

**EAST GIPPSLAND
CATCHMENT
MANAGEMENT
AUTHORITY**



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PROJECT BRIEF

**2019/20 Provision of
Employment, Training
and On-Ground Works
Services**

EGCMA 156

Request for Tender

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Part A – Project Brief

Project Title: 2019/20 Drought Employment Program

1. INTRODUCTION

The East Gippsland Catchment Management Authority (the Authority) is managing an employment program for community people in the Wellington and East Gippsland Shire Council areas.

The program provides drought-affected workers in the Wellington and East Gippsland shires the opportunity to earn an income by working on public good environmental projects within the area of the two shires.

The Authority manages the program; assigns the work and then contracts the employment, staff training and works to one service provider.

2. PROJECT OBJECTIVES

1. Provide flexible (casual, part-time and/or full-time) employment opportunities to up to 40 individual drought-affected farmers and workers in the agriculture sector of the East Gippsland or Wellington Shires at any one time.
2. Full Time Equivalent (FTE) estimates for the 40 people is 20 FTE, although the final number of participants will be dependent on a number of factors, including the demand and basis of employment being casual, part time or full time.
3. Delivery of local natural resource management on-ground works on public land in the East Gippsland and Wellington Shires. Typically works include weed control (spraying and hand removal), fencing (new and repair), track maintenance and public space clean-up (involves hand labour tasks such as raking, hand removal of debris and burning).

3. PROJECT DELIVERABLES AND OUTPUTS

1. Employ at least twenty FTE drought affected farmers or people involved in agriculture related industries during the duration of delivery.
2. Supervise at least three work crews based in East Gippsland and Wellington Shires. Crew locations must match demand; currently, crews are operating in Omeo/Swifts Creek, Bairnsdale and Sale/Maffra areas.
3. Provide flexible employment arrangements to suit the needs of individuals (e.g. farming, seasonal commitments).
4. Provide all support equipment and training to complete the tasks assigned. Present needs are vehicles for crews, spray equipment and hand tools.
5. Promote the program using a range of communication tools, to ensure the program is fully subscribed and information is regularly provided to the community about program achievements and employment opportunities.
6. Undertake suitable training that meets all the legislative requirements including OH&S education, chemical and manual handling and first aid training. Complete and implement a training plan for all individuals participating in the program that looks at existing and future training needs.

4. LOCAL JOBS FIRST POLICY

This project falls under the Local Jobs First (LJF) Policy. This means that:

1. All bidders must prepare a Local Industry Development Plan (LIDP) in accordance with the LJF Policy and Guidelines.
2. The assessment of the tender or proposal will consider whether and how bidders comply with the LJF Policy. This is done through assessment of bidders' LIDPs.

A LIDP must be submitted to the Industry Capability Network (Victoria) and will be made available to the Authority and the Department of Economic Development, Jobs, Transport and Resources.

See Part B for more information on the LJF Policy and how to prepare a LIDP.

5. PROJECT MANAGEMENT

The project manager will be Bec Hemming, Delivery Manager.

The Delivery Manager will establish monthly work plans in advance and in consultation with the Supplier and associated land management partners. Requirements for materials will be determined monthly.

The Delivery Manager will then establish budgets monthly in advance for the duration of the project based on the tendered hourly rate of the Supplier, plus materials.

The project supervisor will provide site induction and safety assessments with the Supplier.

The Supplier is responsible for site safety and management of works sites consistent with the work plan, budget allocation and compliant with all regulations.

6. PROJECT COMMUNICATION

The Supplier will work cooperatively with the Delivery Manager and project supervisor to deliver the project workplans.

The Supplier will then be required to liaise directly with partners associated with each project and coordinate meetings as required.

The Supplier will be required to report progress to the Delivery Manager monthly.

7. CONDUCT OF PROJECT

The Supplier is to provide the following services in accordance with the Authority's project workplan:

1. All labour (including supervision and management), training, equipment and materials for the duration of the program.
2. Complete all recruitment, manage human resources including termination processes and meet all applicable legislative and regulatory requirements including those relating to occupational health and safety.

3. Ensure communication of project is ongoing and consistent with Authority messages.
4. Ensure program reports are delivered in a timely and accurate manner.

8. METHODOLOGY

The Authority anticipates that program funds could last until approx. 30th June 2020; however, the full duration of the program is not known at this stage. This means that the Authority will make decisions for program delivery on a monthly basis in advance (see section 5 Project Management), based on the Suppliers all inclusive hourly rate. Some specific parameters for determining the all inclusive hourly rate for tenders is provided in section 9 (Budgeting Assumptions) below.

The Supplier is to provide a methodology which aligns with the conduct of the project (above).

9. BUDGETING ASSUMPTIONS

1. Basis for provision of hourly rate is:
 - a. The Supplier will incorporate all administrative, communication and management overheads into the hourly rate, based on a total employee complement equivalent of 20 FTE.
 - b. Program budgets will be based on the total employee hours planned, at the hourly rate, plus materials and training costs.
 - c. Employee (participant) gross weekly wages for the Team Supervisor and Team Members will, at a minimum, align with the Gardening and Landscaping Services Award 2010, based on a 38 hour week.
2. Administrative, communication and management overheads will vary dependant on the Supplier structures.
3. Provision of all vehicles, equipment and tools is to be incorporated into the hourly rate. This amount will vary dependant on the Supplier structures.
4. Costs associated with materials is determined monthly with the Delivery Manager in advance and invoiced monthly in arrears.
5. Costs associated with training course fees will be agreed with the Delivery Manager in advance and invoiced monthly in arrears.
6. Program invoicing will be monthly in arrears based on actual hours delivered, plus actual materials and training costs.

The Supplier is required to provide an hourly rate for each participant, based on 20 FTE's fixed until 30th June 2020.

The Supplier will be asked to review the hourly rate at 1st July annually, for the period of the contract.

The Project Manager can terminate the contract, with two months notice, at which time the Supplier will be paid all accrued and committed rates up to the date of termination.

10. SCHEDULE OF OUTPUTS

Output Required	Due Date
<input type="checkbox"/> Projects assigned by Delivery Manager. <input type="checkbox"/> Supplier agrees project scope and extent for each assigned project.	To be assigned monthly in advance.
<input type="checkbox"/> Establish and agree on work plan and timelines.	As above.
<input type="checkbox"/> Deliver work plan requirements and provide project reports to Delivery Manager by 30 th of each month.	Monthly, by 30 th day.
<input type="checkbox"/> Participate in all government reviews and respond to all reasonable queries about program progress.	As above.

11. SUPPLIER QUOTATION AND QUALIFICATIONS

The proposal will be assessed based on the following evaluation criteria:

Evaluation Criteria	Weighting
Experience in providing employment services and training programs in Gippsland for individual participants in multiple work crews and locations.	20%
Technical skills in delivery of contracted natural resource on-ground works.	20%
Project management and communications experience.	20%
Industry development, including commitments made in relation to the Victorian Industry Participation Policy.	10%
Job outcomes	10%
Price at hourly rate per person.	20%

12. LODGING A SUBMISSION

Submission Requirements:

Submissions in response to this Request for Tender must:

1. Address the Project Brief and Evaluation Criteria.
2. Include a signed “Supplier Code of Conduct Commitment Letter” – as provided at Part C.
3. The proposed contract at Part D sets out the proposed terms and conditions that will apply to the provision of the Services as set out in this Project Brief. An acknowledgement of the

ability to comply with these proposed terms and conditions must be provided in the submission.

Submissions dates:

Submissions open Friday 29 November 2019 and close at 5.00pm on Friday, 13 December 2019.

Late submissions will not be accepted.

Submissions are to be clearly marked:

Tender – 2019/20 Drought Employment Program – EGCMA156

Lodgement details:

Submissions must be provided as three printed copies plus one electronic pdf file supplied on USB memory stick. Submissions can be lodged in the following ways:

By Mail:

East Gippsland Catchment Management Authority
PO Box 1012
Bairnsdale Vic 3875

In person:

East Gippsland Catchment Management Authority - Tender Box
574 Main Street, Bairnsdale

13. QUERIES

Any queries regarding this project should be directed to the Project Manager:

Bec Hemming
Delivery Manager
East Gippsland Catchment Management Authority
PO Box 1012
Bairnsdale Vic 3875

Telephone: 03 5150 3577.

Part B – Local Jobs First Policy

1. OVERVIEW

- a) The Local Jobs First Policy (LJF Policy) issued under the Local Jobs First Act 2003 supports businesses and workers by ensuring that small and medium size enterprises are given a full and fair opportunity to compete for both large and small government contracts, helping to create job opportunities, including for apprentices, trainees and cadets. The LJF Policy is implemented by Victorian Government departments and agencies to help drive local industry development.
- b) The LJF Policy comprises the Victorian Industry Participation Policy (VIPP) and the Major Projects Skills Guarantee (MPSG).
 - i. VIPP seeks to ensure that small and medium-sized business are given full and fair opportunity to compete for government contracts.
 - ii. MPSG is a policy that provides job opportunities for apprentices, trainees and cadets on high value construction projects.
- c) Local Jobs First applicable projects include but are not limited to:
 - i. purchase of goods and/or services, regardless of the method of procurement (including individual project tenders, State Purchase Contracts, Supplier panels);
 - ii. construction projects (incorporating design and construction phases and all related elements), including individual projects, Public Private Partnerships, Alliance Contracts, Market Led Proposals, Supplier panels and auctions; and
 - iii. grant and loan projects, including grant agreements or loan arrangements to private, non-government and local government organisations for a single or group of projects.
- d) The LJF Policy applies to standard projects above the threshold values of:
 - i. \$3 million or more in metropolitan Melbourne, and
 - ii. \$1 million or more in regional Victoria, or
 - iii. any project valued at less than \$3 million that the Minister has declared to be a standard project.
- e) This Request for Tender is for a standard project.

For further information, bidders should refer to the LJF Policy and Guidelines which can be found at www.localjobsfirst.vic.gov.au.

2. DEFINITIONS

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

Authority means East Gippsland Catchment Management Authority

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.

Contestable Items means goods or services in a procurement process where there are competitive international and local Suppliers. 'Competitive' means the Suppliers are able to offer comparable goods or services that meet the specifications provided in this Request for Tender. Contestable items can be goods or services at any stage of a project, including maintenance.

Department has the meaning given in s3 (1) the *Local Jobs First Act 2003*.

Guidelines means the Local Jobs First Supplier Guidelines, available at www.localjobsfirst.vic.gov.au.

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

Local Content has the meaning given in s3 (1) of the *Local Jobs First Act 2003*.

LJF Policy means the policy made under s4 of the *Local Jobs First Act 2003*.

Project means the work as described in this Request for Tender.

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*.

3. CONTESTABLE ITEMS

- a) The LJF Policy requires that government agencies consider Local Content and job commitments, particularly in respect of Contestable Items, as a key criterion in tender evaluation and other relevant procurement processes.
- b) Consideration should be given to contestable and non-contestable items in establishing local content commitments.
- c) The Contestable Items within the scope of this invitation are included in the LIDP template.

4. REQUIREMENTS FOR STANDARD PROJECTS

The requirements for this tender or proposal are included in the LIDP template accessible at <https://icn.vic.force.com>.

5. LOCAL INDUSTRY DEVELOPMENT PLAN

- a) All bidders must prepare a Local Industry Development Plan (LIDP) in accordance with the LJF Policy and Guidelines.
- b) The assessment of the tender or proposal will consider whether and how bidders comply with the LJF Policy. This is done through assessment of bidders' LIDPs.
- c) A LIDP must be submitted to the Industry Capability Network (Victoria) and will be made available to the Authority and the Department.
- d) A LIDP must:
 - i. specify how the requirements of the LJF Policy will be met;
 - ii. identify total content and Local Content for the Project; identify total and local jobs for the Project; and
 - iii. include any other matter required to be included in the Plan by the LJF Policy
- e) In developing the LIDP, bidders must consult in good faith with Industry Capability Network (Victoria).
- f) All LIDP submissions must be completed and submitted through to the Industry Capability Network (Victoria) Victorian Local Jobs First Management Centre using the online form at <https://icn.vic.force.com>. Bidders can contact ICN Client Services on 03 9864 6700 or assistadmin@icn.vic.org.au for assistance and guidance.
- g) To demonstrate that the LIDP submitted is completed correctly and includes all required information, bidders must obtain an acknowledgement letter of their LIDP from Industry Capability Network (Victoria). Contact details for ICN are provided below. A tender or proposal cannot be evaluated if an acknowledgement is not supplied. An Authority cannot accept a tender, proposal or other submission that does not include a compliant LIDP.

6. USE OF LOCAL INDUSTRY DEVELOPMENT PLAN

- a) Any post-bid changes in a bidder's LIDP commitments will require further Industry Capability Network (Victoria) assessment and an acknowledgement letter. Bidders should refer to the Guidelines for further details.
- b) The contents of a successful bidder's final LIDP will be included in the agreement to be entered into between that bidder and the Authority. Further, the bidder's LIDP information will be recorded centrally for Industry Capability Network (Victoria) certification of the LIDP outcomes reported.

7. WEIGHTING OF COMMITMENTS TO LOCAL JOBS FIRST POLICY

- a) In evaluating a tender or proposal for an agreement for a project, the Authority will give weighting to the following parts in the specified amounts:
 - i. 10 per cent for industry development, including commitments made in relation to the VIPP; and
 - ii. 10 per cent for job outcomes, including, if applicable, job outcomes provided by the MSPG.
- b) The commitments of a bidder's LIDP will be allocated a minimum 10 per cent weighting for industry development (including commitments made in relation to the VIPP), and 10 per cent weighting for job outcomes (including, if applicable, job outcomes provided by the MSPG), as part of the tender evaluation process.

8. FURTHER INFORMATION AND ASSISTANCE

- a) The Department has prepared the Guidelines for Suppliers on the application of the LJF Policy to projects.
- b) Industry Capability Network (Victoria) provides free services to assist bidders in identifying and developing the above information. Bidders are advised that Industry Capability Network (Victoria) will be available to assist them in implementing the LJF Policy. For further information or assistance, bidders can contact Industry Capability Network (Victoria):

Level 11
10 Queens Road
Melbourne VIC 3004
(03) 9864 6700
https://icn.org.au/vic_home
- c) Bidders must attend any briefing provided by the Authority on the LJF Policy.

Part C - Supplier Code of Conduct Commitment Letter

Commitment Letter

[Note to tenderers: The Victorian State Government's Supplier Code of Conduct is available at the Victorian Government Purchasing Board website: <http://www.procurement.vic.gov.au/Home>. Updates and amendments to the Code will also be made available at this website.

Tenderers are to familiarise themselves with the Supplier Code of Conduct and must include in their tender response a Commitment Letter substantially in the form provided here, addressed to the Project Manager listed at Section 5 of the Request for Tender.

[insert tenderer name]

[insert address]

[insert date]

Bec Hemming
Delivery Manager
East Gippsland Catchment Management Authority
PO Box 1012
Bairnsdale Vic 3875

Ref: EGCMA 156 Drought Employment Program

COMMITMENT TO THE VICTORIAN STATE GOVERNMENT SUPPLIER CODE OF CONDUCT

1. I acknowledge that:
 - a. the Victorian State Government (**the State**) is committed to ethical, sustainable and socially responsible procurement;
 - b. the State has a Supplier Code of Conduct (**Code**) the Code describes the State's minimum expectations of the conduct of its Suppliers in relation to:
 - i. integrity;
 - ii. ethics and conduct;
 - iii. conflicts of interest;
 - iv. gifts, benefits and hospitality;
 - v. corporate governance;
 - vi. labour and human rights;
 - vii. health and safety; and
 - viii. environmental management;
 - c. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed by any applicable contract, law, regulation or otherwise;

- d. to ensure that the Code remains current and relevant, it may be amended or updated by the State; and
- e. the Code includes an ongoing expectation that Suppliers (including my organisation) will raise concerns or otherwise seek clarification in relation to any aspects of the Code, including any updates or amendments to the Code.

2. On behalf of my organisation I:

- a. confirm that the State's expectations of Suppliers as set out in the Code are understood;
- b. provide a commitment that if selected to supply goods and / or services to any State department or public body my organisation will:
 - i. periodically check with reasonable frequency for updates and amendments to the Code; and
 - ii. aspire to meet the State's expectations of Suppliers as set out in the Code, including as updated or amended by the State.

.....
Signature:

.....
Name:

.....
Position:

.....
Organisation:

.....
Date:

Part D – Proposed Contract

Refer to attached Proposed Contract.

Agreement for the provision of services

The State of Victoria through

East Gippsland Catchment Management Authority

Contract EGCMA156

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Parties

Date: [insert date]

The State of Victoria through East Gippsland Catchment Management Authority [the Organisation]
of 574, Main Street, Bairnsdale, 3875

and

[Supplier name]

Australian Business Number:

of [Insert registered address].

Background

- (a) The supplier wishes to provide the services to the organisation.
- (b) The organisation has agreed to engage the supplier to provide the services on and subject to the terms of this Agreement.

Agreed terms

1. Definitions and Interpretation

1.1. Definitions

In this Agreement:

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

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

Code of Conduct means the Code of Conduct for Victorian Public Sector Employees (No 1) 2007 (as amended from time to time) issued by the Public Sector Standards Commissioner pursuant to s63 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).

Commencement date means the date set out in Item 1 of Schedule 1.

Completion date means the date (if any) set out in Item 1 of Schedule 1 as that date may be extended in accordance with this Agreement.

Confidential information means any technical, scientific, commercial, financial or other information of, about or in any way related to, the organisation, including any information designated by the

organisation as confidential, which is disclosed, made available, communicated or delivered to the supplier in connection with this Agreement, but excludes information:

- (a) which is in or which subsequently enters the public domain other than as a result of a breach of this Agreement;
- (b) which the supplier can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the supplier can demonstrate was independently developed by the supplier;
- (d) which is lawfully obtained by the supplier from another person entitled to disclose such information; or
- (e) which is disclosed pursuant to legal requirement or order.

Contract Intellectual Property means any and all Intellectual Property Rights incorporated or comprised in any materials created by or on behalf of the supplier in the course of providing the services, except any Intellectual Property Rights in Data.

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

Control means, in relation to the supplier, the ability of any person directly or indirectly to exercise effective control over the supplier (including the ability to determine the outcome of decisions about the financial operating and other policies of the supplier) by virtue of the holding of voting shares, units or other interest in the supplier by any other means.

Corporate Transaction Card means a card issued by a bank to the State for the purchase of services.

Data means any information, data, datasets or databases created by or on behalf of the supplier in the course of providing the services.

Fees means a fixed fee payable to the supplier for the provision of specified services under this Agreement, determined in accordance with the price schedule.

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

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

Invitation means the opportunity set out in the documents published by the organisation for the market place to submit offers to provide the services pursuant to this Agreement.

Laws means:

- (a) the law in force in Australia and Victoria, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations, orders and by-laws of relevant government, semi-government or local authorities.

Offer means the documentation and any supporting materials lodged by the supplier in response to the Invitation containing an offer to provide services in the form finally accepted by the organisation, as set out in Annexure A.

Pre-Existing Intellectual Property means any and all Intellectual Property Rights in any works, items or systems created by, or the property of the supplier prior to the commencement of the provision of the services.

Price Schedule means the schedule of rates and fees payable by the organisation to the supplier for the provision of the services, as set out in Schedule 2.

Protective Data Security Standard 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).

Rates means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the supplier for the provision of specified services, determined in accordance with the Price Schedule.

Representative means the person or persons nominated by the organisation and the supplier in Item 2 of Schedule 1 or any other person who is subsequently appointed in accordance with clause 6.1.

Service levels means the service levels the supplier must comply with, in performing its obligations under this Agreement, as specified in Schedule 3, and as amended from time to time in accordance with clause 6.2.

Services means the services to be provided by the supplier specified in Schedule 2.

Staff Costs means Pay as You Go tax, withholding tax, superannuation contributions or charge amounts, fringe benefits tax, workers' compensation insurance premiums, payroll tax and any like taxes and charges arising out of or in relation to this Agreement, or any engagement arising under this Agreement (together with all interest or penalties payable by reference to those costs).

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

Supplier means the person, corporation, partnership, joint venture, including employees, agents and sub-contractors supplying the services under this Agreement.

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

1.2. Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) 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;

- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia;
 - (vi) a party or parties is a reference to the organisation and the supplier (as the case requires); and
 - (vii) the organisation is a reference to the Crown in right of the State of Victoria;
- (g) if the date on or by which any act must be done under this Agreement is not a Business Day, the act must be done on or by the next Business Day.

1.3. Headings

Headings do not affect the interpretation of this Agreement.

2. Performance of services

2.1. Provision of services

The supplier must provide the services for the organisation in accordance with the terms of this Agreement.

2.2. Commencement and completion

The supplier must commence performance of the services on the commencement date and complete the services by the completion date and in accordance with any other dates for delivery specified in Schedule 2. However, for the avoidance of any doubt, this Agreement applies to any services performed prior to the date of this Agreement.

2.3. Service levels

The supplier must provide the services to a standard that reaches or exceeds the service Levels and in accordance with all other requirements set out in Schedule 2. In addition, the supplier must:

- (a) provide the services to the reasonable satisfaction of the organisation and in a proper, timely and efficient manner using that standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, expert and experienced provider of services that are similar to the services;
- (b) ensure the highest quality of work and the delivery of the services with the utmost efficiency;
- (c) act in good faith and in the best interests of the organisation;

- (d) comply with all statements or representations as to its performance or the provision of the services set out in the offer;
- (e) keep the organisation informed of all matters of which it ought reasonably be made aware and provide such information in relation to the provision of the services as may reasonably be required by the organisation; and
- (f) carry out its obligations and duties and complete the provision of the services to the reasonable satisfaction of and in accordance with the requirements of the organisation.

2.4. Supplier to provide equipment

The supplier must provide any and all equipment (including computer hardware or software and any ancillary support) necessary for the performance of the services.

2.5. Delay

If the supplier is delayed or is likely to be delayed in the supply of the services in accordance with this Agreement due to any cause beyond its reasonable control, it may make application in writing to the organisation's representative, immediately upon becoming aware of such delay, requesting an extension of the Completion Date. Such request must set out in reasonable detail the circumstances giving rise to such delay and the likely length of such delay (and provide such other information as the organisation's representative may reasonably request). The organisation's representative may agree to extend the Completion Date if, in the reasonable opinion of the organisation's representative, the circumstances giving rise to the delay are legitimate and warrant an extension of time. The organisation's representative will promptly notify the supplier in writing of any agreed revised Completion Date.

2.6. Variations

The organisation may at any time give written notice to the supplier proposing a variation to the scope of the services (including any necessary extension of the Completion Date). The supplier must, within five Business Days of such notice, provide a written proposal as to varied rates or fees that would apply with respect to the provision of the varied services (based on the value for money proposition reflected in the then current Price Schedule). The organisation may accept such proposal within five Business Days of its receipt from the supplier. In the absence of such acceptance, the services must be performed in accordance with this Agreement without such variation.

3. Supplier's staff

- (a) The services must be performed by the persons specified in Item 11 of Schedule 1.
- (b) If the persons identified in Item 11 of Schedule 1 are unavailable or otherwise unable to provide the services, the supplier must promptly notify the organisation of that fact and provide details of alternate, suitably qualified and experienced staff to replace the persons specified in Item 11 of Schedule 1 (Replacement Staff).
- (c) The organisation must notify the supplier in writing within two Business Days as to whether or not it accepts the Replacement Staff proposed by the supplier pursuant to clause 3(b). The supplier acknowledges and agrees that the organisation will be under no obligation to accept any person proposed by the supplier if the organisation is not satisfied as to the qualifications and experience of such person.

4. Price for the services

- (a) The Price Schedule according to which the supplier will charge the organisation for the services is set out in Schedule 2. Subject to any change in the rates or fees for the services resulting from the application of any express provision of this Agreement, the rates and fees are fixed for the Term of this Agreement.
- (b) Expenses or other disbursements may only be charged by the supplier in accordance with Schedule 2.

5. Invoicing and payment

5.1. Invoicing

- (a) The supplier must submit to the organisation a Tax Invoice or Tax Invoices in respect of the services as soon as practicable after the completion of the services, or at such other time or times as set out in Item 4 of Schedule 1 or as otherwise agreed by the parties in writing.
- (b) A Tax Invoice submitted for payment pursuant to clause 5.1(a) must contain each of the matters specified in Item 4 of Schedule 1 and be sent to the address specified in Item 4 of Schedule 1.

5.2. Payment of invoice

- (a) Subject to the remainder of this clause 5.2, the organisation will pay the invoiced amount to the supplier within 30 days of receipt of the invoice, in the manner specified in Item 5 of Schedule 1.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the organisation's representative. An invoice will not be certified for payment unless the organisation's representative is satisfied that it is correctly calculated with respect to the services that are the subject of the relevant invoice.
- (c) If the organisation's representative disputes the invoiced amount (whether in whole or in part) for any reason, the organisation must pay the undisputed amount of such invoice (if any), and notify the supplier of the amount the organisation believes is due for payment. If the organisation and the supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with clause 19.
- (d) Payment of an invoice is not to be taken as:
 - (i) evidence or an admission that the services have been provided in accordance with the service level requirements and otherwise in accordance with this Agreement;
 - (ii) evidence of the value of the services supplied;
 - (iii) an admission that the services were satisfactorily supplied;
 - (iv) an admission of liability; or
 - (v) acceptance or approval of the supplier's performance, but must be taken only as payment on account.

5.3. Fair payment

- (a) Where the value of the Agreement is less than \$3.0 million, the organisation will, on demand by the supplier, pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- (b) For the purposes of clause 5.3(a), overdue amount means an amount (or part thereof) that:
 - (i) is not, or is no longer, disputed in accordance with this Agreement;
 - (ii) is due and owing under a Tax Invoice properly rendered by the supplier in accordance with this Agreement; and
 - (iii) has been outstanding for more than 30 days from the date of receipt of the invoice or the date that the amount ceased to be disputed, as the case may be.

6. Contract management

6.1. Parties' representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the organisation and the supplier, each nominates the person or persons specified in Item 2 of Schedule 1 as their respective representatives (representatives) in relation to all queries, consents, approvals, complaints and disputes required or arising under or in connection with this Agreement.
- (b) The supplier will have regard to all requirements of the organisation's representative and will comply with all reasonable directions of the organisation's representative.
- (c) Either party may nominate a replacement representative by notice in writing to the other party. The appointment of the replacement representative will be effective from the date on which such notice is given.

6.2. Service levels

- (a) The supplier must comply with the service levels in the provision of the services.
- (b) Performance against the service levels will be tracked, monitored and reported on in the manner and at the times (if any) set out in Schedule 3.
- (c) The service levels (or any of them) may only be varied by the written agreement of the parties.

6.3. Progress report

The supplier must provide to the organisation's representative:

- (a) a progress report in respect of the supplier's performance under this Agreement, such report to be provided at the times, in the format and containing the matters specified in Item 6 of Schedule 1; and
- (b) all other data or information that the organisation's representative may request to enable it to adequately assess the performance of the supplier.

7. Price review

Where a price review mechanism is set out in Item 3 of Schedule 1, the parties will adopt that price review mechanism to agree on revised rates or fees for the services. Any revised rates or fees agreed by the parties in accordance with this clause 7 will take effect from the review dates set out in Item 3 of Schedule 1.

8. Access to records

8.1. Supplier to retain records

The supplier must, for a period of seven years after the expiry or termination of this Agreement or completion of the services (whichever is the earlier), keep true and particular accounts and records of all services provided under this Agreement and all associated records including all supporting materials used to generate and substantiate invoices submitted in respect of the services.

8.2. Right to access and audit

- (a) The organisation or its authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the accounts and records of the supplier relating to the provision of the services, and of all other matters relevant to the calculation of the rates and/or fees. Such representatives will be entitled (at the expense of the organisation) to take copies of or extracts from any such records.
- (b) For the avoidance of doubt, the organisation will be solely responsible for the costs of conducting any audit under clause 8.2.

9. Intellectual Property Rights

9.1. Warranty by supplier

The supplier warrants to the organisation that it is entitled to use and deal with any Intellectual Property Rights which may be used by it in connection with the provision of the services.

9.2. Contract Intellectual Property

- (a) The ownership of any Contract Intellectual Property shall vest in the supplier upon the time of its creation.
- (b) The supplier hereby irrevocably and unconditionally grants to the organisation, free of additional charge, a non exclusive, worldwide perpetual, transferable licence (including the right to sublicense) to use, reproduce, adapt, modify, publish, distribute and communicate any Contract Intellectual Property only to the extent necessary to achieve the purposes of the procurement.

9.3. Ownership of Pre-Existing Intellectual Property

All Pre-Existing Intellectual Property used and identified to the organisation by the supplier in connection with the provision of the services or the creation of Contract Intellectual Property remains the property of the Parties or its licensors.

9.4. Licence of Pre-Existing Intellectual Property

- (a) Subject to clause 9.4(b), the supplier hereby irrevocably and unconditionally grants to the organisation, free of additional charge, a non exclusive, worldwide, perpetual licence to use any Pre-Existing Intellectual Property to the extent that such Pre-Existing Intellectual Property forms part of or is integral to, any works or other items created by the supplier in connection with the provision of services or the creation of Contract Intellectual Property.
- (b) The licence granted to the organisation in clause 9.4(a) is limited to use of the relevant Pre-Existing Intellectual Property by the organisation for the purposes of the organisation and for no other purpose.

9.5. Data

The ownership of all Data, including any Intellectual Property Rights, shall vest in the organisation upon the time of its creation.

9.6. Moral rights

The supplier warrants that it has or will procure a written consent from all necessary authors to the organisation exercising its rights in the Data or Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

10. Failure to perform

- (a) Without limiting any other clause of this Agreement, or any other remedy the organisation may have, if the supplier fails to provide or perform any of the services in accordance with the requirements of this Agreement (including the applicable service levels), the organisation will not be required to pay for those services and may, by notice in writing to the supplier, require the supplier to:
 - (i) remedy any default (if the default is capable of being remedied) at the supplier's own expense; or
 - (ii) re-perform the services (if the services are capable of being re-performed by the supplier),
 - (iii) within the time specified in the notice (which must be reasonable having regard to the nature of the services).
- (b) If the remedied or re-performed services are remedied or re-performed in accordance with the applicable service levels and otherwise to the satisfaction of the organisation, then the organisation will pay the applicable rates or fees for those remedied or re-performed services (which the parties acknowledge may be less than the cost to the supplier of remedying or re-performing the services).
- (c) If the default referred to in clause 10(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 re-perform the services, the organisation may either:
 - (i) remedy that default or re-perform the services itself; or
 - (ii) have the services remedied or re-performed by a third party,

and in either case, the supplier must pay the reasonable costs incurred by the organisation doing so.

11. Liability

- (a) The supplier must indemnify the organisation and its officers, employees and agents (Indemnified Party) against any loss, damage, claim, action or expense (including legal expense) which any Indemnified Party suffers as a direct or indirect result of any of the following:
- (i) a breach of this Agreement by the supplier, including any failure to provide the services in accordance with this Agreement;
 - (ii) any warranty given by the supplier under this Agreement being incorrect or misleading in any way; or
 - (iii) wrongful or any negligent act or failure to act by the supplier or any of the supplier's employees, agents, officers or sub-contractors,
- except to the extent that any such loss, damage, claim, action or expense is caused by the negligence or other wrongful act or omission of the organisation, its officer or employees.
- (b) If any indemnity payment is made by the supplier under this clause 11, the supplier must also pay to the Indemnified Party an additional amount equal to any tax which is payable by the Indemnified Party in respect of that indemnity payment.
- (c) If the supplier fails to complete the services by the completion date or meet any date for delivery of the services, the supplier must pay to the organisation any liquidated damages in accordance with the agreed provisions set out in Item 7 of Schedule 1. The parties agree that any such liquidated damages constitute a fair and reasonable pre-estimate of the loss that will be suffered by the organisation with respect to such failure.

12. Warranties

The supplier warrants that:

- (a) the provision of the services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (b) it has the accreditation or membership of professional or other bodies in relation to the provision of the services as set out in the offer for the provision of the services and that it will use its best endeavours to maintain such accreditation or membership during the term of this Agreement;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the services in accordance with the service levels;
- (d) whilst on premises owned or controlled by the organisation, the supplier and its employees, agents and contractors will at all times comply with the organisation's lawful directions and policies of which the supplier is notified or is otherwise aware, including any applicable occupational health and safety and security policies;

- (e) where the organisation 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;
- (f) the provision of the services will not infringe any right of any third party (including any intellectual property right) or any Laws; and
- (g) all representations made by the supplier in or in connection with the Offer were and remain accurate and the supplier has and will maintain at all relevant times the quality assurance arrangements set out in the Specifications.

13. Conflict of interest

- (a) The supplier warrants to the organisation that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, their duties and interest under this Agreement.
- (b) The supplier must promptly inform the organisation of any matter which may give rise to an actual or potential conflict of interest.
- (c) The supplier acknowledges and agrees that failure to comply with this clause 13 will constitute a breach of a fundamental term of this Agreement.

14. Change in control

- (a) The supplier must notify the organisation in writing of any change in control of the supplier (or of the ultimate holding company of the supplier) within 7 days after that change occurs (Notice)
- (b) The organisation may upon receiving the Notice, in its absolute discretion by notice in writing to the supplier, terminate this Agreement; such termination to take effect at any time within the immediately succeeding 12 months after the organisation receives (the Notice).

15. Termination

15.1. Grounds for termination by the organisation

The organisation may terminate this Agreement by notice in writing to the supplier if:

- (a) the supplier fails to provide the services in accordance with the service levels or otherwise in accordance with the requirements of this Agreement;
- (b) the supplier fails to remedy, to the satisfaction of the organisation, any breach of this Agreement (which in the reasonable opinion of the organisation is able to be remedied) within 14 days after the date on which the organisation issues the supplier a written notice requiring the supplier to remedy the breach;
- (c) the supplier breaches any material provision of this Agreement and in the reasonable opinion of the organisation such breach cannot be remedied;
- (d) the supplier or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;

- (e) the supplier commits any act or does anything that is contrary to prevailing community standards, or is otherwise regarded by the public as unacceptable or which brings the reputation of the supplier into disrepute and as a consequence the organisation believes that its continued association with the supplier will be prejudicial or otherwise detrimental to the reputation of the State; or
- (f) the supplier:
 - (i) undergoes a change in its structure which, in the reasonable opinion of the organisation, limits the capacity of the supplier to provide the services or otherwise precludes or adversely affects the supplier's ability to carry out its obligations and duties under this Agreement; or
 - (ii) goes into liquidation or a receiver and manager or mortgagee's or chargee's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

15.2. Termination without cause

The organisation may terminate this Agreement without cause by giving the supplier 24 hours' notice in writing.

15.3. Grounds for termination by the supplier

- (a) The supplier may immediately terminate this Agreement by notice in writing to the organisation if:
 - (i) the organisation fails to remedy, to the satisfaction of the supplier, any breach of this Agreement (which in the reasonable opinion of the supplier is able to be remedied) within 14 days after the date on which the supplier issues the organisation with a written notice requiring the organisation to remedy the breach; or
 - (ii) the organisation breaches any material provision of this Agreement and in the reasonable opinion of the supplier such breach cannot be remedied.

15.4. Consequences of termination

- (a) Termination of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination.
- (b) Where this Agreement is terminated by the organisation pursuant to clause 15.1 and 15.2:
 - (i) the supplier must cease all work under this Agreement as soon as practicable following receipt and take all appropriate action to mitigate any loss and prevent additional costs being incurred; and
 - (ii) the organisation will pay to the supplier all amounts owing in respect of the services undertaken, and work in progress as at the date of termination, provided that such services or work in progress have, in the reasonable opinion of the purchaser, been performed in accordance with the service levels and the requirements of this Agreement.

15.5. Survival

Clauses 8, 9, 11, 12, 15.4, 18 and 19 of this Agreement survive the termination or expiry of this Agreement or the completion of the services and may be enforced at any time.

16. Insurance

- (a) The supplier must effect and maintain for the Term the insurances specified in Item 8 of Schedule 1 in respect of any claim related to this Agreement.
- (b) The policies must cover the supplier's liability to the organisation for loss damage to property and the death or injury to any person and must also note the interest of the organisation.
- (c) The supplier must, upon request by the organisation, provide proof within 10 Business days of the request that the insurance policies have been effected and maintained,

17. Accident compensation

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

- (a) complies with the provisions of the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic);
- (b) insures against its liability to pay compensation whether under legislation or otherwise; and
- (c) produces to the organisation on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

18. Confidentiality, privacy and data protection

18.1. Use of Confidential Information

- (a) The supplier will (and will ensure that its employees, agents and advisers will):
 - (i) use and reproduce Confidential Information only to perform its obligations under this Agreement; and
 - (ii) not disclose or otherwise make available Confidential Information other than to personnel who have a need to know the information to enable the supplier to perform its obligations under this Agreement.
- (b) All Confidential Information will remain the property of the organisation and all copies or other records containing the Confidential Information (or any part of it) must be returned by the supplier to the organisation on termination or expiry of this Agreement.
- (c) The supplier acknowledges that the organisation will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the supplier of this clause 18 and without the need on the part of the organisation to prove any special damage.

18.2. Disclosure

The supplier hereby acknowledges and/or consents to:

- (a) the organisation (or such other public body as may, from time to time, be responsible for doing so) publishing, whether on the internet or otherwise, all such information as is necessary to comply with the requirements of the Contracts Publishing System;
- (b) the organisation making available to the Victorian Auditor-General all information that is requested by the Auditor-General;
- (c) the organisation making available all information in relation to the supplier or this Agreement as may be required to comply with its obligations under the *Freedom of Information Act 1982* (Vic); and
- (d) only being able to make public announcement in relation to this Agreement with express prior written consent of the organisation.

18.3. Privacy

The supplier acknowledges that it will be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the supplier under or in connection with this Agreement in the same way and to the same extent as the State or the organisation would have been bound had it been directly done or engaged in by the State or the organisation.

18.4. Data Protection

The supplier acknowledges that it will be bound by the Protective Data Security Standards and will not do any act or engage in any practice that contravenes 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 this Agreement.

19. Disputes

19.1. Parties to meet

If any dispute arises under or in connection with this Agreement (Dispute) which Dispute is not able to be resolved by the parties' representatives within 14 days of such Dispute arising, the nominated senior executive officer (or equivalent) of each of the organisation and the supplier will promptly meet and discuss in good faith with a view to resolving such Dispute.

19.2. Mediation

- (a) If any Dispute is unable to be resolved in accordance with clause 19.1 within 14 days, the parties agree to endeavour in good faith to settle the Dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation.
- (b) The mediation will be conducted in accordance with the mediation guidelines of ACDC (Guidelines) which set out the procedures to be adopted, the process of selection of the mediator and the costs involved and the terms of those Guidelines are incorporated in this Agreement.

19.3. Arbitration or litigation

- (a) If the parties fail to settle any Dispute in accordance with clause 19.2, the parties may agree to submit the Dispute for resolution to final and binding arbitration under the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia by one or more arbitrators appointed in accordance with those rules.

- (b) If the parties do not agree to refer the dispute to arbitration in accordance with clause 19.3, either party may submit the dispute for resolution to the non exclusive jurisdiction of the Courts of Victoria, Australia.

19.4. Performance during dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement pending the resolution of the Dispute under this clause 19.

19.5. Interlocutory relief

Nothing in this clause 19 is to be taken as preventing any party to a dispute from seeking interlocutory relief in respect of such dispute.

20. Compliance with Law and Policy

20.1. General Law

The supplier must, in performing its obligations under this Agreement, comply with all Laws affecting or applicable to the provision of services by the supplier under this Agreement.

20.2. Code of Conduct

Where, in the course of providing the services, the supplier, or its employees or sub-contractors:

- (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 supplier must (and must ensure that its employees or sub-contractors) comply with the Code of Conduct.

20.3. Employment policy

- (a) The supplier and any person engaged in the provision of the services must not:
 - (i) engage in unethical work practices; or
 - (ii) engage employees or sub-contracted workers upon terms and conditions which do not meet industry standards generally applicable in Victoria.
- (b) Where a federal industrial award may apply to the capacity in which an employee is engaged by the supplier, or by a sub-contractor, in the provision of the services, the supplier must:
 - (i) where applicable, comply with the better off overall test under section 193 of the Fair Work Act 2009 (Cth); or
 - (ii) otherwise ensure the conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

20.4. Local Jobs First Policy (LJFP)

Schedule 4 forms part of the terms and conditions of this Agreement. The Supplier in performing its obligations under this Agreement must comply with Schedule 4.

21. Sub-contracting

- (a) The supplier must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the organisation, which consent may be given or withheld by the organisation in its absolute discretion.
- (b) The supplier must ensure that any person engaged by it complies with all obligations imposed on the supplier by this Agreement. The supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the supplier itself.

22. Access and safety

22.1. Access to premises

If the supplier requires access to the premises of the organisation in connection with the provision of the services, the organisation will, subject to its usual security requirements, permit the supplier reasonable access to the premises at such times as may be reasonably necessary to enable the supplier to provide the services.

22.2. Obligations

When the supplier enters the premises of the organisation, the supplier must and must ensure that its employees, agents and contractors use all reasonable endeavours to:

- (a) protect people and property;
- (b) prevent nuisance and unnecessary noise and disturbance;
- (c) act in a safe and lawful manner and comply with the safety standards and policies of the organisation (as notified to the supplier); and
- (d) comply with the *Occupational Health and Safety Act 2004* (Vic) and any applicable regulations made under that Act.

23. GST

23.1. Definitions

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

23.2. Consideration is exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this Agreement are exclusive of GST.

23.3. Organisation to pay GST

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

23.4. Reimbursement

If this Agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (Reimbursable Expense) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other party is entitled in respect of the Reimbursable Expense plus any GST payable by the other party.

24. Staff Costs

- (a) The supplier will indemnify and keep indemnified the organisation from and against all liability for the Staff Costs in any way relating to the services.
- (b) If the organisation is or becomes liable to pay any Staff Costs, the organisation may deduct the amount of its liability for the Staff Costs from any amount due by the organisation to the supplier, whether under this Agreement or otherwise.

25. Notices

25.1. Giving a communication

A notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

- (a) to the organisation: at the address which is set out in Item 9 of Schedule 1; and
- (b) to the supplier: at the address which is set out in Item 9 of Schedule 1.

25.2. Time of delivery

A notice or document shall be taken to be delivered or served as follows:

- (a) in the case of delivery in person or by courier, when delivered;
- (b) in the case of delivery by post, two business days after the date of posting;
- (c) in the case of delivery by post to or from an address outside Australia, ten days after the date of posting; and
- (d) in the case of electronic mail, if the receiving party has agreed to receipt in that form under the Agreement and the message is correctly addressed to and successfully transmitted to that party's electronic mail address (e-mail address), and acknowledgment of receipt is recorded on the sender's computer.

25.3. After hours communications

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00 pm in the place of receipt; or
 - (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,
- it is taken as having been delivered at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

26. General

26.1. Legal costs

Except as expressly stated otherwise in this Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

26.2. Amendment

This Agreement may only be varied or replaced by a document executed by the parties.

26.3. Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

26.4. Severability

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 shall, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.

26.5. Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

26.6. Set off

The organisation may set off against any sum owing to the supplier under this Agreement any amount then owing by the supplier to the organisation.

26.7. Time of the essence

Time is of the essence in relation to the provision of the services under this Agreement.

26.8. Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the Laws.
- (b) 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.

26.9. Assignment of rights

- (a) A party may assign any right under this Agreement with the prior written consent of the other party.
- (b) The supplier will not, as a result of any assignment pursuant to clause 26.9(a), be relieved from the performance of any obligation under this Agreement, and will be responsible for acts and omissions of any assignee.

- (c) The organisation may, by notice in writing to the Supplier, assign its rights to any other State government department, administrative office or any other public body in the event of any State government restructure or other re-organisation.

26.10. Counterparts

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

26.11. Entire understanding

- (a) This Agreement, together with:
 - (i) the Offer; and
 - (ii) any other documents or representations specified in Item 10 of Schedule 1, contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Except as otherwise provided in clause 26.11(a):
 - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect; and
 - (ii) no oral explanation or information provided by any party to another:
 - (a) affects the meaning or interpretation of this Agreement; or
 - (b) constitutes any collateral agreement, warranty or understanding between any of the parties.

26.12. Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

Schedule 1 – Contract variables

Item 1	Commencement and completion (Clause 2.2)	Commencement date: Completion date:
Item 2	Parties’ Representatives (Clause 6.1)	Organisation’s representative: Name: Title: Telephone: Mobile: Email: Supplier’s representative: Name: Title: Telephone: Mobile: Email:
Item 3	Price review (Clause 7)	Review mechanism: [Insert appropriate review mechanism (e.g. increase or decrease in rates or fees for services by reference to relevant industry specific index)] Review Dates: [Insert timing for revised prices to take effect (e.g. anniversary of commencement / six-monthly)]
Item 4	Invoicing (Clause 5)	Invoice requirements: [Invoice requirements to be inserted] Address for invoice: accounts@egcma.com.au
Item 5	Payment (Clause 5)	Payment for services is to be made in accordance with any of the following methods: Electronic Funds Transfer
Item 6	Progress Report (Clause 6.3)	
Item 7	Liquidated Damages (Clause 11(c))	

Item 8 Insurance (Clause 16) Tick one or more of the boxes below to specify the types and amount of insurance that the Supplier is required to obtain and maintain during the Term:

Type of coverage	Amount (AUD)
<input type="checkbox"/> Public liability insurance	[insert]
<input type="checkbox"/> Product liability insurance	[insert]
<input type="checkbox"/> Professional indemnity insurance	[insert]
<input type="checkbox"/> Other (please specify):	[insert]

Please specify below details of any conditions attaching to such insurance coverage (e.g. run-off insurance)

[insert]

Item 9 Notice particulars (Clause 25) **Organisation:**
Addressee:
Address:
Email:
Supplier:
Addressee:
Address:
Email:

Item 10 Documentation (Clause 26.11) [Insert details of any additional documentation (other than the Offer) that forms part of this Agreement]

Item 11 Supplier's Staff (Clause 3) [Insert details of Supplier's employees or contractors who will be engaged in the provision of the services]

Schedule 2 – Services and price schedule

Item 1	Services	<p>[Insert a description of the required services]</p> <p>or include the following:</p> <p>[The services are as described in the Invitation to Supply and any other documents or representation as listed in Item 10 of Schedule 1]</p> <p>In interpreting the documents which describe the services, the following order of precedence will apply to the extent of any inconsistency:</p> <ul style="list-style-type: none"> a) the Agreement; b) the Schedules; c) the Offer; d) the Invitation.
Item 2	Work program	[Insert delivery dates or milestones to be achieved]
Item 3	Price schedule	<ol style="list-style-type: none"> 1. [Insert details of rates and fees including the services to be provided. The Price Schedule should include the GST exclusive price, the GST payable and the total cost for the services and any details regarding liability for expenses and disbursements incurred by the Supplier] 2. 3. 4.



Schedule 3 – Service level requirements

In providing the services and otherwise performing its obligations under the Agreement, the supplier must comply with the following service levels:

[Insert service levels with applicable measurement periods and categories (including performance scorecard measures, customer satisfaction surveys, etc.)]

Schedule 4 – Local Jobs First

1. Definitions

In this Schedule:

Agency means the organisation with which the Supplier has entered into this Agreement.

Agreement means this project agreement.

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

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.

Contract Manager means the person (however described) appointed by the Agency as its representative for all communication and liaison with the Supplier for the purposes of this Agreement.

Department has the meaning given in s 3(1) the *Local Jobs First Act 2003*.

Guidelines means Local Jobs First Supplier Guidelines, available at www.localjobsfirst.vic.gov.au.

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.

LIDP means the Local Industry Development Plan set out in Attachment 1 to this Schedule.

LIDP Monitoring Table means the table included at Attachment 2 to this Schedule.

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

Local Jobs First Commissioner means the person appointed under s 12 of the *Local Jobs First Act 2003*.

Local Jobs First Policy means the policy of the Victorian Government made under s 4 of the *Local Jobs First Act 2003*.

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

Practical Completion means:

- (a) Practical Completion as defined in the main body of this Agreement; or
- (b) If not defined in the main body of this Agreement it means when the Supplier has completed the delivery of the goods and/or services to be provided under this Agreement (excluding administrative or regulatory obligations remaining to be fulfilled); or
- (c) In any case, such other reporting dates for the purposes of clause 2.3(d) of this Schedule as notified by the Agency.

Responsible Minister means the Minister with responsibility for administering the *Local Jobs First Act 2003*.

Supplier means the person or entity (however described) providing the goods and services under this Agreement.

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*.

2. Local Jobs First Policy

2.1 Local Industry Development Plan

- (a) The Supplier must, in performing its obligations under this Agreement:
 - (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 Supplier acknowledges and agrees that its obligations as set out in the LIDP apply during the term of this Agreement, any extensions to the term and until all of its Reporting obligations as set out in clause 2.3 of this Schedule are fulfilled.
- (c) The Supplier's failure to comply with this clause 2.1 will constitute a material breach of this Agreement.

2.2 Revised LIDP

- (a) If at any time a variation to this Agreement is proposed which involves or effects a change in the nature of any LIDP commitments, the Supplier 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 Supplier must provide the Revised LIDP to the Agency.
- (c) The Revised LIDP must be agreed by the parties before any variation to the Agreement 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 Agreement.

2.3 Reporting

- (a) The Supplier must prepare and maintain records demonstrating its compliance with the LIDP.
- (b) The Supplier must provide a six monthly report demonstrating its progress towards implementing the LIDP in the form of the LIDP Monitoring Table.
- (c) If the Agreement is for a project valued at \$20 million or more, the Supplier must use the ICN Analytics for LJF monitoring and reporting.

- (d) Prior to or at Practical Completion pursuant to clause 1 of this Schedule, the Supplier 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 this Schedule 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 Supplier or the Supplier's Chief Executive Officer or Chief Financial Officer.
- (e) At the request of the Contract Manager, the Supplier 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 Agreement.

2.4 Verification of Supplier's compliance with LIDP Plan

- (a) The Supplier agrees that each of the Agency and the Department will have the right to inspect its records in order to verify compliance with the LIDP.
- (b) The Supplier must:
 - (i) permit the Contract Manager, an accountant or auditor on behalf of the Agency or the Department, or any other person authorised by the Agency or the Department, from time to time during ordinary business hours and upon Notice, to inspect and verify all records maintained by the Supplier for the purposes of this Agreement;
 - (ii) permit the Agency or the Department from time to time to undertake a review of the Supplier'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 the Agency or the Department to undertake such audit or inspection.
- (c) The Supplier acknowledges and agrees that the Agency, the Department, the Agency'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 Supplier's compliance with the LIDP.
- (d) The obligations set out in this clause 2.4 are in addition to and do not derogate from any other obligation under this Agreement.

2.5 Use of information

The Supplier acknowledges and agrees that:

- (a) Industry Capability Network (Victoria) will assess the Supplier's performance against the LIDP;


- (b) the statistical information contained in the LIDP and the measures of the Supplier's compliance with the LIDP as reported in the LIDP Monitoring Table will be:
 - (i) included in the Agency's report of operations under Part 7 of the Financial Management Act 1994 in respect of the Agency'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 Agreement or as otherwise required by Law.

3. Subcontracting

- (a) The Supplier must ensure that any subcontracts entered into by the Supplier in relation to work under this Agreement contain clauses requiring subcontractors:
 - (i) to comply with the Local Jobs First Policy and the LIDP to the extent that it applies to work performed under the subcontract,
 - (ii) to provide necessary information that allows the Supplier to comply with its reporting obligations under clause 2.3 of this Schedule, and
 - (iii) to permit the Agency and the Department to exercise their inspection and verification rights under clause 2.4 of this Schedule.
- (b) The subcontracting obligations set out in this clause 3 are in addition to and do not derogate from any other obligations under this Agreement.
- (c) The Supplier's failure to comply with this clause 3 will constitute a material breach of this Agreement.

4. Local Jobs First Commissioner

- (a) The Supplier 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;
 - (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;
 - (iii) its failure to comply with the compliance notice referred to in this clause 4(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; 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 the Agency to conduct an audit in relation to the Supplier's compliance with the Local Jobs First Policy and the LIDP.
 - (b) The Supplier acknowledges that the Commissioner may recommend that the Agency take enforcement proceedings against the Supplier if the Supplier 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 Agreement.



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 acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at

this [] day of [] 20[]

Signature of person making this declaration

[to be signed in front of an authorised witness]

Before me,

Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the Evidence (Miscellaneous Provisions) Act 1958 (as of 1 January 2010), (previously Evidence Act 1958), (e.g. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

Executed as an Agreement

Signed by **[name]** a duly authorised officer of Error!
No text of specified style in document. for and on
behalf of the **STATE OF VICTORIA** in the presence
of: }

.....

.....
Signature of Witness

.....
Name of Witness (print)

Where the Supplier is a company incorporated in Australia:

Executed by **[Supplier name]** ACN **[insert ACN]** in
accordance with s127(1) of the *Corporations
Act 2001* (Cth)

.....
Signature of Company Secretary/Director

.....
Signature of Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

Where the Supplier is an individual:

Signed by **[Supplier name]** in the presence of: }

.....

.....
Signature of Witness

.....
Name of Witness (print)

.....
Date

Annexure A – The offer

[Attach the offer behind this page and include any amendments required as a result of clarifications and/or negotiations.]

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The Author of this contract template is the State of Victoria (Department of Treasury and Finance), no changes were made to the format.