Moral Rights) arising from or in connection with the performance by or on behalf of the Contractor of the Project Services, the possession or use of any Contract Materials or the exercise by any Indemnified Party of any Intellectual Property Rights in accordance with a licence granted under this Contract.
- (b) Without limiting PSA's or an Indemnified Party's rights under clause 24.4(a), if a Claim of the type described in clause

24.4(a)(ii) is made against PSA or an Indemnified Party in respect of the use of particular Contract Materials or third party rights, then the Contractor must, at its own cost:

- (i) procure for PSA and the Indemnified Parties a licence to continue using the relevant Contract Materials or third party rights (as applicable); or
- (ii) modify the Project Services or the relevant Contract Materials so as to avoid the infringement, provided that such modification does not result in either the Project Services or the Contract Materials ceasing to meeting all relevant requirements (including warranties) of this Contract.

## **24.5 Data**

- (a) All Data hereby vests in PSA, and PSA grants to the Contractor an irrevocable licence with the right to sub-licence to its contractors the right to use Data solely for the purpose of carrying out the Project Services.
- (b) The Contractor must do everything possible to perfect such vesting including:
  - (i) assign to PSA from the date of creation all Intellectual Property Rights in Data created or obtained by or on behalf of PSA for the purposes of the Contract; and
  - (ii) upon completion of the Project Services, give PSA possession of all Data in such form and by such means as PSA reasonably requires.
- (c) The Contractor must only use, copy or supply Data to the extent necessary to perform its obligations under the Contract.

---

## **25. Geological Materials**

- (aa) This clause 25 applies with effect from the Commencement Date.
- (a) If proprietary rights to any or all Geological Materials belong to:
  - (i) any person other than the State, then the Contractor must transfer or procure the transfer of ownership of those Geological Materials to PSA, on terms reasonably acceptable to PSA; and
  - (ii) the State, then ownership of those Geological Materials vests in PSA.
- (b) During the Term, the Contractor:
  - (i) may use the Geological Materials solely for the purposes of performing the Project Services;

- (ii) is responsible for storage of the Geological Material such that they are kept safe, secure from damage and not subject to unauthorised access;
  - (iii) must, if directed by PSA, arrange for storage of the Geological Materials in a State facility; and
  - (iv) must provide access to the State, PSA and their respective agents, employees and consultants for the purposes of examining the Geological Materials, collecting Data and analysing that Data and making Public Disclosure of Data (including in respect of any Other State Projects and / or State Functions) and any purpose reasonably necessary or incidental thereto.
- (c) At the conclusion of the Term or where required under clause 17.2, the Contractor must deliver the Geological Materials to PSA.
- (d) Without limiting the generality of anything in this clause 25 the Contractor acknowledges and agrees that for the purposes of this clause 25 State Functions may include:
- (i) carrying out the research, investigative, reference and associated functions of the Geological Survey of Victoria;
  - (ii) making available to the public the Geological Materials (including any Data contained or referred to therein); and
  - (iii) delivery of an Other State Project.

---

## **26. Termination**

### **26.1 Immediate termination for Default**

- (a) In addition to its other rights, PSA may immediately terminate this Contract or reduce the scope of the Project Services by omitting part of the Project Services by notice in writing to the Contractor and without the need for any court order, if:
- (i) an Insolvency Event occurs in relation to the Contractor;
  - (ii) the Contractor breaches any of its obligations under clause 24;
  - (iii) the Contractor has committed a Default of a kind that the Contractor has been required by PSA to remedy under clause 26.2(b)(ii) on two or more prior occasions in any 12 month period, whether or not the Contractor has remedied the Default on those occasions;



- (iv) there is a Change in Control of the Contractor without the prior written consent of PSA in accordance with clause 33(a); or
  - (v) the Contractor assigns, novates or otherwise transfers any of its rights other than in accordance with the requirements of this Contract.
- (b) PSA is not required to provide prior notice, either orally or in writing, of its intention to exercise its right to terminate under this clause 26.1.

## **26.2 Termination following Default Notice**

- (a) In this clause 26, a "**Default**" exists if:
- (i) the Contractor:
    - A. does not commence performance of the Project Services in accordance with the requirements of this Contract;
    - B. suspends the performance of the Project Services other than in accordance with the Contract Administrator's instruction under clause 7.7 or otherwise does not proceed with the Project Services regularly and diligently;
    - C. fails to exercise the standard of skill, care and diligence required by this Contract;
    - D. fails to provide resources which are suitable and adequate for performance of the Project Services;
    - E. is unable or unwilling to resolve a matter impacting on the Project Services in a manner directed by PSA under clause 7.5(b);
    - F. is unable or unwilling to comply with a direction of PSA under clause 22(b);
    - G. fails to demonstrate, to PSA's satisfaction, full compliance with its insurance requirements in accordance with clause 30;
    - H. fails to comply with all applicable Laws;
    - I. fails to comply with clause 36.1 or 37.1;
    - J. does not comply with any direction of the Contract Administrator made in accordance with this Contract;

- K. has breached its obligations in relation to a Probity Event or Probity Investigation in accordance with clause 42;
  - L. has substantially or persistently breached or been in breach of any requirements of this Contract relating to work, health and safety; or
  - M. is otherwise in substantial or persistent breach of this Contract;
- (ii) a breach of clause 21 occurs; or
  - (iii) a breach of clause 22 occurs.
- (b) PSA may notify the Contractor in writing of a Default (**Default Notice**) which must:
- (i) state that it is a Default Notice under this clause 26.2(b); and
  - (ii) require the Contractor to remedy the Default (or overcome its effects) within a reasonable period having regard to the circumstances, to be specified in the Default Notice.
- (c) If PSA issues a Default Notice, then:
- (i) the Contractor must comply with the Default Notice, including remedying the Default (or overcoming its effects) within the period specified in the Default Notice;
  - (ii) unless the Default is a failure to pay money:
    - A. the Contractor must give PSA a program to remedy the Default (or overcome its effects) in accordance with the terms of the Default Notice which will specify the steps to address the underlying cause of the Default and to avoid similar Defaults occurring in the future;
    - B. the Parties must consult in good faith to develop and settle the remedy program and failing agreement, the remedy program will be as determined by PSA; and
    - C. following agreement or determination of the remedy program in accordance with clause 26.2(c)(ii)B, the Contractor must implement and comply with the remedy program;
  - (iii) the Contractor must comply with the directions given to the Contractor by PSA in relation to the Default; and
  - (iv) the Contractor must mitigate all loss, costs (including the costs of its compliance with any directions) and

expenses in connection with the Default, including those arising from affected Subcontracts.

- (d) If the Contractor considers, in good faith, that the time specified in a Default Notice is not reasonable, it must immediately notify PSA of that belief, the reasons for that belief and the time which it believes is reasonably required to remedy the Default (or overcome its effects).
- (e) If the Contractor gives a notice under clause 26.2(d) and the Contractor is and has been diligently pursuing the remediation of the Default (or overcoming its effects), then the time specified in the Default Notice will be extended by such period as PSA determines is reasonably required to enable the Contractor to remedy the Default (or overcome its effects), as notified by PSA to the Contractor.
- (f) PSA may immediately terminate, or reduce the scope of, this Contract by omitting part of the Project Services, by notice in writing to the Contractor if the Contractor:
  - (i) fails to comply with any of its obligations under clause 26.2(c);
  - (ii) fails to remedy (or overcome the effects of) the Default within the period set out in the Default Notice (as extended, if at all, in accordance with clause 26.2(e)); or
  - (iii) at any time after PSA has given a Default Notice, is not diligently pursuing or has not diligently pursued the remediation of the Default (or overcoming its effects), including implementing any remedy program agreed under clause 26.2(c)(ii)B or agreed or determined under clause 31.

### **26.3 General termination terms**

- (a) If this Contract is terminated under clause 26.1 or clause 26.2 or otherwise:
  - (i) subject to clause 43.2, the Parties will be relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - (ii) subject to the process set out in this clause 26, PSA's right to recover damages, including full contractual damages, will not be affected; and
  - (iii) the Contractor must give reasonable assistance to PSA to ensure that the Project Services are transitioned as smoothly as possible.
- (b) The rights of PSA to terminate, or reduce the scope of, this Contract by omitting part of the Project Services under clause

26.5 are in addition to any other right or remedy PSA may have in relation to this Contract.

- (c) If PSA terminates this Contract under clause 26.1 or clause 26.2, or if the Contractor repudiates this Contract and PSA otherwise terminates this Contract, then PSA will not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 15.

#### **26.4 Wrongful termination**

If PSA terminates or purports to terminate this Contract, other than under clause 26.5, and it is subsequently determined that the action was wrongful:

- (a) that action will be deemed to have been a termination in accordance with clause 26.5; and
- (b) the Contractor's sole rights in those circumstances will be those set out in clause 26.5.

#### **26.5 Termination for convenience**

- (a) Without prejudice to any of PSA's other rights under this Contract including the right to suspend under clause 7.7 and the right to terminate under clauses 26.1 and 26.2, PSA may at any time, in its sole discretion (and without the consent of the Contractor), by giving written notice to the Contractor, terminate this Contract for convenience.
- (b) If PSA issues a notice under clause 26.5(a), the Contractor must:
  - (i) immediately cease all work under this Contract in accordance with the notice;
  - (ii) demobilise any equipment and Contractor Personnel from any Project site;
  - (iii) comply with any directions given to the Contractor by PSA; and
  - (iv) take all appropriate action to mitigate any loss, costs and expenses being incurred with respect to the termination of this Contract.
- (c) If PSA elects to terminate this Contract under clause 26.5(a), subject to clause 26.5(g), PSA will only be liable for:
  - (i) approved and unpaid amounts outstanding at the time of termination;
  - (ii) in respect of any Project Services carried out up to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor had been entitled to and had submitted an invoice on the date of termination; and

- (iii) subject to clause 26.5(d), any reasonable costs actually incurred by the Contractor that are directly attributable to the termination, including those arising from Subcontracts with Subcontractors, subject to the Contractor:
  - A. taking all appropriate action to mitigate all loss, costs and expenses; and
  - B. providing evidence of expenditure to PSA's reasonable satisfaction of such costs.
- (d) If PSA terminates this Contract in circumstances contemplated by clause 7.2(c)(ii), PSA will not be liable for any costs referred to in clause 26.5(c)(iii).
- (e) In no circumstances will the fees payable for terminated Project Services exceed the Project Fee that would have been paid had this Contract not been terminated by PSA and the relevant Project Services been completed.
- (f) Except as set out in clause 26.5(c), the Contractor will not be entitled to any payment from or to make any other Claim against PSA in respect of the termination.
- (g) If this Contract is terminated in accordance with clause 26.5(a), the Contractor will not be entitled under any circumstances whatsoever to payment for any:
  - (i) loss of profits;
  - (ii) loss of opportunity;
  - (iii) consequential losses; or
  - (iv) losses of a similar type or character,
 pursuant to this Contract.

## **26.6 Carrying out Project Services by PSA**

If PSA:

- (a) terminates this Contract; or
- (b) reduces the scope of the Project Services in accordance with this clause 26,

PSA may thereafter carry out the Project Services terminated or amended itself or by engaging a third party.

---

## **27. Nature of engagement**

The Contractor is engaged as an independent contractor and nothing in this Contract is deemed to constitute the Contractor as an agent, employee or partner of PSA and the Contractor does not have any authority to incur and

must not incur any obligation or make or purport to make any representation on behalf of PSA except with the express written instructions of PSA.

---

## **28. Wages, allowances, taxes and statutory charges of Contractor Personnel**

The Contractor:

- (a) must be responsible for administration and payment of all wages and monetary sums owing to Contractor Personnel who are employees of the Contractor for work performed in connection with the Project Services (including any allowances, penalty rates, loadings etc. owing under an award or enterprise agreement applicable to the Contractor Personnel);
- (b) must make all necessary deductions from wages required by Law to be paid or made by an employer in respect of the Contractor Personnel (including superannuation deductions and income tax deductions);
- (c) must pay any taxes and other statutory charges required to be paid by an employer resulting from the employment of the Contractor Personnel to the extent required by Law (including payroll tax and superannuation charges);
- (d) must pay any liability, fine, penalty or other charge imposed on the Contractor as a result of non-compliance with this clause 28 or the failure of the Contractor to ensure that all wages, payments, statutory charges and the like are duly paid and accounted for; and
- (e) indemnifies and must keep PSA indemnified against:
  - (i) any obligation to make payments to the Contractor Personnel and Subcontractors engaged in the provision of the Project Services; and
  - (ii) any obligation to pay any related statutory taxes, fees, levies or charges.

---

## **29. Indemnity**

- (a) The Contractor must indemnify PSA and the Indemnified Parties against any liability, loss, damage, costs, compensation and expenses which they may incur or sustain (including the cost of any settlement of legal costs and expenses on a full indemnify basis) in respect of:
  - (i) death, personal injury, pain, suffering or illness of any person;
  - (ii) loss of or damage to any tangible property; and

- (iii) actions, Claims and demands brought by third parties against PSA or the Indemnified Parties,
- arising from, or in connection with:
- (iv) the performance by or on behalf of the Contractor of the Project Services;
  - (v) any negligence or other wrongful act or omission of the Contractor, Contractor Personnel, Subcontractors or employees, or Subcontractors or of any other persons for whose acts or omissions the Contractor is vicariously liable; and
  - (vi) any negligence or other wrongful act or omission of the Contractor's visitors, invitees or licensees.
- (b) The Contractor's liability under this clause 29 is reduced proportionally to the extent to which any action, proceeding, Claim or demand arises out of any negligence or wrongful act or omission of PSA.
  - (c) All obligations to indemnify under this Contract survive termination of this Contract.
  - (d) PSA and the Contractor each declares and acknowledges that:
    - (i) each indemnity or promise referred to in this Contract in favour of the Indemnified Parties is held on trust by PSA for the benefit of the Indemnified Parties from the Commencement Date;
    - (ii) PSA may exercise rights in relation to, or otherwise enforce such indemnities or promises, on behalf of any Indemnified Party; and
    - (iii) the consent of the Indemnified Parties will not be required for any amendment to, or waiver of rights under, this Contract.

## **30. Insurance**

### **30.1 Professional indemnity insurance**

- (a) The Contractor must:
  - (i) effect and maintain a professional indemnity insurance policy covering:
    - A. the Contractor and each of the Contractor's agents and employees; and
    - B. the Contractor's vicarious liability for each of its Subcontractors and consultants; and

- (ii) ensure that each Key Subcontractor effects and maintains a professional indemnity insurance policy covering:
  - A. the Key Subcontractor and each of the Key Subcontractor's agents and employees; and
  - B. the Key Subcontractor's vicarious liability for each of its Subcontractors and consultants,for the period specified in clause 30.1(b).

- (b) Such insurance will be for an amount not less than that stated in the Contract Details. The policy must be with an insurer that is, and provide coverage that is, reasonably acceptable to PSA. The Contractor must maintain, and ensure that each Key Subcontractor maintains, a policy of insurance on similar terms, for a period of eleven (11) years after expiration of the Term.

### **30.2 Public and products liability insurance**

- (a) The Contractor shall procure and maintain or cause to be procured and maintained a public and products liability policy of insurance in relation to the Project Services:
  - (i) in the name of the Contractor commencing from the Commencement Date, covering the State, PSA, the Contractor and each of the Subcontractors and Contractor's agents and employees of a named insured (whilst acting within the scope of their duties in such capacities in connection with the Project Services), for the duration of the Term; and
  - (ii) for an amount not less:
    - A. than **[Insert relevant amount]** arising from any one occurrence in respect of the legal liability of the insured to pay compensation or damages in respect of personal injury, property damage or advertising injury; and
    - B. than a reasonable amount reflective of the contract value (as notified in writing by PSA to the Contractor from time to time), in respect of physical loss or damage to works associated with the Project Services.
- (b) If PSA considers that the public and products liability policy of insurance taken out by the Contractor is not sufficient to cover the Contractor's liabilities, PSA:
  - (i) must notify the Contractor of its opinion and, if required by the Contractor, meet to discuss the PSA's proposed public and products liability policy requirements (with a



view to resolving the issues with the Contractor's insurers); and

- (ii) subject to having notified the Contractor in accordance with clause 30.2(b)(i) and given the Contractor a reasonable period to consider the PSA's proposed public and products liability policy requirements, may take out and pay for additional insurance as PSA considers necessary; and
- (iii) PSA may recover any debt due from the Contractor the amount paid and the amount of any excess borne by PSA.

### **30.3 Workers' compensation insurance**

- (a) The Contractor must take out and maintain workers' compensation insurance in respect of the Contractor's employees and comply with the Law in regard to workers' compensation insurance, lodging declarations, administration and payment of workers' compensation insurance premiums for the Contractor's employees.
- (b) The Contractor must:
  - (i) ensure that to the extent permitted by Law, the insurance policy extends to provide indemnity to PSA in respect of any statutory liability to the Contractor's employees; and
  - (ii) ensure that each of its Subcontractors legally required to do so has workers' compensation insurance covering the Subcontractor in respect of its statutory liability to employees in the same manner as the Contractor is required to do under clause 30.3(a).

### **30.4 Motor vehicle insurance**

The Contractor must effect and maintain motor vehicle third party liability insurance against property damage and injury to and death of persons, arising from the use of motor vehicles belonging to or in the care, custody or control of the Contractor and used in connection with the Project Services, for any obligation under a Law for insurance relating to motor vehicles.

### **30.5 Construction plant and equipment insurance**

PSA is not responsible for procuring construction plant and equipment insurance. If the Contractor considers that construction plant and equipment insurance is necessary, it will procure it itself at its own cost.

### **30.6 Reputable Insurer**

The Contractor must effect all insurances required to be effected and maintained by it under this Contract with insurance companies which have

a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or equivalent.

### **30.7 Evidence of policies**

- (a) The Contractor must, on request, produce satisfactory evidence of any insurance required under this Contract to be held by the Contractor or a Subcontractor to the Contract Administrator, including details of:
- (i) name and address of the insurance provider;
  - (ii) type of insurance, including policy number;
  - (iii) a summary of coverage of each type of insurance, including limitations and exclusions that apply specifically to the individual policy or that are not standard for the type of cover generally;
  - (iv) limits of liability per claim or occurrence and details of any aggregate limits or relevant sub-limits which apply and whether the limits are costs inclusive or exclusive;
  - (v) whether any past or current claims made under the policy have materially affected, or are likely to materially affect, the amount of cover required under this Contract;
  - (vi) deductible amounts;
  - (vii) period of insurance, including expiration date; and
  - (viii) without limiting clause 30.6, the insurance provider credit rating (including the name of the rating company) as at the date of commencement or renewal of the insurance policy.
- (b) The Contractor must ensure that it:
- (i) does not do or omit to do anything whereby any insurance may be prejudiced;
  - (ii) if necessary, takes all possible steps to rectify any situation which might prejudice any insurance;
  - (iii) renews any required insurance policy if it expires during the relevant period, unless appropriate replacement insurance is obtained;
  - (iv) does not cancel or allow an insurance policy to lapse during the period for which it is required by this Contract without the prior written consent of the Contract Administrator; and
  - (v) complies fully with its duty of disclosure and obligations of utmost good faith toward the insurer and in connection with all of the required insurance policies.

- (c) The Contractor must immediately notify the Contract Administrator if the Contractor becomes aware or reasonably believes that, in relation to any policy of insurance relevant to this Contract:
  - (i) the policy:
    - A. is or will be cancelled;
    - B. has not been or will not be renewed; or
    - C. has had or will have its coverage reduced in any material respect; or
  - (ii) there has been non-compliance with any conditions to which the policy is subject.
- (d) The obtaining of insurance as required under this clause 30 will not in any way limit, reduce or otherwise affect any of the obligations, responsibilities and liabilities of the Contractor under any other provisions of this Contract or otherwise at Law or in equity.
- (e) The Contractor must disclose to the Contract Administrator any material change to any insurance policy effected by the Contractor in accordance with the requirements of this Contract.
- (f) The Contractor must facilitate a meeting between PSA's insurance broker or nominated legal representative and the Contractor's insurance broker at PSA's request at any time during the Term to discuss the details of any policy effected by the Contractor to meet the requirements of this Contract.

## **31. Disputes**

### **31.1 Notice of a Dispute**

- (a) If a Dispute arises, the Dispute must be determined in accordance with the procedure set out in this clause 31.
- (b) Where a Dispute arises, either Party may give a notice in writing to the Contract Administrator and the other Party specifying:
  - (i) the nature of the Dispute;
  - (ii) particulars of the Party's reasons for being dissatisfied; and
  - (iii) the position which the Party believes is correct,

**(Dispute Notice).**

### **31.2 Executive negotiation**

- (a) The Dispute identified in the Dispute Notice given under clause 31.1(b) is to be referred to the Executive Negotiators.

- (b) The Executive Negotiators must within:
- (i) fifteen (15) Business Days of referral of a Dispute; or
  - (ii) such longer period of time as the Executive Negotiators may agree in writing,
- meet and undertake genuine and good faith negotiations with a view to resolving the Dispute and, if they cannot resolve the Dispute, endeavour to agree upon a procedure and time frame in which to resolve the Dispute.

### **31.3 Expert determination**

If the Executive Negotiators cannot resolve the Dispute or agree upon a procedure and time frame to resolve the Dispute in accordance with clause 31.2(b) within fifteen (15) Business Days of referral of a Dispute (or such longer period as may be agreed between the Parties), the Dispute must be submitted to an expert determination.

### **31.4 The expert**

The expert determination under clause 31.3 is to be conducted by:

- (a) the independent industry expert specified in the Contract Details pursuant to a contract between PSA, the Contractor and the expert on terms not inconsistent with those specified in Annexure F; or
- (b) where:
  - (i) no such person is specified; or
  - (ii) the independent industry expert specified in the Contract Details or an independent industry expert otherwise appointed under this clause 31.4:
    - A. is unavailable;
    - B. declines to act;
    - C. does not respond within ten (10) Business Days to a request by one or both Parties for advice as to whether he or she is able to conduct the determination; or
    - D. does not make a determination within the time required by clause 31.9,

an independent industry expert appointed by the nominating authority specified in the Contract Details.

### **31.5 Not arbitration**

An expert determination conducted under this clause 31 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

### **31.6 Procedure for determination**

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the Dispute;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

### **31.7 Disclosure of interest**

The expert must:

- (a) disclose to the Parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one Party without the knowledge of the other.

### **31.8 Costs**

Each Party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay an equal portion of the expert's costs.

### **31.9 Conclusion of expert determination**

Unless otherwise agreed between the Parties, the expert must notify the Parties of his or her decision upon an expert determination conducted under this clause 31 within forty (40) Business Days from the acceptance by the expert of his or her appointment.

### **31.10 Agreement with expert**

- (a) The expert will not be liable to the Parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (b) The Parties must enter into an agreement with the appointed expert on the terms set out in Annexure F or such other terms as the Parties and the expert may agree.

### 31.11 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be final and binding, unless a Party gives notice of appeal to the other Party within fifteen (15) Business Days of the determination; and
- (c) is to be given effect to by the Parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 31.12.

### 31.12 Arbitration

- (a) If:
  - (i) a notice of appeal is given under clause 31.11(b); or
  - (ii) the expert fails to notify the Parties of his or her decision upon an expert determination conducted under this clause 31 within forty (40) Business Days from the acceptance by the expert of his or her appointment (or such longer period as agreed between the Parties),

the Dispute must be determined by arbitration conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (**ACICA Arbitration Rules**). The seat of arbitration will be Melbourne, Australia. The language of the arbitration will be English. The number of arbitrators will be one. The Law governing this arbitration agreement is the Law of the State of Victoria.

- (b) The Parties agree to the following general principles relating to the procedure of the arbitration:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted under this clause will not mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
  - (iii) that in conducting the arbitration, the arbitral tribunal shall have particular regard to the matters set out above; and
  - (iv) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.
- (c) In conducting the arbitration, the arbitral tribunal shall have particular regard to the matters set out in this clause 31.12.

- (d) The Parties agree that the arbitration will be conducted as expeditiously as possible and no Party will unnecessarily delay the arbitration proceedings.
- (e) All evidence in chief will be in writing, unless otherwise ordered by the arbitrator.
- (f) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of that hearing:
  - (i) the duration of the oral hearings shall be fixed by the arbitral tribunal; and
  - (ii) the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the Parties will be split equally between the Parties so that each party has the same time to conduct its case unless, in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the Parties.
- (g) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (h) Subject to paragraph (i), any award will be final and binding upon the Parties.
- (i) The Parties agree that either Party may, under section 34A of the *Commercial Arbitration Act 2011* (Vic), bring an appeal to the Supreme Court of Victoria on a question of Law arising out of the arbitrator's award.

### **31.12A Proportional Liability**

Notwithstanding anything else, to the extent permissible by Law, any:

- (a) expert in an expert determination under clause 31.3; or
- (b) arbitrator in an arbitration under clause 31.12,

will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this provision, have applied to any Dispute referred to expert determination or arbitration pursuant to this Contract.

### **31.13 Performance during Dispute resolution**

Despite the existence of a Dispute between the Parties, the Contractor must:

- (a) continue to perform the Project Services; and
- (b) otherwise comply with its obligations under this Contract.

### **31.14 Interlocutory relief**

The Parties must not oppose any application for interlocutory relief pending resolution of a Dispute under this clause 31.

---

## **32. Assignment**

- (a) The Contractor must not, without the prior written approval of the Contract Administrator, assign, novate, mortgage, charge or encumber this Contract or any part or any benefit of moneys or interest under this Contract. In giving written approval, the Contract Administrator may impose such terms and conditions as it considers appropriate.
  - (b) The Contractor is fully responsible for carrying out the Project Services notwithstanding that the Contractor has assigned the performance of any part of these Project Services.
  - (c) PSA may assign, transfer, novate or otherwise deal with all or any of its rights and obligations under this Contract including to any Authority, agency or State associate without the consent of any person including the Contractor.
- 

## **33. Change in Control**

- (a) Except where any change of Control arises as a consequence of any change in legal or beneficial ownership of any shares that are listed on a recognised securities exchange, the Contractor must ensure that there is no Change in Control of the Contractor without the prior written consent of the Contract Administrator.
  - (b) The Contractor must immediately notify PSA after a Change in Control arising as a consequence of any change in legal or beneficial ownership of any shares that are listed on a recognised securities exchange.
  - (c) The Contract Administrator's consent under clause 33(a) may be given subject to any conditions that the Contract Administrator considers appropriate and the Contractor must comply with such conditions.
  - (d) The Contractor must immediately notify PSA if there is a proposed change in the effective Control of the Contractor (or any Holding Company of the Contractor), such that the person or group of persons who Control the Contractor (or any Holding Company of the Contractor) immediately prior to the proposed change will cease to Control the Contractor (or any Holding Company of the Contractor) immediately after the proposed change.
- 

## **34. Employment policy**

- (a) The Contractor must not be in breach of the *Workplace Gender Equality Act 2012* (Cth) during the Term.



- (b) The Contractor and any person engaged in the provision of the Project Services must not:
    - (i) engage in unethical work practices; or
    - (ii) engage employees or sub-contracted workers upon terms and conditions which are not commensurate with industry standards generally applicable in Victoria.
  - (c) Where an industrial award applies to the capacity in which an employee is engaged by the Contractor, or by a Subcontractor, in the provision of the Project 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.
- 

## **35. Policies**

### **35.1 Privacy**

- (a) The Contractor agrees that in respect of any Personal Information or Health Information (as applicable) held in respect of this Contract that the Contractor is bound by the Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purposes of this Contract, in the same way and to the same extent as PSA would have been bound by the Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by PSA.
- (b) The Contractor must immediately notify PSA where the Contractor becomes aware of a breach or possible breach of the obligations referred to in clause 35.1(a) by the Contractor or any of its Subcontractors or Contractor Personnel.

### **35.2 Code of Conduct**

Where, in the course of providing the Project Services, the Contractor, or its Subcontractors or Contractor Personnel:

- (a) supervise or work with Public Sector Employees;
- (b) 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
- (c) use or have access to public sector resources or information that are not normally accessible or available to the public,

the Contractor must (and must ensure that its Subcontractors and Contractor Personnel) comply with the Code of Conduct.

### 35.3 Protective Data Standards

- (a) Notwithstanding any other provisions of this Contract, the Contractor must:
  - (i) on request from PSA, provide PSA with all necessary assistance and information required by PSA to develop, prepare and update the parts of PSA's Security Risk Profile Assessment and Protective Data Security Plan relevant to the Contractor in accordance with the PDP Act;
  - (ii) not do any act or engage in a practice that if done by a Public Sector Agency would contravene a VPDSS in respect of:
    - A. Public Sector Data; or
    - B. Public Sector Data Systems kept by the Contractor under or in connection with this Contract;
    - C. in carrying out all Project Services, collect, hold, manage, use, disclose and transfer Public Sector Data only:
      - 1) for the purposes of meeting the Contractor's express obligations under this Contract;
      - 2) in accordance with the parts of the Protective Data Security Plan relevant to the Contractor; and
      - 3) in accordance with all other security requirements PSA notifies to the Contractor in writing, where those requirements are reasonably necessary to ensure the parties comply with the PDP Act and VPDSS;
  - (iii) implement processes and training to ensure compliance with this clause 35.3 including mechanisms that will enable Data Subjects to access and correct Personal Information about them that is held by the Contractor, in a manner consistent with IPP 6 and HPP6;
  - (iv) promptly follow any Direction of the Principal in relation to Personal Information and Public Sector Data;
  - (v) ensure that the design, function and operation of all Project Services complies with the VPDSS and the parts of the Protective Data Security Plan relevant to the Contractor;

- (vi) immediately notify PSA (providing full details) and cooperate with PSA in the event of a Public Sector Data Incident;
  - (vii) not make or publish any statement or communication regarding a Public Sector Data Incident, including contacting the Commissioner for Privacy and Data Protection or any other relevant regulatory Authority, without PSA's prior written consent;
  - (viii) comply with any recommendation or direction of the Commissioner for Privacy and Data Protection relevant to the Contractor or this Contract;
    - A. on request from PSA, provide PSA with:
      - 1) reports regarding the Contractor's compliance with this clause 35.3;
      - 2) evidence satisfactory to PSA of the Contractor's compliance with this clause 35.3; and
      - 3) access to all premises, the site, Contractor Personnel, materials and systems (including Public Sector Data Systems) to allow PSA to assess the Contractor's compliance with this clause 35.3;
  - (ix) where disclosing, transferring or otherwise making accessible Public Sector Data to any third party (including Contractor Personnel), ensure that the third party agrees to and complies with this clause 35.3 to the same extent as the Contractor (except that the third party may not further transfer, disclose or otherwise make accessible Personal Information or Public Sector Data without PSA's prior written consent); and
  - (x) on termination or expiry of this Contract, or at any time on request by the Principal, return to PSA or securely destroy (at PSA's discretion) all copies or other records containing Personal Information or Public Sector Data.
- (b) Terms which have a defined or special meaning in the PDP Act have the same meaning where used in this clause 35.3.

#### **35.4 Non-conforming cladding**

- (a) To the extent the Project Services include any design work and without limiting the Contractor's obligations under any other provision of this Contract, the Contractor must:
  - (i) ensure that any design solution must not include the installation into any building of Type A or Type B

Construction, a Prescribed Combustible Product as part of an External Wall (including as an attachment) unless the Consultant has obtained a determination of the Building Appeals Board that the installation of the Prescribed Combustible Product complies with the *Building Act 1993* (Vic) and the regulations made under that Act;

- (ii) if the Contractor becomes aware of the use of any Prescribed Combustible Product on the Project, the Consultant must immediately notify the Contract Administrator; and
  - (iii) indemnify PSA from and against any loss, damage, expense or Claim (including any third party Claim against PSA of the State) arising out of or in connection with any breach by the Contractor of its obligations under clause 35.4(a).
- (b) In this clause 35.3(a):
- (i) "**Cladding Guideline**" means the guideline titled "Minister's Guideline MG-14: Issue of building permits where building work involves the use of certain cladding products" issued pursuant to section 188(1)(c) of the *Building Act 1993* (Vic) on 13 March 2018, as amended or replaced from time to time; and
  - (ii) terms which have a defined or special meaning in the Cladding Guideline have that meaning where used in clause 35.4(a).

### 35.5 Shared Reporting Process

The Contractor acknowledges and agrees that:

- (a) the Contract will be subject to the State's shared reporting regime if the Fee exceeds the threshold identified in the Contract Details (**Shared Reporting Contract**); and
- (b) if the Contract is a Shared Reporting Contract, then the Contractor must:
  - (i) cooperate with, and provide any assistance reasonably required by, the Contract Administrator in relation to the Shared Reporting Process; and
  - (ii) without limiting clause 35.5(a), provide to the Contract Administrator any information required by the Contract Administrator from time to time, within the time requested, for the purposes of the Shared Reporting Process (**Shared Reporting Information**).
  - (iii) details of the Contractor's performance under the Contract, including any Performance Reviews and the

Shared Reporting Information, may be made available by PSA to other Government Parties or municipal, public or statutory Authorities (**Shared Reporting Process**), and taken into account by PSA or those other Government Parties or Authorities when considering the Contractor for future tendering and contracting opportunities.

---

## **36. Local Jobs First Policy**

### **36.1 Local Industry Development Plan**

- (a) The Contractor must, in performing its obligations under this Contract:
  - (i) comply with the LIDP;
  - (ii) perform all obligations required to be performed under the LIDP by the due date for performance; and
  - (iii) comply with the Local Jobs First Policy.
- (b) The Contractor acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Contract, any extensions to the term and until all of its reporting obligations as set out in clause 36.3 of this Schedule are fulfilled.
- (c) The Contractor's failure to comply with this clause 36.1 will constitute a material breach of this Contract.

### **36.2 Revised LIDP**

- (a) If at any time a Variation to this Contract is proposed which involves or effects a change in the nature of any LIDP commitments, the Contractor must prepare a revised LIDP in collaboration with and certified by Industry Capability Network (Victoria) (**Revised LIDP**).
- (b) When requested by the Contract Manager, the Contractor must provide the Revised LIDP to PSA.
- (c) The Revised LIDP must be agreed by the parties before any Variation to the Contract can take effect unless the parties agree that a Revised LIDP is unnecessary.
- (d) Once the Revised LIDP is agreed by the parties, the Revised LIDP replaces the LIDP and forms part of this Contract.

### **36.3 Reporting**

- (a) The Contractor must prepare and maintain records demonstrating its compliance with the LIDP.

- (b) The Contractor must provide a six monthly report demonstrating its progress towards implementing the LIDP in the form of the LIDP Monitoring Table.
- (c) If the Contract is for a Project valued at \$20 million or more, the Contractor must use the ICN Analytics for LJP Policy monitoring and reporting.
- (d) Prior to or at Completion, the Contractor must provide to the Contract Manager:
  - (i) the LIDP Monitoring Table identifying LIDP commitments and actual achievements. The LIDP Monitoring Table must identify and explain any departures from the LIDP Commitments and the aggregated outcomes as reported in the LIDP Monitoring Table; and
  - (ii) a statutory declaration in the form set out in Attachment 3 to Annexure J to confirm that the information contained in the LIDP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.
- (e) At the request of the Contract Manager, the Contractor must provide further information or explanation of any differences between expected and achieved LIDP outcomes.
- (f) The reporting obligations in this Schedule are in addition to and do not derogate from any other reporting obligations as set out in this Contract.

#### **36.4 Verification of Contractor's compliance with LIDP**

- (a) The Contractor agrees that each of PSA and the Department will have the right to inspect its records in order to verify compliance with the LIDP.
- (b) The Contractor must:
  - (i) permit the Contract Administrator, an accountant or auditor on behalf of PSA or the Department, or any other person authorised by PSA or the Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Contractor for the purposes of this Contract;
  - (ii) permit PSA or the Department from time to time to undertake a review of the Contractor's performance in accordance with the LIDP; and
  - (iii) ensure that its employees, agents and Subcontractors give all reasonable assistance to any person authorised

by PSA or the Department to undertake such audit or inspection.

- (c) The Contractor acknowledges and agrees that PSA, the Department, PSA's and Department's duly authorised representatives and Industry Capability Network (Victoria) are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the LIDP.
- (d) The obligations set out in this clause 36.4 are in addition to and do not derogate from any other obligation under this Contract.

### **36.5 Use of information**

The Contractor acknowledges and agrees that:

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

### **36.6 Subcontracting**

- (a) The Contractor must ensure that any Subcontracts entered into by the Contractor in relation to Project Services contain clauses requiring subcontractors:
  - (i) to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to services performed under the Subcontract;
  - (ii) to provide necessary information that allows the Contractor to comply with its reporting obligations under clause 36.3; and
  - (iii) to permit PSA and the Department to exercise their inspection and verification rights under clause 36.4.

- (b) The subcontracting obligations set out in this clause 36.6 are in addition to and do not derogate from any other obligations under this Contract.
- (c) The Contractor's failure to comply with this clause 36.6 will constitute a material breach of this Contract.

### **36.7 Local Jobs First Commissioner**

- (a) The Contractor acknowledges that:
  - (i) it is required to comply with any information notice issued to it by the Local Jobs First Commissioner in accordance with s 24 of the *Local Jobs First Act 2003* (Vic);
  - (ii) it is required to comply with any compliance notice issued to it by the Local Jobs First Commissioner in accordance with s 26 of the *Local Jobs First Act 2003* (Vic);
  - (iii) its failure to comply with the compliance notice referred to in this clause 36.7(a) may result in the issue of an adverse publicity notice by the Responsible Minister under s 29 of the *Local Jobs First Act 2003* (Vic); and
  - (iv) the Local Jobs First Commissioner may:
    - A. monitor and report on compliance with the Local Jobs First Policy and LIDP; and
    - B. request PSA to conduct an audit in relation to the Contractor's compliance with the Local Jobs First Policy and the LIDP.
- (b) The Contractor acknowledges that the Commissioner may recommend that PSA take enforcement proceedings against the Contractor if the Contractor has failed to comply with the Local Jobs First Policy or the LIDP by:
  - (i) applying to a court to obtain an injunction; or
  - (ii) taking action available under this Contract.

---

## **37. Social Procurement Framework**

### **37.1 Social Procurement Compliance Plan**

- (a) The Contractor must, in performing its obligations under this Contract, comply with the Social Procurement Compliance Plan (including the Social Procurement Commitments).
- (b) The Contractor acknowledges and agrees that the Social Procurement Compliance Plan (including the Social Procurement Commitments) applies in respect of the Contract and the



performance of the Project Services, including any Variation, and regardless as to whether the Project Services are performed at the site or at any other location and until all of its reporting obligations as set out in clause 37.2 are fulfilled.

- (c) The Contractor agrees that the Social Procurement Commitments will bind the Contractor in relation to:
  - (i) the Contract as a whole (or to all of the works specified in the Contract), including any change of scope during the term of the Contract; and
  - (ii) all Construction conducted off site provided that the work has been specified as part of the Contract.
- (d) The Contractor's failure to undertake all reasonable measures to achieve compliance with clauses 37.1 to 37.3 (inclusive) may be determined by PSA to constitute a material breach of this Contract.
- (e) The Contractor must ensure that any Subcontracts entered into in relation to the Project Services, contain clauses requiring the relevant Subcontractor (or their Subcontractors of any tier) to:
  - (i) comply with the Social Procurement Commitments to the extent that it applies to Works performed under the Subcontract;
  - (ii) provide all necessary information to the Contractor so that the Contractor can fulfil its reporting obligations under clause 37.2 of this Contract; and
  - (iii) permit PSA to exercise its verification and inspection rights under clause 37.3 of this Contract.

## **37.2 Reports**

- (a) The Contractor must submit written Social Procurement Performance Reports to PSA outlining its performance against the Social Procurement Compliance Plan at least every **[insert reporting frequency]**.
- (b) The Social Procurement Performance Report submitted in accordance with clause 37.2(a) must:
  - (i) be in a form satisfactory to the Victorian Government (acting reasonably); and
  - (ii) include all supporting information reasonably required by the Victorian Government to verify the contents of the Social Procurement Performance Report.
- (c) Social Procurement Performance Reports must include details specifying the Contractor's performance in complying with the Social Procurement Compliance Plan. Any reasons for deviations

from the Social Procurement Compliance Plan must also be detailed in Social Procurement Performance Reports.

- (d) In addition to the Social Procurement Performance Reports, the Contractor must submit:
  - (i) a final Social Procurement Performance Report within 2 months of the date of Completion; and
  - (ii) a statutory declaration made by the Contractor declaring that the contents of the final Social Procurement Performance Report are true and correct, which must be submitted together with the final Social Procurement Performance Report.
- (e) Where maintenance or ongoing service components form part of the work under the Contract, the final Social Procurement Performance Report must be submitted at the time at which the primary substance of the work under the Contract has been practically completed (excluding any ongoing maintenance or service work).

### **37.3 Verification of Contractor's compliance with Social Procurement Compliance Plan**

- (a) The Contractor agrees that the Department / PSA has the right to inspect the Contractor's records in order to verify compliance with the Social Procurement Compliance Plan.
- (b) The Contractor must:
  - (i) permit the Department / PSA from time to time during ordinary business hours, to inspect, verify and make copies of all records maintained by the Contractor for the purposes of this Contract at the Contractor's premises, or provide copies of those records to the Department / PSA at the Department / PSA's request;
  - (ii) permit the Department / PSA from time to time to undertake a review of the Contractor's performance in accordance with the Social Procurement Compliance Plan; and
  - (iii) ensure that all its Subcontractors and Contractor Personnel give all reasonable assistance to PSA to undertake such audit or inspection as described in clauses 37.3(b)(i) and 37.3(b)(ii) above.
- (c) The Contractor acknowledges and agrees that the Department / PSA and the Department / PSA's duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Social Procurement Compliance Plan.

- (d) The obligations set out in this clause 37.3 are in addition to and do not derogate from any other obligation under this Contract.

### **37.4 Use of Information**

The Contractor acknowledges and agrees that the statistical information contained in the Social Procurement Compliance Plan and the measures of the Contractor's compliance with the Social Procurement Compliance Plan as reported will be:

- (a) reported by the Department / PSA to the Department of Treasury and Finance; and
- (b) considered in the assessment or review of the Contractor's eligibility to tender for future Victorian Government contracts.

---

## **38. Health and safety**

### **38.1 Contractor's general OHS obligations**

- (a) PSA requires the Project Services to be completed with safety as the paramount consideration, for the management of safety during the planning and carrying out of the all Project Services to be of the highest priority, and for all health and safety risks to be either eliminated or reduced so far as is reasonably practicable. This Contract will be interpreted with regard to this requirement.
- (b) The Contractor warrants that it is familiar with, has the capability and resources to comply with, and will comply with and ensure all Subcontractors engaged in delivery of the Project Services comply with, all OHS Legislation.
- (c) The Contractor:
  - (i) must ensure safety is a core value for and throughout the performance of the Project Services;
  - (ii) must aspire to provide all persons whose health and safety may be put at risk arising out of, or in connection with, the performance of the Project Services, with the highest level of protection to ensure, so far as is reasonably practical, that no harm to those persons arises;
  - (iii) must maintain independent certification to AS4801-2001 (or equivalent) by a JAS-ANZ accredited certification body for the duration of the Project Services;
  - (iv) must perform (and must procure that its Subcontractors perform) the Project Services safely and without risk to the health, safety or welfare of any person and, without limiting clause 8.1(a)(ii), in accordance with the requirements of OHS Legislation and the Agreed Health and Safety Management Plan;

- (v) must effectively engage, consult and co-ordinate with relevant stakeholders regarding health and safety matters throughout the performance of the Project Services, including during planning, design and (where applicable) construction. Without limiting this obligation, the Contractor must:
  - A. ensure that all parties are aware of the risks associated with the Project Services and their responsibilities with respect to those risks; and
  - B. inform all parties of any material amendment to relevant Management Plans, or safe work method statements as appropriate to ensure that those persons are aware of any changes to the risks associated with the Project Services or their responsibilities with respect to those risks;
- (vi) must promote a culture where hazards and risks including unsafe behaviour are identified, reported, addressed and prevented;
- (vii) must, upon reasonable request by or on behalf of PSA, demonstrate compliance with OHS Legislation including providing evidence of measures taken to achieve such compliance;
- (viii) accepts that it is responsible for all aspects of health and safety relating to the Project Services during the Term and it cannot delegate or assign this responsibility to a third party without the prior approval of PSA; and
- (ix) must cooperate with PSA in respect of the discharge of any OHS obligations of PSA in connection with the Project Services under the OHS Legislation, and must:
  - A. comply with all reasonable requests of PSA to assist it to discharge its obligations;
  - B. refrain from doing anything that may impede PSA in discharging its obligations; and
  - C. notify PSA immediately of any:
    - 1) non-compliance or potential non-compliance in connection with the OHS Legislation;
    - 2) act, fact, or circumstance associated with the Project Services relevant to the ability of the Contractor to conduct the Project Services in a manner that is safe;

- 3) incident where notification under any relevant OHS Legislation is required; and
  - 4) other OHS incident or other unplanned disruption to traffic conditions (howsoever occurring) that occurs in connection with the Project Services.
- (d) The Contractor must:
- (i) undertake a risk assessment to identify the OHS risks associated with the Project Services (**Risk Assessment**);
  - (ii) conduct a risk workshop with respect to the OHS risks associated with the Project Services involving all relevant stakeholders prior to the commencement of any site based Project Services, at appropriate intervals during the Term and as requested by PSA;
  - (iii) implement relevant risk mitigation measures including those identified in the risk workshops conducted in accordance with clause 38.1(d)(ii);
  - (iv) maintain a risk register with respect to the OHS risks associated with the Project Services; and
  - (v) conduct an emergency response and incident management workshop involving all relevant stakeholders prior to the commencement of any site based Project Services.

## 38.2 OHS Personnel

- (a) [The Contractor must also appoint a suitably experienced and qualified individual as a "Ground Penetration Permit Coordinator" for the Project Services, who is responsible for ensuring:
- (i) the safe compliant management of working in and around underground and overhead services and assets; and
  - (ii) compliance with PSA's Minimum Conditions - Underground Services.]
- (b) The Contractor must appoint suitably experienced and skilled persons as health and safety professionals for the purpose of the Project Services that are carried out on-site. The health and safety professionals must:
- (i) be employed by the Contractor in a full time capacity as a safety professional;

- (ii) as a minimum, have had suitable experience as a safety professional in construction safety on a full time basis for at least three (3) years and possess the required technical skills and knowledge to perform the role, which may include the attainment of a recognised certificate, degree or post graduate qualification in a safety or OHS risk management discipline; and
- (iii) be able to demonstrate competence, experience and training in safety in road and rail environments.

### **38.3 Principal Contractor**

- (a) To the extent that the Contractor will be carrying out "construction work" within the meaning of regulation 333 of the OHS Regulations in connection with the Project Services, if clause 38.3(c) does not apply PSA may:
  - (i) appoint, or procure the appointment of, the Contractor (or such other nominee of the Contractor identified in a Works Order and acceptable to PSA (acting reasonably)) as Principal Contractor, at all times for that "construction work" in connection with the Project Services until the relevant "construction work" is completed pursuant to the terms of the Contract, as detailed in the relevant Works Order; and
  - (ii) authorise, or procure the authorisation of, the Contractor to manage or control the "workplace" where the "construction project" of which the Project Services form a part are to be carried out, to the extent necessary to discharge the duties of a Principal Contractor under the OHS Legislation.
- (b) The Contractor must:
  - (i) perform all relevant functions and duties of an employer and person with management and control of each workplace at which the Project Services are carried out under OHS Legislation; and
  - (ii) to the extent applicable, accept the appointment under clause 38.3(a)(i) and perform all relevant functions and duties of a Principal Contractor under the OHS Legislation.
- (c) To the extent that the Contractor is not the Principal Contractor or is not to be appointed as the Principal Contractor in connection with the carrying out of the Project Services, then the Contractor must, and must procure that its Subcontractors, employees and agents:
  - (i) co-operate with the Principal Contractor (if any) appointed from time to time in the discharge of the performance of that Principal Contractor's statutory

duties as Principal Contractor under the OHS Legislation; and

- (ii) comply with any reasonable instruction given by the Principal Contractor in its capacity as Principal Contractor.
- (d) Terms used in this clause 38.3 which are defined in the OHS Regulations have the same meaning in this clause, unless the context otherwise requires.

#### **38.4 Health and Safety Management Plan**

- (a) No later than two (2) months after the Commencement Date or prior to commencing any Project Services on site, whichever is the earlier, the Contractor must submit an Health and Safety Management Plan to the Contract Administrator for review.
- (b) The Health and Safety Management Plan must be reviewed, and if necessary amended, by the Contractor every six (6) months and upon the occurrence of any of the following:
  - (i) a health and safety incident that occurs in connection with the Project Services;
  - (ii) a significant change in site conditions;
  - (iii) a change in the applicable OHS Legislation;
  - (iv) upon request by PSA or the Health and Safety Auditor; or
  - (v) the issue of any Works Order.
- (c) The Contract Administrator will review the Health and Safety Management Plan, including having regard to the requirements in clause 38.4(f) and within ten (10) Business Days of receipt of the Health and Safety Management Plan provide a notice that:
  - (i) sets out its comments; or
  - (ii) states that it has no comments,in relation to the Health and Safety Management Plan.
- (d) The Contractor must incorporate the comments received by the Contract Administrator in accordance with clause 38.4(c)(i) into the Health and Safety Management Plan and re-submit the revised Health and Safety Management Plan to PSA.
- (e) Clauses 38.4(c) and 38.4(d) will continue to apply until the Contract Administrator provides a notice under clause 38.4(c)(ii).
- (f) The Health and Safety Management Plan must:
  - (i) include details of how the Contractor will comply with OHS Legislation and the requirements of AS 4801: 2001

"Occupational Health & Safety Management Systems" to manage health and safety risks, including:

- A. compliance with OHS policies and procedures;
- B. identification and assessment of hazards and the associated risks during performance of the Project Services;
- C. OHS performance reporting and regular OHS audits; and
- D. review and compliance with all applicable Laws;

(ii) include sections addressing:

- A. access to and egress from relevant work sites;
- B. the provision of appropriate information, instruction and training to the Contractor's workers, suppliers and other persons who attend relevant worksites;
- C. the preparation and implementation of safe work method statements for all high risk works;
- D. utility service works, including coordination and interfacing with utility service providers;
- E. maintaining major items of plant and equipment;
- F. management of hazardous materials including asbestos;
- G. arrangements for consulting with and providing OHS information to relevant stakeholders; and
- H. consideration of public safety for all relevant Project Services, including control measures;

(iii) if the Project Services involve any ground penetration, include details on the level of service investigation that will be adopted to locate underground services prior to the commencement of intrusive works, including:

- A. when and in what circumstance various types of service investigation activities will be carried out (non-destructive excavation or similar will be carried out compared to other methods of locating services);



- B. a strategy to capture and embed a standard which is no less than PSA's "Minimum Conditions – Underground Services"; and
  - C. a description of the functional accountabilities and structure of the team of resources that will be in place for the overall management of service identification, permit management and protection of underground services;
- (iv) include a management system which, as a minimum, complies with a set of railway safety management system requirements of AS 4292.1 -2006 "Railway Safety Management" and the Rail Safety National Law; and
- (v) include details of reporting requirements, including:
- A. OHS performance reporting (including results of OHS audits and reviews);
  - B. reporting of incidents and system failures;
  - C. reporting on hazard identifications;
  - D. reporting on the Risk Assessment; and
  - E. reporting on preventive and corrective action.
- (g) To the extent that the HSMP requires further amendment at any time during the Term, the Contractor must submit to PSA an amended HSMP and clauses 38.4(c), 38.4(d) and 38.4(e) will apply.
- (h) Work on site shall not commence until the Contract Administrator provides a notice under clause 38.4(c)(ii).

### **38.5 OHS Audits**

- (a) The Contractor must engage a Health and Safety Auditor to:
- (i) conduct an audit of the Contractor's Health and Safety Management Plan (**Health and Safety Management Plan Audit**) before the HSMP is submitted to PSA in accordance with clause 38.6; and
  - (ii) conduct general audits of the Project Services (**Health and Safety Compliance Audits**), in accordance with clause 38.7.
- (b) The Health and Safety Auditor must:
- (i) be independent of the Contractor and free of any separate commitment or obligation to the Contractor;

- (ii) hold a recognised certificate, degree or post-graduate qualification in safety or health and safety risk management discipline or otherwise have sufficient practical experience and a certificate of attainment for health and safety auditing in compliance with Exemplar Global Auditor Registration requirements (or its equivalent);
- (iii) have been employed as a safety professional in construction safety on a full time basis for at least 3 of the last 5 years;
- (iv) have demonstrated competence, experience and training in health and safety audits in road or rail construction or a related discipline; and
- (v) have had no involvement in the development of the Health and Safety Management Plan.

### **38.6 Health and Safety Management Plan Audit**

- (a) The Health and Safety Management Plan Audit must verify that the Health and Safety Management Plan:
  - (i) appropriately addresses the risks identified in the Risk Assessment and any other safety risks of which PSA has notified the Contractor in writing; and
  - (ii) is in accordance with the requirements specified in clause 38.4(f).
- (b) The Contractor must ensure the Health and Safety Auditor provides the Contractor with the following:
  - (i) a report regarding the Health and Safety Management Plan Audit, which identifies all non-conformances with the HSMP; and
  - (ii) a declaration, which includes:
    - A. the name and company of the Health and Safety Auditor;
    - B. details of the Health and Safety Auditor's skills, qualifications and expertise;
    - C. a statement that the Health and Safety Management Plan complies with the specified requirements in clause 38.4(f);
    - D. a statement that all non-conformances identified in the Health and Safety Management Plan Audit have been rectified; and

- E. an acknowledgement that PSA will be relying upon the declaration provided under this clause 38.6(b)(ii), in meeting PSA's obligations to ensure health and safety,

which must be submitted to PSA at the same time the Health and Safety Management Plan is submitted to PSA.

- (c) Where required by PSA, any amendment(s) to the Health and Safety Management Plan after submission of the signed declaration under clause 38.6(b)(ii) must be referred to the Health and Safety Auditor for review, and the Health and Safety Auditor must provide written confirmation that the declaration provided under clause 38.6(b)(ii) remains valid in respect of any such amendment(s) to the Health and Safety Management Plan.

### **38.7 Health and Safety Compliance Audits**

- (a) The Contractor must engage a Health and Safety Auditor to perform Health and Safety Compliance Audits that verify that all site related Project Services are being performed in compliance with:
  - (i) OHS Legislation and clause 38.4; and
  - (ii) the Health and Safety Management Plan.
- (b) The Health and Safety Compliance Audits must, at a minimum, include:
  - (i) review of relevant documentation and records generated as a result of implementing the Health and Safety Management Plan;
  - (ii) inspection of all parts of the site where the Project Services, or part thereof, are being performed;
  - (iii) a sample of observations of the Project Services being performed, including a sample of high risk work being performed;
  - (iv) consultation with a sample of the workforce performing the Project Services in relation to the Health and Safety Management Plan and its implementation; and
  - (v) review of actions and close-out of previous non-conformances.
- (c) Following a Health and Safety Compliance Audit, the Health and Safety Auditor must prepare a report that:
  - (i) provides evidence of or a detailed summary of the methodology of the Health and Safety Compliance Audit;

- (ii) identifies any non-conformances or areas for improvement;
- (iii) provides recommendations as to appropriate control measures to address those non-conformances; and
- (iv) nominates the timeframes for resolution of any non-conformances identified.

The Contractor must, as soon as practicable and in any case within five (5) Business Days of a Health and Safety Compliance Audit, or any other health and safety audit, provide PSA with a copy of the audit report (whether draft or final) together with proposed and/or implemented actions for addressing any non-conformances identified in the report.

- (d) The Contractor must ensure a Health and Safety Compliance Audit is performed by a Health and Safety Auditor once within the first three (3) months following commencement of site related Project Services and at least every six (6) months thereafter.
- (e) The Contractor must ensure PSA is given at least five (5) Business Days' notice of any upcoming Health and Safety Compliance Audit or other health and safety related audit of the Project Services, and must allow a representative of PSA to attend those audits if PSA so requests.

### **38.8 New WHS Regulations**

If the New WHS Regulations are enacted in Victoria and supersede the OHS Regulations and PSA determines that it is necessary to appoint a Principal Contractor for any part of the Project Services and to the extent that the Contractor will be carrying out "construction work" within the meaning of regulation 322 of the OHS Regulations in connection with the Project Services, then PSA will appoint, or procure the appointment of, the Contractor as Principal Contractor for the Project Services and the Contractor must accept such appointment.

### **38.9 Safety accreditation and safety management system**

- (a) Prior to performing any Project Services on site, the Contractor must complete all necessary training courses and obtain the certification required to ensure the Contractor complies with its obligations under clauses 37 and 39.
- (b) The Contractor must:
  - (i) do all things necessary to assist any relevant Rail Transport Operator and its maintenance contractors (including all things reasonably required by PSA) to:
    - A. manage the changes associated with the Project Services; and

- B. prepare their safety management documentation in relation to the carrying out of the Project Services;
- (ii) do all things necessary to provide any relevant Rail Transport Operator and its maintenance contractors with the information, advice and other support in relation to the Project Services (including assisting in the timely preparation of any safety management documentation) as required by the Rail Transport Operator and its maintenance contractors in order to amend their safety management systems;
- (iii) make available all Contractor Personnel assisting in preparing the safety management documentation to attend any safety management system meetings or workshops as arranged from time to time by PSA; and
- (iv) provide any additional documentation or information in relation to the safety management documentation as may be reasonably required by PSA in order to facilitate any relevant Rail Transport Operator and its maintenance contractors amending their safety management systems.
- (c) The Contractor's obligations under this clause 38.9 continue until all affected Rail Transport Operators have completed all activities associated with amending their safety management systems as a consequence of the Project Services and the amended safety management systems have been accepted by Transport Safety Victoria.

### **38.10 Rail safety**

- (a) The Contractor must ensure that all Project Services carried out on or adjacent to rail infrastructure are conducted in accordance with all Laws, including the Rail Safety National Law and their respective regulations and any reasonable requests of PSA in relation to the safety and amenity of the operating rail system.
- (b) The Contractor must, in respect of any and all duties, obligations or requirements under the Rail Safety National Law:
  - (i) be aware of those duties, obligations or requirements;
  - (ii) comply with those duties, obligations or requirements; and
  - (iii) provide any evidence requested by PSA of compliance with those duties, obligations or requirements.

---

## **39. Access**

When accessing (or seeking access to) sites, property or premises for the purposes of carrying out the Project Services, the Contractor must at its cost:

- (a) subject to clause 39(c), assume sole responsibility and all risks in relation to obtaining access to any land required for the purposes of carrying out the Project Services (including, for the avoidance of doubt, in respect of Railway Land);
- (b) ensure that all requirements (including any relevant access protocols) imposed by PSA and any relevant Access Provider are properly understood and complied with by the Contractor and all Contractor Personnel;
- (c) in respect of any land identified by PSA where PSA will assist the Contractor in obtaining access, provide PSA with a written request (containing reasonable advance notice of the proposed access) setting out details of:
  - (i) the location of the site, property or premises;
  - (ii) the proposed times of access; and
  - (iii) the nature of work to be undertaken by the Contractor; and
- (d) in respect of Railway Land:
  - (i) liaise directly with the relevant Access Provider to obtain the required access;
  - (ii) at its cost, execute any agreements as required by an Access Provider for the purpose of the Access Arrangements, on terms satisfactory to the Access Provider;
  - (iii) simultaneously provide PSA with copies of all requests for access and other correspondence between the Contractor and the Access Provider; and
  - (iv) ensure that relevant Contractor Personnel, as a minimum, hold a current Level 1 Train Track Safety Awareness accreditation to be obtained through the relevant franchisee or another Rail Transport Operator as the case may be.

---

## **40. Building Code**

- (a) If so directed by PSA at any time, the Contractor must:
  - (i) comply with the Building Code (and the other conditions in the direction) from the date stated in the direction; and

- (ii) provide PSA with the evidence required by PSA to demonstrate that compliance.
- (b) Without limiting clause 4, PSA may:
  - (i) direct that the Contractor comply with the Building Code as a condition of proceeding with any part of the Project Service; and
  - (ii) elect (in its absolute discretion) not to proceed with any part of the Project Services if the Contractor is not able to demonstrate compliance with the Building Code or the other requirements of a direction under clause 40 to the satisfaction of PSA.

---

## **41. Security of Payment**

- (a) The Contractor agrees with PSA that:
  - (i) a claim for payment submitted to the Contract Administrator under clause 15.1(b) which also purports to be a payment claim under the SoP Act is received by the Contract Administrator as agent for PSA;
  - (ii) unless otherwise notified to the Contractor by PSA in writing, the Contract Administrator will give payment statements and carry out all other functions of PSA under the SoP Act as the agent of PSA;
  - (iii) to the extent permitted by and for the purposes of the SoP Act, the “reference dates” are those of the dates prescribed in clause 15.1(b) on which the Contractor has satisfied the requirements of clause 15.1(c); and
  - (iv) a reference to a payment statement is also a reference to a “payment schedule” for the purposes of the SoP Act.
- (b) Failure by the Contract Administrator to set out in a payment statement issued under the SoP Act or otherwise an amount which PSA is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by PSA will not prejudice:
  - (i) the Contract Administrator's ability or power to set out in a subsequent payment statement an amount which PSA is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by PSA; or
  - (ii) PSA's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under the Contract.

- (c) The Contractor agrees that the amount set out in a payment statement in accordance with clause 15.1(d) is, to the extent permitted by and for the purposes of the SoP Act, the amount of the “progress payment” calculated in accordance with the terms of the Contract, which the Contractor is entitled to in respect of the Contract.
- (d) Upon an adjudication application under the SoP Act, the authorised nominating authority for the purposes of the SoP Act shall be one of the following:
  - (i) the Resolution Institute, Compass Office, Level 10, Tower 4, World Trade Centre, Melbourne VIC 3000;
  - (ii) Building Adjudication Victoria Inc., Hobsons Bay Business Centre, Level 1, 92 Railway Street South, Altona, VIC 3018; or
  - (iii) Rialto Adjudications Pty Ltd, Level 9, 440 Collins Street, Melbourne, VIC 3000.
- (e) In dealing with any adjudication application made by the Contractor, or any adjudication review application made by either party, under the SoP Act, an adjudicator or review adjudicator (as applicable) under the SoP Act shall:
  - (i) have no power to open up, review or revise any payment statement issued under the Contract by the Contract Administrator except to the extent required to meet the requirements of section 23 or 281 of the SoP Act (as applicable); and
  - (ii) at all times act impartially between the Parties, in accordance with all applicable Laws.
- (f) The Contractor shall promptly and without delay give the Contract Administrator a copy of any written communication in relation to the SoP Act which the Contractor receives from a Subcontractor.
- (g) The Contractor acknowledges that this obligation represents a fundamental term of the Contract, a breach of which is a substantial breach of the Contract by the Contractor.
- (h) If the Contractor suspends the whole or part of the Project Services pursuant to the SoP Act:
  - (i) the suspension will not affect the Contractor's obligation to comply with the Contractor's Program;
  - (ii) except as otherwise provided in section 29(4) of the SoP Act, PSA will not be liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of the suspension; and



- (iii) the Contractor must recommence the part of the work under the Contract suspended within one (1) Business Day after the Contractor receives payment of the amount due to be paid to the Contractor pursuant to the SoP Act.
- (i) Neither party shall at any time, without the written consent of the other party (**Disclosing Party**), divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the Disclosing Party or any details thereof in respect of an adjudication application or an adjudication review application made under the SoP Act (in this clause, the 'Information').
- (j) For the avoidance of doubt:
  - (i) a Party's obligation in respect of the Information applies in respect of any subsequent proceedings before a court, arbitrator, expert or tribunal save where a party is unable by requirement of Law to comply with its obligation in respect of the Information;
  - (ii) a Party may divulge or suffer or permit its servants, subcontractors or agents to divulge to any person any communication, submission or statement made or evidence or information used by or relied upon by the other party or any details thereof in respect of an adjudication application or an adjudication review application made under the SoP Act; and
  - (iii) any Information which a party provides or relies upon in respect of an adjudication application or an adjudication review application made under the SoP Act is made without prejudice to that party's right to vary, modify, supplement or withdraw the Information in any subsequent proceedings before a court, arbitrator, expert or tribunal.
- (k) The Contractor acknowledges and agrees that if a Subcontractor exercises its right under section 31 of SoP Act to be paid by PSA an adjudicated amount which is owing to it by the Contractor:
  - (i) if PSA is obliged to pay that adjudicated amount to the Subcontractor by virtue of the operation of section 31 of the SoP Act, PSA will pay that adjudicated amount out of the portion of the Fee not yet paid to the Contractor; and
  - (ii) payment of such adjudicated amount will be in part satisfaction of PSA's obligation to pay the Contractor the Fee pursuant to clause 15.
- (l) The Contractor shall indemnify PSA against all damage, expense (including legal costs), loss (including consequential and

economic loss) or liability of any nature suffered or incurred by PSA arising out of:

- (i) a suspension pursuant to the SoP Act by a Subcontractor of services or work which forms part of the Project Services; or
- (ii) a failure by Contractor to comply with clause 41.

---

## **42. Probity**

### **42.1 Probity Requirements**

The Contractor must comply with PSA's probity requirements, including any:

- (a) requirement for the Contractor to put in place (or update) a probity plan (as determined by PSA, in its absolute discretion); and
- (b) other requirements or policies which may be notified to the Contractor from time to time.

The Contractor must bear its costs associated with taking any action necessary to comply with any probity plan or other requirements, where the Contractor, its Contractor Personnel or its Subcontractors, or circumstances concerning any of them, give rise to such costs.

### **42.2 Probity Events**

- (a) Without limiting the Contractor's obligations under clause 42.2(b), the Contractor must give notice to PSA immediately upon becoming aware that a Probity Event has occurred or is likely to occur. The notice must at a minimum describe the Probity Event, when the Probity Event occurred or is likely to occur and the circumstances giving rise to the Probity Event.
- (b) Upon receipt of a notice under clause 42.2(a) or otherwise upon the occurrence of a Probity Event:
  - (i) PSA and the Contractor must meet within five (5) Business Days to agree to a course of action that will remedy the Probity Event (including conducting a Probity Investigation); and
  - (ii) the Contractor must comply with any agreement made in accordance with clause 42.2(b)(i) to remedy the Probity Event in accordance with the timeframe agreed.
- (c) If PSA and the Contractor fail to agree to a course of action in accordance with clause 42.2(b), the Contractor must take any action as required by PSA to remedy the Probity Event immediately upon being required to do so and in accordance with any timeframe determined by PSA. The Contractor must bear all costs of doing so.

### **42.3 Probity Investigation**

- (a) The Contractor agrees that:
  - (i) PSA may require at any time that the Contractor; or
  - (ii) PSA may,  
  
conduct a Probity Investigation in respect of the Contractor, Key People or Key Subcontractors.
- (b) The Contractor must procure all relevant consents from any persons in connection with which a Probity Investigation is to be conducted.

### **42.4 State costs of Probity Events and Probity Investigation**

- (a) Subject to clause 42.4(b), the Contractor must bear all costs incurred by PSA in connection with a Probity Event or Probity Investigation.
- (b) The Contractor will not be liable for PSA's costs of any further Probity Investigation required by PSA in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

---

## **43. General**

### **43.1 Applicable Law**

The Laws of the State of Victoria will govern this Contract. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Victoria (and the courts competent to determine appeals from those courts) to decide any matter arising from or in connection with this Contract.

### **43.2 Surviving obligations**

The obligations of the Contractor under clauses 1, 2, 3,10(a), 11, 15.1(h) - 15.1(l), 16, 17, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 35, 37, 42 and 43 survive the termination or expiration of this Contract.

### **43.3 Service of documents**

- (a) All notices and documents required to be delivered or served by one Party to this Contract on the other may be delivered or served by delivering or sending them by prepaid post, e-mail or prepaid courier as follows:
  - (i) to PSA at the address which is set out in the Contract Details; or
  - (ii) to the Contractor at the address which is set out in the Contract Details,

unless a Party has advised the other Party of a new address, in which case that Party's new address must be used.

- (b) A notice or document is taken to be delivered or served as follows:
- (i) in the case of delivery in person or by prepaid courier, when delivered;
  - (ii) in the case of delivery by post, two (2) Business Days after the date of posting; and
  - (iii) in the case of e-mail, on receipt by the sender of confirmation of receipt,

but if the result of the foregoing is that a notice would be taken to be given or made on a day which is not a Business Day or is later than 4.00pm (local time) on a day which is a Business Day, it will be taken to have been duly given or made at the commencement of business on the next Business Day.

- (c) The provisions of this clause are in addition to any other mode of service permitted by Law.

#### **43.4 Severability**

Any provision in this 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 provisions will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

#### **43.5 Amendment of Contract**

This Contract may only be varied by a deed executed by or on behalf of each Party.

#### **43.6 Further steps**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Contract.

#### **43.7 Counterparts**

This Contract may be executed in counterparts. Delivery of a counterpart of this document by email attachment constitutes an effective mode of delivery.

#### **43.8 Attorneys**

Each attorney signing this Contract under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.



**Executed** by the Parties as a deed.

**Signed** by a duly authorised officer of **[Insert name and description of relevant authority]** for and on behalf of the **State of Victoria**, in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

**Executed** by **[Insert name of Contractor]** ABN **[Insert ABN]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by or in the presence of:

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Full name of authorised officer

\_\_\_\_\_  
Name of Director or sole Director and sole Secretary in full

## Annexure A – Contract Details

Clause ref.			
1.1	Commencement Date:	Date of execution of the Contract [or insert alternative]	
1.1	Name of Contractor's Representative:	[Insert name]	
	Contractor's Representative's details	Address:	[Insert]
		Telephone:	[Insert]
		Facsimile:	[Insert]
		Email:	[Insert]
1.1	Name of Contract Administrator:	[Insert name]	
	Contract Administrator's details	Address:	[Insert]
		Telephone:	[Insert]
		Facsimile:	[Insert]
		Email:	[Insert]

Clause ref.		
1.1 and 3	Contract and order of precedence:	<p>This Contract is comprised of the following (in decreasing order of precedence):</p> <ul style="list-style-type: none"> <li>(a) the Conditions of Contract;</li> <li>(b) Annexure A – Contract Details;</li> <li>(c) Annexure B – Project Services Brief;</li> <li>(e) Annexure J - Local Industry Participation Plan;</li> <li>(f) Annexure K – Social Procurement Compliance Plan;</li> <li>(g) Annexure E – Confidentiality Deed;</li> <li>(h) Annexure F – Expert Determination Agreement;</li> <li>(i) Annexure H – Access Arrangements;</li> <li>(j) Annexure I – Moral Rights Consent; and</li> <li>(k) the balance of the Annexures.</li> </ul>
1.1	Executive Negotiators:	<ul style="list-style-type: none"> <li>(a) [Insert PSA's CEO or equivalent]; and</li> <li>(b) [Insert Contractor representative for negotiations]</li> </ul>
1.1 and 18.1(a)	Key People (including all roles, functions and minimum resource allocation rates included in Rates and Fees):	[Insert]
1.1	Key Subcontractors (including all roles, functions and minimum resource allocation – rates included in Rates and Fees where applicable):	[Insert]
15.1(j)	Rate of interest	[insert]%
30.1	Professional indemnity insurance:	[\$[insert]]
30.2	Public liability insurance:	[\$[insert]]
31.4	Industry expert who will conduct expert determinations:	None specified [or insert]
31.4	Nominating authority for expert:	[Insert – eg President of the Australian Centre for International Commercial Arbitration].



Clause ref.		
35.5	Shared Reporting Contract regime threshold	The Shared Reporting Contract regime applies if the value of the Fee is equal to or greater than \$[200,000] (incl. GST)
43.3(a) (i)	Address for service on PSA:	[Insert]
43.3(a) (ii)	Address for service on the Contractor:	[Insert]

## **Annexure B – Project Services Brief**

***[Drafting note: Insert Project Services Brief]***

**Annexure C – Rates and Fees**

**1 Rates and Fees**

**[Insert]**

**2 [Daily Cap**

- (a) Unless otherwise agreed by the Contract Administrator, the Contractor will have no Claim arising out of or in connection with any Project Services performed by individual Personnel of the Contractor in excess of 8 hours per day, per person.
  
- (b) Unless otherwise agreed by the Contract Administrator and notwithstanding clause 13.1(b), the Contractor will have no claim in respect of disbursements incurred in the performance of the Project Services.]

## Annexure D – Methodology

[Insert]

**Annexure E – Confidentiality Deed**



- (e) immediately notify the MTIA if the Covenantor is aware of any breach of this Deed or of any unauthorised person gaining access to Confidential Information;
- (f) deliver up to the MTIA upon completion or earlier termination of the Project Services or upon receipt by the Covenantor of any demand to do so made by the MTIA, all Confidential Information which is in the possession or under the power or control of the Covenantor.

## 2. Survival of obligations

This Deed shall survive termination of the Project Services and shall remain in force in respect of each part of the Confidential Information until that part of the Confidential Information becomes part of the public domain.

## 3. Retention of Property and Relief

- (a) All Confidential Information shall remain the property of the MTIA.
- (b) The MTIA shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Covenantor of the Deed and without the need of the MTIA (as the case requires) to prove any special damage.

## 4. Jurisdiction

The Deed shall be governed by the Laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria.

## 5. Variation

This Deed may only be varied by the written agreement of the Covenantor and the MTIA.

## 6. Interpretation

- (a) In this Deed:

“**Confidential Information**” means any Information which is not in the public domain and which:

- (i) is either directly or indirectly disclosed provided or made available by or on behalf of the MTIA to the Covenantor, (whether orally, electronically, in writing or by any other means) in the course of, in respect of, or in connection with the Project Services, whether before or after the signing of this Deed; and
- (ii) pertains to or is connected in any way with a Project, including but not limited to:
  - A. Information about the MTIA or those involved in the activities of the MTIA;
  - B. information relating to the internal management and structure of the MTIA, or the clients, client lists, client identities and contacts of the MTIA;

- C. information concerning documentation, systems, technology and affairs, operations, processes, plans or inventions and product information (whether customers, suppliers or otherwise);
- D. financial, technological, strategic or business information, concepts, plans, strategies, directions or systems;
- E. research, development, operational, legal, marketing or accounting information, concepts, plans, strategies, directions or systems;
- F. technology, source and object codes for computer software;
- G. information comprised in or relating to any Intellectual Property Rights of the MTIA, or a client of the MTIA or third parties to whom the MTIA owes a legal obligation;
- H. know-how relating to computer software, financial techniques and products of the MTIA;

**“Information”** includes information or data, whether:

- (i) written, graphical, electronic, oral or in any other form, irrespective of the form in which it was originally provided;
- (ii) provided in writing, graphically, electronically, orally or in any other way; or
- (iii) denoted as Confidential Information or not.

**“Project”** means all projects managed or delivered by the MTIA at any time.

**“Project Services”** means, in relation to each Project, the services provided by the Covenantor.

(b) In this Deed, unless the context otherwise requires or a contrary intention appears:

- (i) the singular includes the plural and vice versa and words importing a gender include other genders;
- (ii) terms importing natural persons include partnerships and bodies corporate;
- (iii) other grammatical forms of defined words or phrases have corresponding meanings;
- (iv) where a party comprises two or more persons provisions of this Deed that bind that party shall bind those persons jointly and severally; and



- (v) a reference to a person includes its successors and permitted assigns.

Executed as a Deed Poll on the date set out at the commencement of this Deed.

**SIGNED SEALED and  
DELIVERED**

By:

**PRINT NAME OF  
CONVENANTOR:**

\_\_\_\_\_

\_\_\_\_\_  
*Signature of Covenantor*

in the presence of:

**PRINT NAME OF WITNESS:**

\_\_\_\_\_

\_\_\_\_\_  
*Signature of Witness*

**Annexure F – Expert Determination Agreement**

**AGREEMENT MADE AT** **ON**

**Parties** **The Crown in right of the State of Victoria through [insert Project Statutory Authority], of [insert address] ("PSA")**  
**[Insert name of Contractor] ABN [Insert ABN] of [Insert address] ("Contractor")**  
**[INSERT NAME AND ADDRESS OF EXPERT] ("Expert")**

**Recitals**

- A. PSA has entered into a contract with the Contractor dated **[INSERT DATE]** ("**Contract**") for the performance of the Project Services (as defined in the Contract).
- B. The Expert has been appointed by PSA and the Contractor to determine Disputes (as defined in the Contract) by the procedure described in clauses 31.6 to 31.11 of the Contract.

**Operative**

**2. Interpretation**

Words and phrases used in this Agreement, unless the contrary intention appears or they are otherwise defined in this Agreement, have the meaning attributed to those words and phrases in the Contract.

**3. Decide on Disputes**

The Expert must:

- (a) determine Disputes referred to him or her in accordance with the procedures set out in the Contract; and
- (b) in discharging his or her obligations under this Agreement, abide and be bound by the provisions of the Contract.

**4. Confirmation that can act**

The Expert must, within fourteen (14) days after receiving notice from the person described in the Schedule ("**Contract Administrator**") of a Dispute, advise the Contract Administrator whether he or she is available to act in resolving that Dispute.

**5. Meeting**

If the Expert advises the Contract Administrator that he or she can act in resolving the Dispute, the Expert must meet with PSA and the Contractor ("**Disputing Parties**") to determine a procedure to resolve the Dispute.

## **6. The Expert released**

The Expert is not liable to the Disputing Parties or either of them or to any third party for anything done or omitted by him or her under this Agreement and the Disputing Parties each release and indemnify the Expert from and against any claims for negligence, bias or other misconduct (other than actual fraud) in the course of discharging his or her obligations under this Agreement.

## **7. Expert's powers**

Without limiting clause 3(a), the Expert must in discharging his or her obligations under this Agreement:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in such manner as the Expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) take into consideration all documents, information and other written and oral material that the Disputing Parties place before the Expert including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material but may do so if the Expert so desires;
- (e) without giving reasons, make a decision in such form as the Expert considers appropriate stating the determination of the matters in dispute; and
- (f) act with expedition with a view to making a decision within the time period required by the Contract.

## **8. Meet with Disputing Parties**

The Expert may, if he or she so desires, require as a part of the procedure to be determined under clause 5 to further meet with the Disputing Parties to discuss the Dispute and at and in connection with any such meeting:

- (a) neither Disputing Party may be accompanied by their legal representative; and
- (b) the Disputing Parties agree to be bound by such procedural directions as may be given by the Expert both in preparation for and during the course of the meeting.

The Disputing Parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

## **9. Decision binding**

Subject to clause 31.11(b) of the Contract, the Expert's decision is final and binding.

## **10. Remuneration**

In consideration of the Expert performing his or her obligations under this Agreement, the Disputing Parties will jointly pay to the Expert the amount set out in the Schedule or such other amount as is agreed between all parties to this Agreement.

## **11. Confidentiality**

The Expert must not at any time, whether before or after the expiration or sooner determination of this Agreement, without the consent of the Disputing Parties divulge or suffer or permit his or her servants, consultants or agents to divulge to any person:

- (a) any details concerning the subject matter of any Dispute referred to the Expert under this Agreement;
- (b) any of the contents of the Contract or this Agreement or any other agreements collateral or supplemental thereto or any of the commercial bases thereof or any information relating to the negotiations concerning the same; or
- (c) any information which may have come to the Expert's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Disputing Parties as contemplated by the Contract.

## **12. Nature of Expert's role**

- (a) The Expert:
  - (i) is to be independent from PSA and the Contractor; and
  - (ii) without limitation, warrants that he or she has no conflict of interest in acting under this Agreement.
- (b) Nothing in this Agreement will be deemed to make the Expert an agent, employee or partner of the Contractor or PSA.
- (c) The Expert must assume full responsibility and liability for the payment of all taxes due on moneys received by him or her under this Agreement.
- (d) The Contractor and PSA must not make any deductions for taxes, insurance or other benefits from any moneys paid to the Expert under this Agreement.

## **13. Termination**

- (a) This Agreement may be terminated by either PSA or the Contractor by giving the other parties ten (10) days' written notice in any of the following events:
  - (i) the Expert being declared of unsound mind or mentally ill;
  - (ii) the Expert being declared bankrupt;
  - (iii) the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly

prejudicial to the interests of the Contractor or PSA or the Project Services;

- (iv) the Expert failing to observe and fulfil any of the substantive terms of this Agreement; or
- (v) the Expert being prevented by prolonged illness or incapacity from performing his or her obligations under this Agreement.

#### **14. Notices**

All notices to be given to the Expert under this Agreement will be deemed to be properly given if hand delivered to the Expert or if sent by certified or registered mail to the Expert's address set out in the Schedule or to such other address as the Expert may from time to time advise by notice in writing.

#### **15. Governing law**

This Agreement is to be construed for all purposes in accordance with the Laws applying to the Contract.

**SCHEDULE**

Contract Administrator (Clause 4)	.....
Expert's remuneration (Clause 10)	.....
Expert's address (Clause 14)	.....

**Executed** as an agreement.

**Signed** by a duly authorised officer of **[Insert name and description of relevant authority]**, for and on behalf of the **State of Victoria**, in the

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised officer

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Full name of authorised officer

**Executed** by **[insert] ABN [insert]** in accordance with section 127 of the *Corporations Act 2001* (Cth) by or in the presence of:

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Name of Director or sole Director and sole Secretary in full

**[INSERT EXECUTION BLOCKS OF THE EXPERT]**

## **Annexure G – Outline Health and Safety Management Plan**

**[Insert]**



## Annexure H – Access Arrangements

[Insert]

**Annexure I Moral Rights Consent**

**MORAL RIGHTS CONSENT**

Deed Poll made at ..... on ....., 20.....

By: **[INSERT NAME OF INDIVIDUAL]** of **[INSERT ADDRESS]**, **[INSERT OCCUPATION]** ("Author")

In favour of:

**The Crown in right of the State of Victoria**, through the **[insert Project Statutory Authority]** of **[insert address]** ("PSA")

**Recitals**

- A. The Victorian Government is committed to the construction of the **[insert name of project]** project ("**[insert name of Project]** Project" or the "Project").
- B. The Contractor has entered into a contract with PSA entitled "Conditions of Contract – Project Advisor Services" ("**Contract**") dated **[INSERT DATE]** for the provision of technical advisory services in respect of the Project ("**Contract Services**").
- C. **[Note: Option 1: Use this paragraph where the Author is an employee of a subcontractor]** The Contractor and **[INSERT NAME AND ABN OF SUBCONTRACTOR]** ("**Subcontractor**") have entered into a contract entitled "Design Services Subcontract" ("**Subcontract**") for **[INSERT BRIEF PROJECT DETAILS]** dated **[INSERT DATE OF SUBCONTRACT SIGNING IF AVAILABLE. IF NOT, DELETE "dated"]** to perform or create certain design services ("**Subcontract Services**") and the Author is an employee of the Subcontractor.
- C. **[Note: Option 2: Use this paragraph where the Author is an employee of the Contractor]** The Author is an employee of the Contractor.
- D. The Author has created or may create material in which copyright subsists for the purposes of the *Copyright Act* 1968 (Cth) (as amended), as described in this Deed, which may be used in connection with, or as part of, the **[Subcontract Services / Contract Services]** ("**Copyright Works**").

**This deed poll provides**

- 1. In this deed poll:
  - (a) **Moral Rights** means the moral rights granted to authors under the *Copyright Act 1968* (Cth), and any similar rights existing under foreign laws; and
  - (b) **Other Service Provider** means any contractor, consultant, tradesperson or other person engaged directly by PSA to perform works or services relating to the Project other than the Contractor, or subcontractor **[other than the Subcontractor]** engaged by the Contractor to perform works or services relating to the Project.
- 2. The Author:
  - (a) agrees that the Copyright Works to which this Deed applies are:
    - (i) **[INSERT DESCRIPTION OF THE COPYRIGHT WORKS WHICH THE AUTHOR HAS CREATED OR WILL CREATE - THIS DESCRIPTION SHOULD BE AS PRECISE AS POSSIBLE]**; and

- (ii) any other material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended), which the Author creates or has created for the purposes of, or otherwise in connection with, the **[Subcontract / Contract]** and any of the **[Subcontract Services / Contract Services]**;
- (b) warrants that he or she will not sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of the Author's Moral Rights by:
  - (i) the **[Subcontractor / Contractor]**;
  - (ii) PSA;
  - (iii) any third party to whom the Contractor or PSA, as applicable, sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Copyright Works ("**Sub-Licensee**");
  - (iv) any third party to whom the Contractor or PSA, as applicable, assigns any Intellectual Property Rights (as defined in the **[Subcontract / Contract]**) the Contractor or PSA, as applicable, has in, or in relation to, any Copyright Works ("**Assignee**"); or
  - (v) any Other Service Providers;
- (c) without limiting paragraph (b), consents to any of the **[Subcontractor / Contractor]**, PSA, Other Service Providers, Sub-Licensees and Assignees:
  - (i) failing to acknowledge or attribute the Author's authorship of any Copyright Works;
  - (ii) falsely attributing authorship of any Copyright Works; and
  - (iii) making any modification, variation or amendment of any nature whatsoever to the Copyright Works, whether or not:
    - A. it results in a material distortion of or destruction or mutilation of the Copyright Works; or
    - B. it is prejudicial to the honour or reputation of the Author; and
- (d) without limiting paragraph (b) or (c), consents to any of the **[Subcontractor / Contractor]**, PSA, Other Service Providers, Sub-Licensees and Assignees:
  - (i) using any Copyright Works other than for the purpose for which it was intended at the time the Copyright Works were created;
  - (ii) altering any Copyright Works by adding to, removing elements from, or rearranging elements of, the Copyright Works, including (without limitation) by combining elements of the Copyright Works with any other material; or
  - (iii) changing, relocating, demolishing or destroying any building, any artistic work affixed to or forming part of a building or other Copyright Works, whether or not such building, artistic work or Copyright Works incorporate, are based on, or are constructed in accordance with, any Copyright Works.

3. The Author confirms that in executing this Deed the Author did not act in reliance on any representation made by any person as to the future use of the Copyright Works or any other matter.
4. A term or part of a term of this Deed that is unenforceable may be severed from this Deed and the remaining terms or parts of terms of this Deed will continue to have full force and effect.

**Executed** as a deed poll.

**Signed sealed and delivered** by *[INSERT FULL NAME OF AUTHOR]* in the presence of:

---

Signature of witness

---

Signature of Author

---

Name of witness in full

---

Name of Author in full

**Annexure J Local Jobs First Policy**

**Attachment 1 - Local Industry Development Plan**

**[insert LIDP]**

**Attachment 2 - LIDP Monitoring Table**

***[Insert the Monitoring Table from the LIDP]***

### Attachment 3 - Statutory Declaration

#### State of Victoria Statutory Declaration

I, (Full name)  
of [address]  
[occupation], do solemnly and sincerely declare that: -  
[contracted company]

achieved the Local Jobs First outcomes relating to local content; employment; skills and technology transfer; and apprentices/ trainees reflected in the Local Jobs First Monitoring Table (or ICN Analytics report) for

[name and tender number of procurement activity]  
as submitted to [agency] on \_\_\_\_/\_\_\_\_/\_\_\_\_  
[date]

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

.....[signature of declarant]

Declarant

Declared at [place] )  
in the State of Victoria on the )  
[date] day of [month] [year] )

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

.....[signature of authorised statutory declaration witness]

on [date]  
[Name of witness]  
[Address of witness]  
[Capacity in which authorised person has authority to witness statutory declaration]

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



***[Note: Where the Statutory Declaration exceeds 1 page, each page must be signed or initialled by the declarant and the witness.]***

## **Annexure K Social Procurement Compliance Plan**

As annexed.

## **Annexure L Form of Works Order**

Refer separate document annexed.

## Works Order

Works Order No.	Start Date:	
Revision No.	End Date:	
Works Stage / Phase:	PSA WBS Code:	
<b>Title:</b>		
<b>Scope of Project Services:</b>	Refer Part A. The Project Services are to be performed in accordance with the Methodology in Part C of this Works Order.	
<b>Deliverables:</b>	Refer Part A.	
<b>Program:</b>	Refer Part D.	
<b>Basis for Fee:</b>	Refer Part B. <i>[The Project Services will be performed by the Contractor's existing Personnel.] / [PSA has approved the additional Personnel in Part D for the performance of the Project Services]</i>	
<b>Assumptions/Exclusions:</b>	Refer Part A.	
<b>Fee basis is:</b>		
<input type="checkbox"/> Fixed lump sum      or <input type="checkbox"/> Schedule of Rates and Fees		
<b>Revisions to Works Order</b>		
Rev No.	Name / Description/Modification Ref	Fee (ex GST)
<b>Total cost shall not exceed (ex GST)</b>		
The Contractor shall inform PSA when the value of the Project Services performed under this Works Order reaches 80% of the Fee. The Contractor shall only be entitled to claim payment for costs against this Works Order that are within the approved Fee.		
<b>Endorsed by: Program Manager (PSA)</b>  Signature: ..... Date:		<b>Endorsed by: Contract Manager (PSA):</b>  Signature: ..... Date:
<b>Accepted by (Contractor – Authorised Representative):</b>  Signature: ..... Date:		<b>Approved by (Contract Administrator -PSA):</b>  Signature: ..... Date:

**PART A – PROJECT SERVICES AND DELIVERABLES**

**Works Order Description (Purpose)**

*[Note: Briefly describe the purpose or intent of the Project Services and deliverables to be carried out pursuant to this Works Order]*

**Scope of Project Services**

*[Note: Include in this section the services or work that will be required to be undertaken by the Contractor in return for payment of the Fee. The description should also clarify which stages of the Project the engagement relates]*

*[Note: Include in this section the agreed deliverables that will be required to be provided by the Contractor in return for payment of the Fee. For example, delivery of reports in accordance with the Contractor's Program, reference designs, etc]*

*[Note: insert any aspects of the Quotation response with which the Consultant is required to comply - (eg. quality assurance, sustainability objectives, engagement of Aboriginal staff, etc)]*

**Deliverables:**

Deliverable Title	Delivery Date	Program Fee Component (\$)

**Assumptions / Exclusions:**

*[List any assumptions / exclusions to the scope of the Project Services here]*

**Contractor's Program Impact / Mitigations**

*[Detail any impacts on the Contractor's Program (eg delays, deletion of portions of the Project Services) and proposed Methodology for ameliorating the effect of any impacts which may have an adverse effect on the performance of the Project Services].*

**Other (Specify, if any):**

## PART B – FEE

The Contractor is entitled to claim payment of all amounts payable for the performance of the Project Services promptly and properly performed in accordance with the requirements of this Works Order and the Contract (**Fee**), as set out in this Part B.

### Section 1 – Fee

*[Note: The following are suggestions to complete this Section.]*

The Fee for the Project Services is to be calculated as the total number of hours/days spent performing the Project Services in the relevant month the subject of the claim for payment, multiplied by the relevant hourly/daily rates set out in Section 2 of this Part B.

OR

The Fee for the Project Services is calculated as the fixed lump sum of \$*[insert]*, which is not subject to adjustment except where permitted under the Contract or this Works Order. The Fee will be payable as a *[fixed lump sum / progressively upon the achievement of the following milestones]*

OR

The Fee for the Project Services are as follows:

Item	Milestone or Stage	Fee
1		
2		
3		
4		
<i>[Note: Optional]</i> The overall Fee for the Project Services is:		

### Section 2 – Schedule of Rates and Resources

The resources and schedule of rates for calculating the Fee and pricing Variations is set out below.

If no schedule of rates is included, the Schedule of Rates approved under the Project Services Contract from time to time will apply to the Project Services the subject of this Works Order, unless otherwise agreed in writing by the Parties.

*[Note insert resource profile and cash flow. Resource profile to detail the individuals proposed to undertake the Project Services. The below is a sample of a schedule or rates / resources table which can be used to complete this Section]*

Resource	Class	Hours							Total Hours	Rate	Total Fee component (ex GST)
		Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7			
										\$0.00	\$0.00
										\$0.00	\$0.00
										\$0.00	\$0.00
										\$0.00	\$0.00
										\$0.00	\$0.00
<b>Total</b>										-	\$0.00

**Section 3– Reimbursable Expenses**

In addition to the Fee, the Contractor may be entitled to claim payment for the following disbursements and expenses.

Disbursement	Amount	Pre-approval required (Y/N)
		<i>[Note: Include any relevant conditions – eg local travel of less than xx hours does not require pre-approval]</i>

Unless otherwise agreed in writing by the Parties, any expenses which the Contractor seeks to be reimbursed for must be approved by PSA.

## **PART C – METHODOLOGY**

The Project Services the subject of this Works Order must be performed in accordance with the following Methodology.

*[Insert documents which describe PSA's requirements for the:*

- *performance of the Project Services;*
- *the stated purpose for the Project]*



**PART D – CONTRACTOR'S PROGRAM**

*[Insert activity schedule with milestone deliverable dates and relevant logic linkages].*

<b>Date</b>	<b>Project Services / deliverable</b>	<b>Comment</b>
[insert date]	[Project Services / deliverable]	

## Annexure M –Subcontractor Statutory Declaration

Project Name: [insert Project name]

Contract Number: [insert]

To: [insert name] (ACN [insert ACN]) of [insert address]

and (PSA)

[insert name] (ACN [insert ACN]) of [insert address] (Contract Administrator)

From: [insert name] (ACN [insert ACN]) of [insert address] (Contractor)

In the matter of: the contract for the provision of services in connection with the [insert description of the project] entered into between PSA and the Contractor dated [insert date of Contract] (Contract)

Period covered by this progress payment claim: from: \_\_\_\_\_ to:  
\_\_\_\_\_ (Payment Period)

I, [insert name] of [insert address], in the State of Victoria, [insert occupation], make the following statutory declaration under the *Oaths and Affirmations Act 2018* (Vic):

1. I am an employee duly authorised to make this statutory declaration on behalf of the Contractor;
2. all employees who are, or have been, engaged by the Contractor in connection with the Contract have been paid their full remuneration for work done during the Payment Period including any superannuation or redundancy payments (if applicable) and in accordance with any applicable award or industrial agreement;
3. subject to clause 4(d), all consultants, suppliers and subcontractors who are, or have been, engaged by the Contractor in connection with the Contract have been paid in full all amounts that have become payable to them under the terms of their agreement with the Contractor during the Payment Period;
4. as at the end of the Payment Period:
  - (a) the total amount payable by the Contractor to all subcontractors in respect of work under the Contract is: \$\_\_\_\_\_

- (b) the amount paid by the Contractor to all subcontractors in respect of work under the Contract is: \$\_\_\_\_\_
- (c) the amount claimed by all subcontractors in respect of work under the Contract which is disputed by the Contractor as being due and payable is: \$\_\_\_\_\_
- (d) the amount referred to in paragraph 4(c) of this statutory declaration is disputed as, at the date of this statutory declaration, on the following grounds:

**[insert grounds for dispute]**

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

.....**[signature of declarant]**

Declarant

Declared at **[place]** )  
 in the State of Victoria on the )  
**[date]** day of **[month]** **[year]** )

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

.....**[signature of authorised statutory declaration witness]**

on **[date]**

**[Name of witness]**

**[Address of witness]**

**[Capacity in which authorised person has authority to witness statutory declaration]**

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

**[Note: Where the Statutory Declaration exceeds 1 page, each page must be signed or initialled by the declarant and the witness.]**

## Annexure N – Minimum Conditions – Underground Services

- (a) A GPP system must be in place for the management of all ground penetrations. A permit is required for any works where the ground is broken / penetrated.
- (b) The Ground Penetration Permit (**GPP**) must ensure that there is coordination and consultation with asset owners to ensure all requirements and approvals are achieved.
- (c) Within the nominated work zone stipulated on the GPP, all known services must be identified (using technologies such as acoustic devices, electromagnetic technologies or ground penetrating radar), and dependent on the proximity of the ground penetration works to these services; positively located (by verifying the precise horizontal and vertical location of underground assets through non-destructive means (i.e. water jetting, vacuum excavation and/or soft digging methods) as per asset owner or Contractor organisational requirements, and marked (as per AS 1345:1995 Identification of the contents of pipes, conduits and ducts) prior to the commencement of any ground penetration works.
- (d) Service investigation works must consider not only all known services but include investigations to locate domestic and commercial feeds/taps coming from the main.
- (e) The GPP system must detail roles and responsibilities of all Personnel involved in the permit process. Roles and responsibilities must be clearly defined including the minimum competencies, training, authority, consultation expectations and experience required for each role.
- (f) All Personnel involved in the GPP process (including but not limited to the project manager, GPP Coordinator (as defined in paragraph (g) below), the operators and spotters on the ground) must receive detailed information, instruction and training into the GPP system.
- (g) A senior suitably qualified and experienced person with appropriate authority must be assigned to the position of **GPP Coordinator**. The GPP Coordinator must be a dedicated resource and must have the responsibility to manage and coordinate the GPP system and be the singular point of issue for all GPPs. This role is considered critical in the process and therefore should not be assigned additional unrelated tasks / functions, as the role is to be separate from other operational disciplines.
- (h) A specific hold point must be included within the GPP, outlining the requirement of a walk through / site inspection to be conducted prior to the commencement of ground penetrating works. This is to be carried out by the GPP Coordinator, site supervisor(s) and all associated operational employees.
- (i) Duration of the permit must be determined using, whichever is assessed as the least duration from the following: a risk based approach; or by adhering to the timeframes outlined by dial before you dig (**DBYD**) (valid for 28 days). The permit must have a re-validation section to be completed by the GPP Coordinator to ensure its currency and validity in the field. This re-validation section must be completed at least weekly.
- (j) Any unknown or redundant services identified during the ground penetration process must be recorded, the relevant asset owner / stakeholder notified and the information captured as required by 'Minimum Condition (m)'.
- (k) The scope of work including the task and limits of work boundaries must be clearly defined in the GPP and communicated to all affected workers and stakeholders. The

issue of a permit covering multiple tasks such as a "blanket permit" and / or "piggy backing" of multiple tasks onto a single permit is to be avoided.

- (l) All service strikes (and potential to strike) must be reported through normal incident reporting processes and thoroughly investigated to identify casual factors and implementation of corrective actions to prevent recurrence. As part of the reporting process, escalation to the most senior project representative is required to demonstrate an appropriate governance structure is in place.
- (m) An underground service data management system must be implemented to capture, update and classify (as per AS 5488:2013 Classification of Subsurface Utility Information) all underground assets (including the dissemination of updated information) within suitable timeframes to protect underground assets from damage by other user groups. All relevant project participants will be expected to co-operate with the collation of this information.
- (n) Where requested by PSA, the GPP system must be independently audited to ensure the inclusion of these 'Minimum Conditions', to verify the adequacy and implementation of the GPP system / process.