**Contract refresh matrix: General conditions for the provision of Services Department of Treasury and Finance**

| **General conditions for the provision of services** | | |
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| **Relevant clause** | **Amendment/inclusion** | **Reason for amendment/inclusion** |
| 1(b) | A new clause included setting out the duration of the Agreement. | This allows either the Organisation or the Supplier, with the written consent of the other party, to extend the term for pre-agreed periods (e.g. 3 years + 1 + 1). Previously, there was no option for extension of the Agreement. |
| 2(a) | Amended so that the Supplier must provide the Services in accordance with any reasonable directions given by the Organisation. | It is reasonable for the Supplier to comply with the State's directions when supplying the Services. |
| 2(b)(ii) | A new clause has been included which requires the Supplier to notify the Organisation as soon as it becomes aware of any delay or possible delay in the supply of Services. | Ensures that the Organisation is made aware as soon as possible of any actual or possible delay in the supply of Services. |
| 2(c) and (d) | Acceptance procedure included. | The acceptance clause provides that the Organisation will review the Services or any deliverable(s) (tangible outputs of the Services) to ensure they are fit for purpose and comply with the Agreement. If the Services or a deliverable do not meet the Organisation's requirements, the Supplier must rectify the non-compliance until the Organisation, in its discretion:   1. waives the requirement for the Services or deliverable(s) to comply with the Agreement (by written notice to the Supplier); 2. conditionally accepts the Services or deliverable(s), on the condition that the Supplier rectifies the non-compliance within a specified time; or 3. terminates the Agreement if the Services or deliverable(s) fail to pass acceptance testing on the second occasion.   If the Organisation terminates the Agreement, it will be entitled to a full refund of all money paid to the Supplier in respect of the relevant Services or deliverable(s) that the Organisation cannot use. |
| 4 | Payment is linked to completion and acceptance of the Services. | The Supplier must invoice the Organisation following completion of the Services. This is subject to any alternative payment schedule included in the Agreement. The Organisation will pay the invoiced amount on or following acceptance of the Services, within 30 days of receipt of an accurate invoice. |
| 7 | A new clause regarding the Organisation's Data has been included. | This clause:   1. provides that ownership of any Intellectual Property Rights in the Data remains vested in the Organisation at all times; and 2. sets out the Supplier's right to use the Data, which is limited to the purpose of performing its obligations under the Agreement. |
| 8 | Indemnities have been updated to address specific issues that are within the Supplier's control as well as the Australian Consumer Law (**ACL**) provisions regarding unfair contract terms (to the extent that the Agreement is a consumer contract within the meaning of the ACL). | The Supplier must indemnify the Organisation and its Personnel in respect of any:   1. personal injury, including sickness and death; 2. property damage; 3. breach of an obligation of confidence or privacy, whether under the Agreement or otherwise; 4. fraudulent acts or omissions; 5. any wilful misconduct or unlawful act or omission; 6. breaches of logical or physical security; 7. loss or corruption of Data; 8. third party claim arising out of a breach of the Agreement by the Supplier or its Personnel (including breach of warranty) or any negligent act or omission of the Supplier or its Personnel; or 9. infringement or alleged infringement of the Intellectual Property Rights or any other rights of any person, including any third party,   which was caused or contributed to by any act or omission of the Supplier or any of its Personnel.  The Supplier's liability under this indemnity is reduced to the extent that any wilful, unlawful or negligent act or omission by the Organisation or its Personnel contributed to the liability, loss, damage, cost, expense or compensation incurred.  The previous indemnities were extremely broad and may not have been accepted by some suppliers (particularly if the result was to leave the supplier uninsured for those events under the terms of its insurance policies). The previous indemnities may have also constituted unfair contract terms under the *Australian Consumer Law and Fair Trading Act 2012* (Vic). This clause has been updated to refer to specific types of loss which ought to be at the Supplier's risk. |
| 10(a) | A new clause has been included governing the Organisation's right of termination for cause under the Agreement. | The Organisation may terminate the Agreement by giving notice in writing to the Supplier if the Supplier:   1. fails to provide the Services in accordance with the Agreement; 2. breaches any provision of the Agreement and fails to remedy it; 3. breaches any provision of the Agreement that is not capable of remedy; 4. or any of its Personnel involved in the provision of the Services is guilty of fraud, dishonesty or other serious misconduct; 5. commits any act or does anything that may be prejudicial or otherwise detrimental to the reputation of the State; or 6. suffers from an Insolvency Event. |
| 10(b) and (c) | New clauses have been included allowing the Organisation to terminate without cause (for convenience). | The Organisation will pay the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination for convenience, including the cost of any Services provided up to the date of termination. This is to reduce the risk that the right to terminate for convenience is viewed as an unfair contract term under the *Australian Consumer Law and Fair Trading Act 2012* (Vic). The Supplier must to everything possible to mitigate its losses arising from the termination. |
| 10(e) | The Supplier may only terminate the Agreement for non-payment by the Organisation. | The Supplier must give at least 20 Business Days written notice to the Organisation to exercise its right of termination for non-payment. |
| 11(a) | Clause amended to require the Supplier, on request by the Organisation, to maintain insurance cover for a period of up to 7 years after the Services have been completed. | This ensures that the Supplier has an appropriate level of insurance cover for any claims that may arise after the provision of the Services. |
| 11(c) | A new clause has been inserted which requires that the Supplier, on request by the Organisation, provide evidence of replacement insurance prior to the expiry of the initial insurance. | This clause allows the Organisation to ensure that the Supplier is at all times covered by an appropriate level of insurance cover. Many insurance policies contain a provision which states that the terms of the policy may not be disclosed. |
| 12(b) | The circumstances in which the Organisation may disclose information relating to the Supplier have been updated. | The Organisation may disclose information relating to the Supplier where required:   1. to comply with the Contracts Publishing System; 2. to other Victorian Public Entities or Ministers of the State of Victoria in connection with the use of the Services; 3. to any public sector agency (of the State, any other state or territory of the Commonwealth) for the purposes of benchmarking provided that it will not identify the Supplier; 4. by the office of the Auditor General or the Ombudsman; 5. to comply with Law, including the *Freedom of Information Act 1982* (Vic); or 6. to the IBAC. |
| 12(c) | A reference to the Health Privacy Principles has been included. | Ensures that the Supplier is required to comply with all relevant privacy laws. |
| 13(e) | Amended to require the Supplier to comply with any lawful directions of the Organisation or its Personnel when at the Organisation's premises. | To ensure safety, it is reasonable for the Supplier to comply with the lawful directions of the Organisation or its Personnel when on the Organisation's premises. |
| 15(a) | Amended to include a reference to the Victorian Industry Participation Policy. | Ensures that the Supplier must comply with the Victorian Industry Participation Policy if it is applicable. |
| 15(c) | Obligations regarding the Supplier Code of Conduct have been included. | A substantive obligation for suppliers to comply with the Code has not been included. The clause requires the Supplier to acknowledge that:   1. 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; 2. it has read and aspires to comply with the Supplier Code of Conduct; and 3. the expectations set out in the Code are not intended to reduce, alter or supersede any other obligations which may be imposed on the Supplier, whether under the Agreement or at Law. |
| 17 | A new clause has been included which provides a process for dispute resolution. | If a dispute arises under the Agreement, a party may give a written notice to the other requesting that a meeting take place to seek to resolve the dispute. If the dispute is not resolved in 15 Business Days it will be referred to mediation. If the parties fail to settle the dispute at mediation, the parties may agree to submit the dispute for resolution at final and binding arbitration. |
| 18 | A number of general clauses have been included. | Various standard general clauses have been included, covering items such as waivers, inconsistency, set-off, assignment and transfer or novation. |
| 19(a) | Order of precedence included. | When entering into this Agreement, the Organisation should create a Purchase Order. The Purchase Order contains the specifications for the provision of the Services under the Agreement (see Guidance material). If there is an inconsistency between the General conditions under the Agreement and the Purchase Order, the terms of the General conditions for the provision of Services will prevail to the extent of the inconsistency. |
| 19(b) | Entire understanding included. | The General conditions under this Agreement contain the entire agreement between the Organisation and the Supplier. Neither party may rely on any document entered into, or any discussion had, prior to the execution of this Agreement. |
| 20 | Survival. | The parties have particular rights and obligations under the Agreement which survive termination or expiry of the Agreement, or completion of the supply of the Goods. This provision ensures that these rights and obligations continue to be operative and enforceable at any time. |