

TERMS AND CONDITIONS

PART A - General Conditions

These General Conditions apply to the supply of Goods and/or the provision of the Services:

1. Agreement for the Term

The Supplier must supply the Goods and/or provide the Services specified in the Purchase Order, in accordance with the Agreement for the Term.

2. Order of Precedence

(a) A formal contract entered into by the parties including under a State Purchase Contract, whether before or after a Purchase Order is issued by CSV to the Supplier, will take precedence over these Terms and Conditions.

(b) In the event and to the extent of any inconsistency between

- i. these Terms and Conditions;
- ii. the Purchase Order; and
- iii. any attachments to the Purchase Order or other documents incorporated by reference,

the first mentioned document will prevail to the extent of the inconsistency and, if the inconsistency remains incapable of resolution by reading down, the inconsistent provisions will be severed from the Agreement without otherwise diminishing the enforceability of the remaining provisions of the Agreement.

(c) Any Supplier terms and conditions are expressly excluded from this Agreement.

3. Price

The price for the Goods and/or Services is specified in the Purchase Order and is inclusive of all expenses, fees and taxes (excluding GST), for the Term.

4. Invoicing and payment

(a) On acceptance of the Goods and/or completion of the Services, the Supplier must submit an invoice to CSV at the 'Bill to' 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 CSV may reasonably require.

(b) Subject to clause 4(a), CSV will pay the invoiced amount, less any amount required by Law, within 30 days of receipt of an accurate invoice.

(c) Payment of an invoice is not to be taken as evidence that the Goods and/or Services have been supplied in accordance with the Agreement but must be taken only as payment on account.

5. Intellectual Property Rights

(a) Ownership of any Contract Materials will vest in CSV from the time of its creation.

(b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the Goods and/or the performance 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 CSV 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 Goods and/or Services. The licence granted to CSV under this clause is limited to use of the relevant Pre-Existing Intellectual Property by CSV for the purposes of CSV and for no other purpose.

(d) The Supplier must, upon request by CSV, do all things necessary (including executing any documents) to give full effect to this clause 5.

6. Liability and Indemnity

(a) The Supplier indemnifies, and will at all times keep CSV 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 breach of the Agreement.

7. Warranties

The Supplier represents and warrants to CSV that:

(a) **(Capacity)** it has the right to enter into the Agreement and provide the Goods and/or perform the Services;

(b) **(IP)** it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the Goods and/or Services (including without identifying any person as the individual responsible for creating any material) and its performance of the Agreement will not infringe the Intellectual Property Rights of any person or any Laws;

(c) **(Conflict)** it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Agreement;

(d) **(Trust)** it has not entered into the Agreement on behalf of a trust; and

(e) **(Purpose)** where CSV has, either expressly or by implication, made known to the Supplier any particular purpose for which the Goods and/or Services are required, the Goods and/or Services will be performed in such a way as to achieve that result.

8. Insurance

(a) The Supplier must obtain and maintain insurance cover during the Term

and, if requested by CSV, for a period of up to 7 years after the Goods and/or Services have been supplied, 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 WorkCover, professional indemnity and, if applicable, public and product liability insurance.

(a) On request, the Supplier must, within 10 Business Days, provide CSV with evidence of the currency of any insurance it is required to obtain under this Agreement.

(b) Where the required insurance is due to expire, on request by CSV, the Supplier must provide evidence of the replacement insurance prior to the expiry of the initial insurance.

9. Termination

(a) CSV may terminate the Agreement with immediate effect by giving notice in writing to the Supplier, if the Supplier:

- i. fails to provide the Goods and/or Services in accordance with this Agreement;
- ii. breaches any provision of the Agreement; or
- iii. any of its Personnel commits fraud, dishonesty, or any other serious misconduct.

(b) CSV may terminate the Agreement without cause by giving notice in writing to the Supplier. Upon such termination CSV will pay the Supplier:

- i. for the Goods and/or Services provided 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 CSV has no other liability to the Supplier in relation to that termination.

(c) The Supplier may terminate the Agreement by giving at least 20 Business Days written notice to CSV if CSV fails to pay amounts due under this Agreement.

10. Confidentiality

(a) The Supplier and its Personnel will treat as secret and confidential all Confidential Information to which it has access or which is disclosed to it and must take all reasonable steps, including establishment or maintenance of security measures, to ensure that the confidentiality of the Confidential Information is preserved.

(b) The Supplier must not directly or indirectly disclose the Confidential Information to any other person, without the prior written consent of CSV.

(c) The Supplier will use the Confidential Information only for the purpose of this Agreement.

(d) The Supplier must immediately notify CSV of any unauthorised disclosure or use of the Confidential Information or any suspected or potentially unauthorised use or disclosure of the Confidential Information and must take any and all reasonable steps required by CSV to resolve the situation.

(e) The Supplier acknowledges that CSV will be entitled (in addition to any remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Supplier of this Agreement and without the need on the part of CSV to prove any special damage.

(f) The Supplier hereby consents to CSV publishing or otherwise making available information in relation to the Supplier (and the provision of the Goods and/or Services) as may be required, including to:

- i. the office of the Auditor General;
- ii. the Independent Broad-based Anti-corruption Commission; and
- iii. to comply with Law, including the *Freedom of Information Act 1982* (Vic).

11. Privacy and data protection

(a) 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**), as relevant, 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 CSV in respect of that act or practice had it been directly done or engaged in by CSV.

(b) The Supplier must not do an act or engage in a practice that contravenes a Protective Data Security Standard in respect of data collected, held, used, managed, disclosed or transferred by the Supplier in the course of, or for the purpose of, providing the Services.

(c) The Supplier will follow all reasonable directions from CSV in respect of the protection of data collected, held, used, managed, disclosed or transferred by the Supplier in the course of, or for the purpose of, providing the Services.

12. Access

When at CSV's premises, the Supplier must, and must ensure that its Personnel:

- (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 CSV (as notified to the Supplier); and
- (e) comply with any lawful directions of CSV or its Personnel.

13. Sub-contracting

(a) The Supplier must not sub-contract to any third person any of its obligations in relation to the supply of the Goods and/or provision of the Services without the prior written consent of CSV (which may be given conditionally or withheld 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 the Agreement 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 this Agreement, comply with all Laws, CSV policy and other requirements affecting, or applicable to, the provision of Goods and/or Services by the Supplier under this Agreement, including but not limited to CSV's Gifts, Benefits and Hospitality Policy and any requirement for Personnel to have undergone a satisfactory national police check.
- (b) The Supplier acknowledges that:
- 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;
 - it has read and aspires to comply with the Supplier Code of Conduct; and
 - the expectations set out in the Supplier Code of Conduct are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law.

15. Supplier to retain records

- (a) The Supplier must, during the Term and for a period of seven years after the supply of the Goods and/or performance of the Services, keep true and particular accounts and records of all Goods and/or Services provided under this Agreement and all associated records, including all supporting materials used to generate and substantiate invoices submitted in respect of the Goods and/or Services provided under this Agreement.

16. Right to access and audit

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

17. General

- (a) This Agreement is governed by the Laws of Victoria and 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 those courts which may hear proceedings in connection with this Agreement.
- (b) This Agreement contains everything the parties have agreed in relation to its subject matter. No party can rely on an earlier written item or anything said or done by or on behalf of another party before this Agreement was executed.
- (c) Time is of the essence in relation to the provision of the Goods and/or Services.
- (d) The Agreement may only be varied as agreed in writing by the parties.

PART B – Conditions for supply of Services

These conditions apply to the supply of the Services (in addition to the General Conditions in Part A):

18. Standards of Services

The Supplier must:

- 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;
- promptly notify CSV as soon as it becomes aware of any delay or possible delay in the supply of the Services;
- use appropriately skilled and qualified Personnel to provide the Services;
- act in good faith and in the best interests of CSV; and
- provide any and all equipment necessary for the performance of the Services.

19. Failure to Perform

- (a) Without limiting any other available remedy, if the Supplier fails to provide any of the Services in accordance with the Agreement, CSV will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or reperform the Services within a reasonable time.
- (b) If the default referred to in clause 19(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the default or reperform the Services, CSV may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by CSV in doing so.

PART C – Conditions for supply of Goods

These conditions apply to the supply of Goods (in addition to the General Conditions in Part A):

20. Delivery of Goods

- The Supplier must deliver the Goods to the Delivery Point by the Time for Delivery set out in the Purchase Order.
- Acceptance of the Goods by CSV will not be taken to have occurred until CSV acknowledges acceptance in writing to the Supplier.

21. Rejection of Goods

- If the Goods do not conform to this Agreement, CSV may reject the Goods within 30 days by written notice giving reasons. If CSV does not accept or reject the Goods within 30 days of delivery, delivery will be deemed to have then occurred.
- The Supplier must at its cost collect and remove any Goods that have been rejected as soon as practicable or CSV may return the Goods to the Supplier at the Supplier's expense.

22. Warranties in relation to Goods

The Supplier warrants that:

- it has the right to sell, and transfer title to and property in the Goods to CSV;
- the Goods:
 - are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, 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); and
 - are of merchantable quality and comply with all Laws.
- if provided for in the Purchase Order, the Supplier has obtained the benefit of any manufacturer's warranties for CSV.

23. Title and Risk

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

PART D – Definitions

24. In this Agreement, unless the context otherwise requires:

Agreement means the agreement for the supply of the Goods and/or provision of the Services consisting of these Terms and Conditions, the Purchase Order and any other documents incorporated by reference.

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

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 on which the supply of the Goods and/or provision of the Services commences, as specified in the Purchase Order.

Confidential Information means any technical, scientific, commercial, financial or other information of, about or in any way related to CSV or the courts and tribunals of Victoria, including any information designated by CSV 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 that it was developed independently of any disclosures previously made by CSV;
- the Supplier can demonstrate it was in its possession prior to the date of the Agreement;
- is lawfully obtained by the Supplier on a non-confidential basis from a person who is not bound by a confidentiality agreement with CSV 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 the supply of the Goods and/or the provision of the Services.

CSV means Court Services Victoria, the body corporate established under section 5 of the *Court Services Victoria Act 2014* (Vic).

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

Goods means the goods as specified in the Purchase Order.

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

Information Privacy Principles has the meaning given in the *Privacy and Data Protection Act 2014* (Vic).

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:

- any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State of Victoria, irrespective of where enacted; and
- lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

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 supply of the Goods and/or provision of the Services.

Protective Data Security Standards means any standard issued under Part 4 of the *Privacy and Data Protection Act 2014* (Vic) and any policies or protocols issued by CSV to ensure compliance with those standards.

Purchase Order means the purchase order attached to these Terms and Conditions or any form of order or acknowledgment from CSV for the supply of the Goods and/or the provision of the Services which incorporates these Terms and Conditions.

Services means the services as specified in the Purchase Order.

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

State Purchase Contract means a whole of Victorian Government contract.

Supplier Code of Conduct means the Code of Conduct issued by the Victorian Government for suppliers providing goods and/or services to the Victorian Government, as amended from time to time.

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

Term means the duration of this Agreement from the Commencement Date until completion of all Services and/or the delivery of all Goods by the Supplier, in accordance with this Agreement.

Terms and Conditions means these Terms and Conditions.

Time for Delivery means the date and, where relevant, the time specified in the Purchase Order (or such other date or time as may be agreed in writing) by or on which the Goods must be delivered by the Supplier.