

Terms and Conditions for Purchase of Services and/or Goods

1. Definitions

In these Terms and Conditions, unless the context otherwise requires or a contrary intention appears:

Agreement means the binding legal agreement for the provision of Services and/or supply of Goods between the Purchaser and the Supplier, consisting of these Terms and Conditions and the Purchase Order.

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

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

Commencement Date means the date set out in the Purchase Order by which the provision of Services and/or the supply of Goods must be commenced by the Supplier.

Completion Date means the date set out in the Purchase Order by which the provision of Services and/or supply of Goods must be completed by the Supplier.

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

- is in or which subsequently enters the public domain, other than as a result of a breach of an obligation of confidentiality;
- the Supplier can demonstrate was in its possession prior to the Commencement Date;
- the Supplier can demonstrate was developed by it independently of any disclosures previously made by the Purchaser;
- is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with the Purchaser or otherwise prohibited from disclosing the information to the Supplier; or
- is required to be disclosed pursuant to Law, court order or other legal process.

Contract Materials means any materials (including any Intellectual Property) which the Supplier creates (whether alone or jointly with any other person) in performing the Services.

Contract Publishing System means the system of the Victorian Government requiring publication of details of contracts entered into by Victorian Government departments, bodies and agencies, including any replacement or amended system.

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

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

Delivery Point means the location or address to which the Goods are to be delivered, as specified in the Purchase Order.

Fees means the fees payable to the Supplier for the provision of the Services, as specified in the Purchase Order.

Goods means the goods (if any) to be supplied to the Purchaser, as specified in the Purchase Order.

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

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

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

Information Privacy Principles means the information privacy principles set out in the *Privacy and Data Protection Act 2014* (Vic).

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

- anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- the Supplier ceasing, or indicating that it is about to cease, carrying on business.

Intellectual Property Rights means all intellectual property rights at any time recognised by law, including all present and future copyright, all proprietary rights in relation to inventions (including patents), registered and unregistered trademarks, trade secrets and know-how, registered designs, circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Laws means the law in force in Victoria, including common law, legislation and subordinate legislation.

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

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

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems which are the property of either party and which

existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

Protective Data Security Standards means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic).

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

Purchase Order means the form of order or purchase issued by the Purchaser for the supply of Goods and/or the provision of Services.

Purchase Price means the sum ascertained by multiplying the Unit Price for the applicable Goods by the number of units delivered and set out in the Purchase Order.

Purchaser means Mallee Catchment Management Authority, a statutory authority established under the *Catchment and Land Protection Act 1994*.

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for providing Services, as set out in the Purchase Order.

Services means the Services (if any) to be provided by the Supplier, as specified in the Purchase Order.

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

Supplier means the party providing the Services and/or supplying the Goods under this Agreement.

Supplier Code of Conduct means the code of conduct issued by the Victorian Government for suppliers providing services or goods to the Victorian Government (as amended from time to time).

Time for Delivery means the date and, where relevant, the time specified in the Purchase Order by or on which the Supplier, must deliver the Goods.

Unit Price means the price per item of each of the Goods, as specified in the Purchase Order.

Victorian Public Entity means:

- a public sector body as defined in section 4 of the *Public Administration Act 2004* (Vic);
- a statutory corporation, a State owned company, a State body or a State business corporation as those terms are defined in the *State Owned Enterprises Act 1992* (Vic);
- a "Council" as defined in the *Local Government Act 1989* (Vic); or
- an entity which receives the majority of its funding from any of the entities listed in paragraphs (a) to (c) or any entity under the control of any of the entities listed in paragraphs (a) to (c).

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

2. Interpretation

Unless expressed to the contrary, in these Terms and Conditions:

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

3. Term of Agreement

- This Agreement begins on the Commencement Date and continues until the Completion Date, unless extended in accordance with clause 22 or clause (c) or terminated earlier in accordance with these terms.
- If no Completion Date is specified, the Purchase Order will come to an end when all Services have been performed or all Goods have been

delivered and accepted and all payments required to be made under these Terms and Conditions have been made.

4. Providing Services and/or supplying Goods

- (a) The Supplier must provide the Services and/or supply the Goods to Purchaser in accordance with these Terms and Conditions and any reasonable directions given by the Purchaser.
- (b) The Supplier may not charge the Purchaser for any additional fees or charges (including any amounts for packaging, transport, insurance, loading, unloading or storage in relation to supply of any Goods), or recover any expenses or other costs from the Purchaser.

5. Invoicing and payment

- (a) On or following acceptance of the Services and/or Goods, or as otherwise specified in the Purchase Order, the Supplier must submit an invoice to the Purchaser at the address specified in the Purchase Order. Each invoice submitted by the Supplier must contain all information required in a tax invoice for the purposes of the GST Act together with such other information as the Purchaser may reasonably require.
- (b) The Purchaser will pay the invoiced amount less any amount required by Law within 30 days of receipt of an accurate invoice. However, if the Purchaser disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 16.
- (c) Payment of an invoice is not to be taken as evidence that the Services have been provided, or the Goods have been supplied in accordance with the Agreement but must be taken only as payment on account.

6. General Warranties

The Supplier represents and warrants to the Purchaser that:

- (a) **(Capacity)** it has the right to enter into this Agreement and provide the Services and/or supply the Goods;
- (b) **(Conflict)** it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations, whereby duties or interests are or might be created in conflict with, or might appear to be created in conflict with, its obligations under these Terms and Conditions;
- (c) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Services and/or the Goods and is able to grant to the Purchaser the licences contemplated by these Terms and Conditions; and
- (d) **(Trust)** it has not entered into this Agreement on behalf of a trust.

7. Data

- (a) Data will remain (and, if necessary, will become) the property of the Purchaser. The Supplier will assign to the Purchaser from the date of creation all Intellectual Property Rights in any data created by or on behalf of the Supplier.
- (b) The Supplier must only use the Data to the extent necessary to perform its obligations under these Terms and Conditions.
- (c) The Supplier must not, and must ensure that its Personnel do not, without the Purchaser's prior written consent:
 - i. remove Data or allow the Data to be removed from the Purchaser's premises, equipment or control; or
 - ii. take, disclose or make available the Data or allow the Data to be taken, disclosed or made available outside of Australia.

8. Liability

- (a) The Supplier indemnifies, and will at all times keep the Purchaser and each of its Personnel indemnified, against any liabilities, losses, damages, costs and expenses (including all legal and settlement costs determined on a full indemnity basis) or compensation arising out of, or in any way in connection with, any:
 - i. personal injury, including sickness and death;
 - ii. property damage;
 - iii. breach of an obligation of confidence or privacy, whether under these Terms and Conditions or otherwise;
 - iv. fraudulent acts or omissions;
 - v. wilful misconduct or unlawful act or omission;
 - vi. breaches of logical or physical security;
 - vii. loss or corruption of Data;
 - viii. third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or
 - ix. infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party, which was caused, or contributed to by, any act or omission of the Supplier or any of its Personnel.
- (b) The Supplier's liability to indemnify the Purchaser under clause (a) is reduced to the extent that any wilful, unlawful or negligent act or

omission of the Purchaser or its Personnel contributed to the liability, loss, damage, cost, expense or compensation.

- (c) To the extent that the indemnity in clause (a) refers to persons other than the Purchaser, the Purchaser holds this clause on trust for those other persons.

9. Insurance

- (a) The Supplier must obtain and maintain insurance cover from the Commencement Date until completion until the Completion Date and, if requested by the Purchaser, for a period of up to 7 years after any Services have been completed. The insurance cover must be sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with the Agreement, including professional indemnity and, if applicable, public and product liability insurance to the value specified in the Purchase Order or, if no value is specified, to a value sufficient to cover any loss or costs that may be incurred.
- (b) On request, the Supplier must, within 10 Business Days, provide the Purchaser with evidence of the currency of any insurance it is required to obtain under these Terms and Conditions.
- (c) Where the required insurance is due to expire, on request by the Purchaser, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

10. Termination

- (a) The Purchaser may terminate the Agreement with immediate effect (or with effect from a specified date) by giving notice in writing to the Supplier if the Supplier:
 - i. fails to provide the Services and/or Goods in accordance with the Agreement;
 - ii. breaches any provision of the Agreement and, where that breach is capable of remedy, fails to remedy the breach within 10 Business Days after receiving written notice requiring it to do so (or such later date as may be specified in that notice);
 - iii. breaches any provision of the Agreement that is not capable of remedy; or
 - iv. or any of its Personnel involved in the provision of Services and/or supply of Goods commits fraud, dishonesty or any other serious misconduct;
 - v. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or
 - vi. suffers from an Insolvency Event.
- (b) The Purchaser may terminate the Agreement without cause on notice to the Supplier.
- (c) If the Agreement is terminated pursuant to clause (b), the Purchaser will pay the Supplier:
 - i. for the Services performed and/or Goods delivered in accordance with the Agreement up to the date of the termination; and
 - ii. the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination, excluding any loss of profit, and the Purchaser has no other liability to the Supplier in relation to that termination.
- (d) When the Purchaser issues a notice under clause (b), the Supplier will immediately comply with any directions given in the notice and do all that is possible to mitigate its losses arising from the termination of the Agreement.
- (e) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to the Purchaser if the Purchaser fails to pay amounts due under these Terms and Conditions.
- (f) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry.
- (g) On termination or expiry the Supplier must immediately, following instructions by the Purchaser, cease using all materials that contain any Data or Confidential Information by either destroying the materials or returning the materials at no additional cost to the Purchaser.

11. Confidentiality, privacy and data protection

- (a) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier consents to the Purchaser publishing or otherwise making available information in relation to the Supplier (and the supply of the Goods and/or provision of Services):
- (c) as may be required to comply with the Contract Publishing System;
 - i. to other Victorian Public Entities or Ministers of the State in connection with the use of the Goods;
 - ii. to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
 - iii. to the office of the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) or the ombudsman appointed under the Ombudsman Act 1973 (Vic);

- iv. to comply with Law, including the *Freedom of Information Act 1982* (Vic); or
 - v. to the IBAC.
- (d) The Supplier acknowledges that it will be bound by the Information Privacy Principles, Health Privacy Principles and any applicable Code of Practice (together, Privacy Obligations) with respect to any act done or practice engaged in by the Supplier for the purposes of the Agreement, in the same way and to the same extent as the Privacy Obligations would have applied to the Purchaser in respect of that act or practice had it been directly done or engaged in by the Purchaser.
- (e) The Supplier acknowledges that the Purchaser is bound by the Protective Data Security Standards. The Supplier will not do any act or engage in any practice that would contravene or give rise to a breach of a Protective Data Security Standard in respect of any Data collected, held, used, managed, disclosed or transferred by the Supplier, on behalf of the State, under or in connection with the Agreement.

12. Access

When entering the premises of the Purchaser, the Supplier must, and must ensure that its Personnel, take all necessary measures to:

- (a) protect people and property;
- (b) prevent nuisance;
- (c) act in a safe and lawful manner;
- (d) comply with the safety standards and policies of the Purchaser (as notified to the Supplier); and
- (e) comply with any lawful directions of the Purchaser or its Personnel.

13. Sub-contracting

- (a) The Supplier must not sub-contract to any third party any of its obligations in relation to providing the Services and/or supplying the Goods without the prior written consent of the Purchaser (which the Purchaser may give conditionally or withhold in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under these Terms and Conditions and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

14. Compliance with Law and Policy

- (a) The Supplier must, in performing its obligations under these Terms and Conditions, comply with the Laws affecting or applicable to providing the Services and/or supplying the Goods.
- (b) The Supplier acknowledges that:
 - i. the Supplier Code of Conduct is an important part of the State's approach to procurement and describes the State's minimum expectations regarding the conduct of its suppliers;
 - ii. it has read and aspires to comply with the Supplier Code of Conduct; and
 - iii. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.
- (c) Where, in the course of providing the Services and/or supplying the Goods, the Supplier, or its employees or sub-contractors:
 - i. supervise Public Sector Employees;
 - ii. undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace;
 - iii. use or have access to public sector resources or information that are not normally accessible or available to the public;
 - iv. the Supplier will (and will ensure that its employees or sub-contractors) comply with the VPSC Code of Conduct.

15. GST

- (a) The terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with the Agreement, the recipient of the taxable supply must pay to the party making the taxable supply an amount equal to the GST payable on or for the taxable supply. Subject to the recipient first receiving a valid tax invoice, payment of the GST amount will be made at the same time the consideration for the taxable supply is to be paid or provided in accordance with the Agreement.

16. Dispute Resolution

- (a) If any dispute arises under or in connection with these Terms and Conditions (Dispute), either party may at any time give written notice to the other (Dispute Notice) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved in 15 Business Days it will be referred to mediation (Mediation) conducted by the Australian Disputes Centre

(ADC) in accordance with the ADC mediation guidelines with each party bearing their own cost.

- (c) If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- (d) The parties will continue to perform their respective obligations under these Terms and Conditions pending the resolution of a Dispute.

17. Order of Precedence

- (a) In interpreting the documents, which describe the Services and/or the Goods, the following order of precedence will apply to the extent of any inconsistency:
 - i. these terms and conditions;
 - ii. the Purchase Order and any attachments; and
 - iii. any quotation from the Supplier in relation to the Services and/or Goods.
- (b) In the event and to the extent of any inconsistency between these terms and conditions for the supply of goods and the Purchase Order, these terms and conditions will prevail to the extent of the inconsistency. If the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Purchase Order without otherwise diminishing the enforceability of the remaining provisions of the Purchase Order.

18. Survival

Clauses 1, 5, 6, 7, 8, (a), (c), (d), (f), (g), 11, (b), 16, 18, 19, 20, 24, 26, 29, 30 and 32 of these Terms and Conditions survive the termination or expiry of this Agreement or the completion of the provision of Goods and may be enforced at any time.

19. General Conditions

- (a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to providing the Services and/or supplying the Goods.
- (c) These Terms and Conditions and the Purchase Order contain everything the parties have agreed in relation to the Services and/or Goods. No party can rely on an earlier written document or anything said or done by or on behalf of another party before the Purchase Order was issued.
- (d) This Agreement may only be varied or replaced by a written document executed by the parties.
- (e) A waiver of any right, power or remedy under this Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement does not amount to a waiver.
- (f) Any provision of this Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (g) The Purchaser may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier to the Purchaser.
- (h) Subject to clause (i), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.
- (i) The Purchaser may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate this Agreement to any Victorian Public Entity in the event of any State government restructure or other re-organisation or change in policy.

PART A – Terms and conditions for providing Services

20. Supply of Services

- (a) If the Purchase Order indicates that Services are to be supplied, the following terms and conditions apply to the supply of Services, in addition to the clauses 1 to 19 above.
- (b) The Fees and/or Rate applicable to the Services are set out in the Purchase Order and are fixed.

21. Supplier's obligations with respect to providing the Services

The Supplier must:

- (a) complete the Services by the Completion Date and any other date(s) for delivery of the Services specified in the Purchase Order;
- (b) provide fit for purpose Services in a timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the Services; and
- (c) use appropriately skilled and qualified Personnel to provide the Services.

22. Delay in providing Services

- (a) **If the Supplier is aware of any actual or possible delay in the provision of the Services, the Supplier:**
- must advise the Purchaser by written notice immediately upon becoming aware of such delay or possible delay; and
 - may include in the notice a request for an extension of time.
- (b) **A notice given under clause (b) must set out:**
- the circumstances giving rise to the actual or possible delay, including the cause of the delay;
 - the likely length of the actual or possible delay; and
 - the steps the Supplier intends to take to prevent the delay from occurring or minimise the delay.
- (c) **On request from the Purchaser, the Supplier must promptly provide any additional information the Purchaser requires about a notice given under clause (b).**
- (d) **The Purchaser may, in its absolute discretion and by written notice to the Supplier, extend the Completion Date.**

23. Failure to perform Services

- (a) **If the Supplier fails to perform any Services or deliver any deliverable(s) in accordance with this Agreement the Purchaser:**
- will not be required to pay for those Services or deliverable(s) until they are provided in accordance with the Agreement; and
 - may issue a notice to the Supplier requiring the Supplier to remedy any default or re-perform the Services or deliverable(s) within the time specified by the Purchaser (which time must be reasonable having regard to the nature of the relevant Services or deliverable(s)).
- (b) **If:**
- the default referred to in clause (a) above is incapable of being remedied or re-performed; or
 - the Supplier fails to remedy the default or re-perform the non-compliant Service(s) or deliverable(s) within the time specified in the notice issued under clause (a),
 - the Purchaser may either have the Services or deliverable(s) remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the Purchaser in doing so.
- (c) **Nothing in this clause 23 derogates or otherwise limits any other remedy available to the Purchaser at Law.**

24. Warranties in relation to Services

Where the Supplier is providing Services, the Supplier represents and warrants to the Purchaser that:

- (a) **(Purpose) where the Purchaser has, either expressly or by implication, made known to the Supplier any particular purpose for which the Services are required, the Services will be performed in such a way as to achieve that result; and**
- (b) **(No infringement) the receipt of the Services and the possession or use of any deliverables by the Purchaser will not infringe the Intellectual Property Rights or other rights of any person or any Laws.**

25. Intellectual Property Rights in relation to any Services provided

- (a) **Ownership of any Contract Materials will vest in the Supplier from the time of its creation. The Supplier irrevocably and unconditionally grants to the Purchaser a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to exercise all Intellectual Property Rights in the Contract Materials to the extent necessary to allow the Purchaser the full use and enjoyment of the Services.**
- (b) **All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Services or the creation of Contract Materials remains the property of the relevant party or its licensors.**
- (c) **The Supplier hereby irrevocably and unconditionally grants to the Purchaser a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-license) to use any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to use the Contract Materials or the Services. The licence granted to the Purchaser under this clause is limited to use of the relevant Pre-Existing Intellectual Property by the Purchaser for the purposes of the Purchaser and for no other purpose.**
- (d) **The Purchaser grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the Purchaser's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the Services and comply with its obligations under the Agreement during the Term.**
- (e) **The Supplier undertakes that the Services may be used in any way by the Purchaser, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.**

- (f) **The Supplier must, upon request by the Purchaser, do all things necessary (including executing any documents) to give full effect to this clause 25.**

Part B – Terms and Conditions for the Supply of Goods**26. Supply of Goods**

- (a) **If Goods are supplied under the terms of this Agreement, the following terms and conditions apply to the supply of Goods, in addition to clauses 1 to 19 above.**
- (b) **The Unit Price applicable to the Goods is set out in the Purchase Order and is fixed, and includes all packaging, transport, insurance, loading, unloading and storage costs and any other costs incurred by the Supplier.**

27. Delivery and delay to delivery

- (a) **The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery. Delivery will not be taken to have occurred until delivery is accepted by the Purchaser in accordance with clause 28 below.**
- (b) **If the Supplier becomes aware of any actual or possible delay to the Time for Delivery, the Supplier will provide written notice to the Purchaser of this delay promptly, including advising the Purchaser of:**
- the circumstances giving rise to the delay, including the cause of the delay;
 - the likely length of the actual or possible delay;
 - the steps the Supplier intends to take to prevent the delay from occurring or minimise the delay; and
 - any request for an extension of a Time for Delivery or the Completion Date.
- (c) **The Purchaser may, in its absolute discretion and by written notice to the Supplier, extend a Time for Delivery or the Completion Date.**

28. Acceptance or rejection of Goods

- (a) **If the Goods conform with this Agreement, the Purchaser will promptly accept the Goods in writing.**
- (b) **If the Goods:**
- do not conform with this Agreement; or
 - on delivery are damaged, unfit for purpose or not of merchantable quality,
 - the Purchaser may reject the Goods within 30 days by written notice (including reasons for rejection). To avoid doubt, the Purchaser is not obliged to pay for any rejected Goods.
- (c) **If the Purchaser does not accept or reject the Goods within 30 days of delivery, acceptance will be deemed to have occurred on the date of delivery.**
- (d) **The Supplier must, at its cost, collect and remove any rejected Goods as soon as practicable following notification. If the Supplier fails to collect and remove the rejected Goods within a reasonable time, the Purchaser may return the Goods to the Supplier at the Supplier's expense, or, following further notification, destroy the Goods or otherwise dispose of the Goods in its discretion.**

29. Title and Risk in Goods

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

30. Warranties in relation to Goods

The Supplier warrants to the Purchaser that:

- (a) **(Title) it has the right to sell and transfer title to and property in the Goods to the Purchaser; and**
- (b) **(Goods) the Goods:**
- are new and fit for the purpose for which the Goods would ordinarily be used;
 - conform in all respects with this Agreement;
 - are free from defects (including defects in installation);
 - are of merchantable quality and comply with all Laws.

31. Manufacturer's Warranties

Where stated in the Purchase Order or otherwise requested by the Purchaser, the Supplier must obtain for the Purchaser the benefit of any manufacturer's warranties for the Goods for the benefit of the Purchaser.

32. Goods – Intellectual Property Rights

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