

## Purchase Order Terms and Conditions for the Supply of Goods and/or Services

### 1. FORMATION OF AGREEMENT

- (a) This purchase order (**PO**) constitutes an offer by Holmesglen Institute (**Holmesglen**) to purchase the goods and/or services specified on the purchase order attached to this document from the named supplier (**Supplier**) on these terms and conditions and any terms or conditions set out on the PO (the **Agreement**). The Agreement is formed when the Supplier accepts the offer by notice to Holmesglen, within 7 days of receipt of the PO or when the goods and/or services are supplied, whichever is earlier (the Commencement Date). The Agreement begins on the Commencement Date and continues until the Completion Date unless extended in accordance with clause 1(b) or terminated in accordance with these terms. If no Completion Date is specified the Agreement will come to an end when all goods and/or services have been delivered and accepted and all payments required to be made under the Agreement have been made.
- (b) A party may, by the provision of notice in writing, request the Agreement be extended beyond the Completion Date. The Agreement may only be extended for the period or periods agreed to by the parties in writing.

### 2. SUPPLY AND DELIVERY OF GOODS AND/OR SERVICES

- (a) The Supplier must supply the goods and/or services to Holmesglen in accordance with this agreement and any reasonable directions given by Holmesglen from time to time.
- (b) The Supplier must deliver the goods and/or services to the address, and by the time, specified in the PO. Acceptance of the goods and/or services by Holmesglen will not be taken to have occurred until either:
  - (i) acceptance is acknowledged in writing by Holmesglen or
  - (ii) acceptance is deemed to have occurred in accordance with clause 3(a) below.

### 3. ACCEPTANCE OR REJECTIONS OF GOODS AND/OR SERVICES

- (a) If the goods and/or services conform with this Agreement, Holmesglen will promptly issue written notification of acceptance of the goods and/or services. If Holmesglen does not give written notification of acceptance or rejections of the goods and/or services within 30 days of delivery, acceptance of the goods and/or services will be deemed to have occurred on the date of delivery.
- (b) If the goods and/or services do not conform with this Agreement, Holmesglen may reject the goods and/or services by giving written notice (including reasons for rejection) to the Supplier within 30 days of delivery. Holmesglen is not obliged to pay for and rejected goods and/or services.
- (c) The Supplier must, at its cost, collect and remove any rejected goods as soon as practicable following notification. If the Supplier fails to collect rejected goods, then following further notification, Holmesglen may destroy the goods or otherwise dispose of the goods in its discretion. At Holmesglen's option, the Supplier must reimburse Holmesglen for any payment made for the rejected goods and/or services or replace the goods or resupply the services.

### 4. PRICING

- (a) The prices payable for the goods and/or services are fixed and inclusive of all taxes (excluding GST), for the duration of the Agreement.
- (b) Holmesglen is not liable for any insurance, taxes (except GST), transportation costs, packing, loading, unloading, storage or any other expenses or costs incurred by the Supplier and the Supplier may not charge Holmesglen for any additional fees or charges or recover any expenses or other costs from Holmesglen in supplying or delivering the goods and/or services.

### 5. INVOICING AND PAYMENT

- (a) On or following acceptance of the goods and/or services, or as otherwise specified in the Purchase Order, the Supplier must submit a tax invoice (containing all information required in a tax invoice for the purposes of the GST Act together with such other information as Holmesglen may reasonably require) to Holmesglen for the Purchase Price.
- (b) Subject to clause 6, Holmesglen will pay the invoiced amount less any amount required by Law within 30 days of receipt of an accurate invoice. However, if Holmesglen disputes the invoiced amount, it must pay the undisputed amount (if any) and notify the Supplier of the amount in dispute. The parties will endeavour to resolve any such dispute in accordance with clause 19.
- (c) Payment of an invoice is not to be taken as evidence that the goods and/or services have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (d) Subject to clause 6, simple interest, as at the penalty interest rate fixed for the time being under section 2 of the Penalty Interest Rates Act 1983 (Vic), accrues on a daily basis on any Overdue Amount and is payable by Holmesglen to the Supplier on demand.

### 6. FAIR PAYMENTS POLICY

- (a) This clause applies only if the total aggregate Fees payable under this Agreement is less than \$3 million.
- (b) If this clause applies, the reference in clause 5(b) to 30 days is taken to be a reference to 10 Business Days.
- (c) Simple interest payable under clause 5(d) in respect of an Overdue Amount does not become payable after 10 Business Days, but only after 30 days from the date of receipt of a correct invoice, in respect of any Overdue Amount payable before 1 April 2021.

### 7. TITLE AND RISK

Title and risk in the goods provided in accordance with this Agreement will pass to Holmesglen on delivery of the goods to Holmesglen at the address specified in the PO.

### 8. WARRANTIES

The Supplier represents and warrants to Holmesglen that:

- (a) it has the right to enter into the Agreement and deliver the goods and/or perform the services;
- (b) it has the right to sell, and transfer title to and property in, the goods to Holmesglen;
- (c) where Holmesglen 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;
- (d) 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 goods and/or services;

- (e) it and its Personnel do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under this Agreement; and
- (f) it has not entered into the Agreement on behalf of a trust; and
- (g) the goods:
  - (i) are new and fit for the purpose stated in the Purchase Order (or, if no purpose is stated, the purpose for which the goods would ordinarily be used)
  - (ii) conform in all respects with this Agreement;
  - (iii) are free from defects (including defects in installation);
  - (iv) are of merchantable quality and comply with all Laws.
  - (v) If provided for in the Purchase Order, the Supplier must obtain the benefit of any manufacturer's warranties for Holmesglen, and
- (h) the receipt of the goods and/or services and the possession or use of any deliverables by Holmesglen will not infringe the Intellectual Property Rights or other rights of any person or any Laws.

## 9. INTELLECTUAL PROPERTY RIGHTS

- (a) The Supplier irrevocably and unconditionally grants to Holmesglen a perpetual, non-exclusive, royalty-free, worldwide and transferable licence (including the right to sub-licence) to exercise all Intellectual Property Rights in relation to any goods and/or services provided under this Agreement to the extent necessary to allow Holmesglen the full use and enjoyment of the goods and/or services.
- (b) All Pre-Existing Intellectual Property used by the parties in connection with the provision of the goods and/or services remains the property of the relevant party or its licensors.
- (c) The Supplier hereby irrevocably and unconditionally grants to Holmesglen a perpetual, nonexclusive, royalty-free, worldwide and transferable licence (including the right to sub-licence) to use any of the Supplier's Pre-Existing Intellectual Property incorporated in or otherwise required to use goods and/or services. The licence granted to Holmesglen under this clause is limited to use of the relevant Pre-Existing Intellectual Property by Holmesglen for the purposes of Holmesglen and for no other purpose.
- (d) Holmesglen grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use Holmesglen's Pre-Existing Intellectual Property for the sole purpose of performing, and only to the extent required to perform, the services and comply with its obligations under the Agreement during the Term.
- (e) The Supplier undertakes that the services may be used in any way by Holmesglen, without identifying any person as the individual responsible for creating any particular material comprised in it, without infringing the Moral Rights of any person.
- (f) The Supplier must, upon request by Holmesglen, do all things necessary (including executing any documents) to give full effect to this clause 9.

## 10. DATA

Any data accessed or generated by the Supplier will remain (and/or become) the property of Holmesglen and the Supplier must only use the data to the extent necessary to perform its obligations under the Agreement.

## 11. LIABILITY AND INDEMNITY

- (a) The Supplier indemnifies Holmesglen and each of its personnel against any liabilities arising out of, or in any way in connection with, any:
  - (i) personal injury or death;
  - (ii) property damage;
  - (iii) breach of the Agreement;
  - (iv) fraudulent acts or omissions;
  - (v) wilful misconduct or unlawful act or omission;
  - (vi) breaches of logical or physical security; loss or corruption of data; or
  - (vii) infringement or alleged infringement of the IP or any other rights of any person, including any third party, which was caused, or contributed to by, any act or omission by the Supplier or any of its personnel.
- (b) The Supplier's liability to indemnify Holmesglen under this clause is reduced to the extent contributed by any wilful, unlawful or negligent act or omission by Holmesglen or its personnel.

## 12. TERMINATION

- (a) Holmesglen may terminate the Agreement by giving notice in writing to the Supplier if the Supplier breaches any provision of the Agreement or the Supplier suffers an Insolvency Event.
- (b) "Insolvency Event" means the bankruptcy or liquidation of the Supplier; if there is a significant risk that the Supplier is or will become unable to pay debts as they fall due; a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or the Supplier ceasing, or indicating that it is about to cease, carrying on business.
- (c) Holmesglen may terminate the Agreement without cause on 30 days' notice to the Supplier. Holmesglen will only be liable for the goods and/or services delivered in accordance with the Agreement up to the date of the termination and the unavoidable and substantiated costs incurred by the Supplier as a direct result of the termination (excluding any loss of profit).
- (d) The Supplier may terminate the Agreement by giving 30 days' written notice if Holmesglen fails to pay an invoice on time.
- (e) On expiry or termination of the Agreement, the Supplier must immediately cease using all materials that contain any data or confidential information of Holmesglen and either destroy or return the materials at no additional cost to Holmesglen, as instructed by Holmesglen.

## 13. INSURANCE

- (a) The Supplier must obtain and maintain insurance cover, at the time of delivery of the goods and/or services and, if requested by Holmesglen, for a period of up to 7 years after the goods and/or services are delivered, that is sufficient to cover any loss or costs that may be incurred and for which the Supplier may be liable in connection with **the Agreement**.
- (b) On request, the Supplier must, within 10 Business Days, provide Holmesglen with evidence of the currency of any insurance it is required to obtain under this Agreement.

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

#### 14. CONFIDENTIALITY, PRIVACY AND DATA PROTECTION

- (a) The Supplier and its Personnel must keep the Confidential Information confidential and secure and must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier consents to Holmesglen publishing or otherwise making available information in relation to the Supplier (and the provision of the goods and/or services):
  - (i) as may be required to comply with the Contract Publishing System;
  - (ii) to other Victorian Public Entities or Ministers of the State in connection with the use of the services;
  - (iii) to any public sector agency (of the State, any other state or territory or the Commonwealth) for the purposes of benchmarking, provided that it will not identify the Supplier;
  - (iv) (to the office of the Auditor General appointed under section 94A of the Constitution Act 1975 (Vic) or the ombudsman appointed under the Ombudsman Act 1973 (Vic);
  - (v) to comply with Law, including the Freedom of Information Act 1982 (Vic); or
  - (vi) to the IBAC.

##### 14.1 Privacy and data protection compliance

- (a) The Supplier must, in relation to Personal Information and Public Sector Data:
  - (i) at all times comply, and ensure that its Personnel comply, with the Privacy/Data Requirements; and;
  - (ii) implement and maintain appropriate processes to comply with the Privacy/Data Requirements.
- (b) Without limiting its obligations under clause 14.1(a), the Supplier must maintain and implement appropriate technical and organisational security measures to protect the confidentiality, integrity and availability of the Personal Information and Public Sector Data that it holds, including in relation to data restoration, backups, viruses, malware, physical security, data separation, personnel security, access control, training and testing, in accordance with industry best practice.
- (c) The Supplier must not do any act or engage in any practice which would be a breach of a Privacy/Data Requirement if done or engaged in by Holmesglen.
- (d) The Supplier indemnifies Holmesglen its Personnel in relation to any loss, damage, liability, charge, expense, outgoing, payment or cost (including all legal and other professional costs) of any nature or kind incurred or arising out of or in connection with a breach by the Supplier of clauses 14.1 to 14.4.
- (e) The Supplier must maintain appropriate records to ensure that it can demonstrate compliance with clauses **Error! Reference source not found.** to 14.4 and give Holmesglen or its nominee access to all of the Supplier's premises, Personnel, materials and systems to assess the Supplier's compliance with all or any part of clauses **Error! Reference source not found.** to 14.4
- (f) The Supplier must allow the independent investigation of complaints by Holmesglen or any person or body nominated by Holmesglen and provide appropriate redress to complainants for any harm arising from the Supplier's failure to effectively uphold the Privacy/Data Requirements.
- (g) Where disclosing or otherwise making available Personal Information to any third party, the Supplier must:
  - (i) ensure that the third party agrees in writing to, and complies with, clauses **Error! Reference source not found.** to 14.4, to the same extent as the Supplier (except that the third party may not further disclose Personal Information or Public Sector Data without Holmesglen's prior written agreement); and
  - (ii) take all reasonable steps to ensure the reliability of the third party to comply with its privacy and data obligations.

##### 14.2 Handling of Personal Information

- (a) The Supplier must:
  - (i) only collect, access, use and disclose Personal Information and Public Sector Data to the extent necessary to perform the Supplier's obligations under this agreement, with Holmesglen's previous written approval, or as required by Law;
  - (ii) not access, transfer, or make accessible Personal Information in any jurisdiction outside Victoria without Holmesglen's prior written agreement;
  - (iii) not match or otherwise combine any Personal Information with any other information or opinion about the individual Data Subject from any other source without the prior written approval of Holmesglen or where required by Law or with the Data Subject's consent (in which case the Supplier must notify Holmesglen of that consent);
  - (iv) on request from Holmesglen, promptly update or allow Holmesglen to access, Personal Information; and
  - (v) on termination or expiry of this agreement or on request by Holmesglen, return to Holmesglen (in a format reasonably acceptable to Holmesglen) or securely destroy (at Holmesglen's election) all copies or other records containing Personal Information and Public Sector Data.

##### 14.3 Collection from Data Subject

- (a) Before collecting Personal Information directly from an individual, the Supplier must obtain all consents and provide all notices instructed by Holmesglen or necessary under Law to:
  - (i) handle the Personal Information in accordance with clause 14.2; and
  - (ii) disclose the Personal Information to Holmesglen and for Holmesglen to collect, store, use and disclose the Personal Information for Holmesglen's intended purposes.

##### 14.4 Data Incidents

- (a) Without limiting any other clause of this agreement, the Supplier must comply with, and provide all reasonable assistance to Holmesglen to enable Holmesglen to comply with, the notifiable data breaches provisions of the *Privacy Act 1988* (Cth) and the *Privacy Data Protection Act 2014* (Vic) (as applicable).
- (b) When the Supplier becomes aware of a Data Incident, the Supplier must:

- (i) immediately notify Holmesglen (providing full details and ongoing updates as available);
  - (ii) conduct a thorough and expeditious investigation and assessment of the incident; and
  - (iii) provide all information and assistance requested by Holmesglen in relation to assessing, responding to, notifying and remediating the incident, including requests made for the purposes of compliance with Law, co-operation with Governmental Agencies or minimising harm to Data Subjects, Holmesglen or third parties.
- (c) The Supplier must obtain Holmesglen's prior written agreement before making any statement, communication, filing, notice, press release or report (including any statement to any Governmental Agency or notification to an individual) in relation to a Data Incident. Holmesglen will not unreasonably withhold or delay consent where the Supplier is required by Law to make the statement.
- (d) The Supplier must bear the Supplier's own costs of complying with this clause 14.4 and pay Holmesglen the costs of assessing and responding to a Data Incident caused by the actions or omissions of the Supplier or the Supplier's Personnel.

## 15. ACCESS

When on Holmesglen's premises, the Supplier must ensure that its Personnel:

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

## 16. SUB-CONTRACTING

The Supplier must not sub-contract to any third person any of its obligations without the prior written consent of Holmesglen and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## 17. COMPLIANCE WITH LAW AND POLICY

### 17.1 Compliance

The Supplier must, in performing its obligations under the Agreement, comply with

- (a) all Laws relevant to the provision of goods and/or services by the Supplier under the Agreement, including complying with Modern Slavery Laws in the conduct of its business;
- (b) the Victorian Government's Supplier Code of Conduct;
- (c) the Local Jobs First Policy (where applicable); and
- (d) the Victorian Fair Jobs Code (where applicable).

### 17.2 Modern Slavery

- (a) Without limiting its obligations under 17.1, the Supplier must:
  - (i) ensure that its related body corporate and their subcontractors and suppliers comply with the Modern Slavery Laws;
  - (ii) take reasonable steps to identify, assess and address risks of Modern Slavery practices in the Supplier's operations and supply chains;
  - (iii) have and maintain throughout the Term its own policies and procedures that are intended to ensure compliance with clause 17.1 (in respect of Modern Slavery) and this clause 17.2 and
  - (iv) provide any information reasonably requested by Holmesglen for Holmesglen to comply with its obligations under Modern Slavery Laws.
- (b) The Supplier represents and warrants that it:
  - (i) conducts its business in a manner which complies with Modern Slavery Laws and does not involve conduct which would constitute Modern Slavery; and
  - (ii) is not aware of any circumstances within the Supplier's supply chain that is inconsistent with the Laws of the jurisdiction in which it operates, or which would constitute Modern Slavery if carried out in Australia, or which do not comply with the Victorian Government's Supplier Code of Conduct.
- (c) If the Supplier becomes aware that it, its Personnel, or any entity in its supply chain, has engaged in Modern Slavery or breached Modern Slavery Laws, the Victorian Government's Supplier Code of Conduct, or this clause **Error! Reference source not found.**17.2, or that Modern Slavery exists in its supply chain, it must:
  - (i) promptly notify Holmesglen in writing, with all available details; and
  - (ii) as soon as reasonably practicable take reasonable steps to remediate any adverse impacts caused or contributed to by the Supplier or its Personnel.

### 17.3 Anti-bribery and corruption

The Supplier:

- (a) must not, and must ensure that its Personnel will not, in connection with this agreement:
  - (i) offer, give or agree to give any person, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value (including any facilitation payment to any public official) in order to obtain, influence, induce or reward any reward or advantage; and
  - (ii) make any facilitation payment to any public official, being any payment for the purpose of expediting or facilitating the performance of routine government action;
- (b) represents and warrants that:
  - (i) neither it nor any of its officers have been investigated or convicted for breach of any Anti-Bribery Laws; and

- (ii) it has and will maintain in place its own procedures to ensure compliance with Anti-Bribery Laws and enforce them where appropriate;
- (c) must promptly notify Holmesglen in writing, and provide all available details, if the Supplier becomes aware:
  - (i) Of any request for or offer of any benefit or thing of value referred to in clause 17.3(a) above received by the Supplier or its Personnel in relation to this agreement.
  - (ii) that it or its Personnel have contravened clause 17.3(a); or
  - (iii) that it or any of its officers are being investigated or have been convicted for breach of any Anti-Bribery Laws.

#### 17.4 Public Sector Employees

Where, in the course of providing the goods and/or services, the Supplier or its Personnel:

- (a) supervise or work with Public Sector employees;
- (b) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or 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 Personnel) comply with the VPSC Code of Conduct

#### 18. GST

- (a) The terms used in this clause have the same meanings given to them in the GST Act.
- (b) A reference to GST payable by or input tax credit of a party includes the corresponding GST payable by or input tax credit of the representative member of the GST group of which that party is a member.
- (c) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Agreement are exclusive of GST (**GST Exclusive Consideration**).
- (d) Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (e) To the extent that GST is payable in respect of any supply made by the Supplier under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (f) The recipient must pay the additional amount payable under clause 18(e) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (g) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 18(e) or at such other time as the parties agree.
- (h) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 18(f), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (i) If one of the parties to this Agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 18(e).
- (j) If Holmesglen is required to make any withholding, deduction or payment for or on account of Tax or by any Government Agency, Holmesglen must pay or procure the payment of the full amount of the withholding or deduction, or make or procure the making of the payment, to the appropriate Government Agency under applicable law.

#### 19. DISPUTE RESOLUTION

- (a) If any dispute arises under or in connection with this Agreement (Dispute), either party may at any time give written notice to the other (Dispute Notice) requesting that a meeting take place to seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved in 15 Business Days, it will be referred to mediation (Mediation) conducted by the Australian Disputes Centre (ADC) in accordance with the ADC mediation guidelines (Guidelines) with each party bearing their own cost.
- (c) If the parties fail to settle the Dispute at Mediation, the parties may agree to submit the dispute for resolution to final and binding arbitration.
- (d) The parties will continue to perform their respective obligations under this Agreement pending the resolution of a Dispute.

#### 20. GENERAL

- (a) The Agreement is governed by and is to be construed in accordance with the Laws. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (b) Time is of the essence in relation to the provision of the goods and/or services.
- (c) The Agreement may only be varied or replaced by a written document executed by the parties.
- (d) A waiver of any right, power or remedy under the Agreement must be in writing and signed by the party granting it. The fact that a party fails to do, or delays in doing, something the party is entitled to do under the Agreement does not amount to a waiver.
- (e) Any provision of the Agreement which is invalid or unenforceable is to be read down, if possible, so as to be valid and enforceable, and, if that is not possible, the provision will, to the extent that it is capable, be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions.
- (f) Holmesglen may set off against any sum owing to the Supplier under the Agreement any amount then owing by the Supplier Holmesglen.
- (g) Subject to clause 20(h), a party may not assign any right under the Agreement without the prior written consent of the other party. The Supplier will be responsible for acts and omissions of any assignee.

- (h) Holmesglen may, by notice in writing to the Supplier, assign its rights, transfer its obligations or novate the Agreement to any Victorian Public Entity in the event of any State government restructure or other re organisation or change in policy.

## 21. ENTIRE UNDERSTANDING AND ORDER FOR PRECEDENCE

In interpreting the documents which describe the goods and/or services, the following order of precedence will apply to the extent of any inconsistency:

- a) These Conditions: and
- b) The Purchase Order and any attachments.

Where the parties enter into a formal contract for the provision of the goods and/or services, that are the subject matter of this Purchase Order, the terms of the formal contract will take precedence over these Conditions in the event of any inconsistency between these terms and conditions and the formal contract to the extent of that inconsistency.

## 22. SURVIVAL

Clauses 4, 5, 7, 8, 9, 10, 11, 12(c), 12(d), 12(e), 13(a), 14, 16, 19, 20, 21, 22, 23 and 24 of this Agreement survive the termination or expiry of this Agreement or the completion of the provision of the goods and/or services and may be enforced at any time.

## 23. DEFINITIONS

2 In this Agreement, unless the context otherwise requires:

**Agreement** means the agreement for the supply of the goods and/or services consisting of these General conditions for the supply of goods and/or services and the Purchase Order.

**Anti-Bribery Laws** means all anti-bribery and anti-corruption laws applicable to the Supplier and its Personnel, including but not limited to, where relevant, the *Criminal Code Act 1995* (Australia), the *Foreign Corrupt Practices Act 1977* (United States) and the *Bribery Act 2010* (United Kingdom).

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

**Completion Date** means the date by which the goods and/or services should be delivered by the Supplier, as specified in the Purchase Order.

**Commencement Date** means the date on which the supply of the goods and/or services will commence, as specified in the Purchase Order.

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

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

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

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

- a) supplied by or on behalf of Holmesglen in connection with this Agreement (**Input Data**); or
- b) generated, placed, stored, processed, retrieved, printed, accessed or produced utilising the Input Data or the goods and/or services.

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

**goods** means the goods specified in the Purchase Order and as provided under this Agreement.

**Governmental Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**GST** means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

**GST Act** means the *A New Tax System (goods and services Tax) Act 1999* (Cth).

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

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

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

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

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

**Laws** means:

- a) any statute, regulation or subordinate legislation of the Commonwealth of Australia, the State or local or other government in force in the State of Victoria, irrespective of where enacted; and
- b) lawful requirements of any government or government department or other body or a governmental, semi-governmental, judicial, municipal, statutory or public entity or authority (including a statutory authority or a State-owned enterprise), a self-regulatory authority established under

statute or a stock exchange (wherever created or located) or a person (whether autonomous or not) who is charged with the administration of a law.

**Modern Slavery** means slavery, servitude, forced labour, trafficking in persons (including orphanage trafficking of children), forced marriage, child labour, debt bondage and other slavery-like practices as defined in the Modern Slavery Laws.

**Modern Slavery Laws** means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and any other anti-Modern Slavery laws or regulations in force in Australia and any other jurisdictions relating to this agreement, the Supplier or the services, including any anti-slavery and human trafficking laws.

**Overdue Amount** means an amount (or part thereof) that:

- a) is not, or is no longer, disputed;
- b) is due and owing under a tax invoice (as defined in the GST Act), properly rendered by the Supplier in accordance with this Agreement; and
- c) which has been outstanding for more than 30 days, or if clause 6 applies, 10 Business Days from the date of receipt of the correctly rendered tax invoice, or the date that the amount ceased to be disputed, as the case may be.

**Personal Information** means any of the following:

- a) 'personal information' as defined in the Privacy and Data Protection Act 2014 (Vic);
- b) 'health information' as defined in the Health Records Act 2001 (Vic);
- c) information to which a Privacy/Data Requirement applies; and
- d) information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion,

that is collected by, generated by or accessible to the Supplier or the Supplier's Personnel in connection with this agreement.

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

**Privacy/Data Requirements** means:

- a) the Information Privacy Principles and any Code of Practice under the Privacy and Data Protection Act 2014 (Vic);
- b) the Health Records Act 2001 (Vic);
- c) the Privacy Act 1988 (Cth);
- d) any other Law relating to privacy, data protection, surveillance, direct marketing, data security or the handling of Personal Information as applicable to either party;
- e) any standard issued under Part 4 of the Privacy and Data Protection Act 2014 (Vic)
- f) any policies or protocols issued by Holmesglen in relation to matters in paragraphs a) to e) above or privacy requirements applicable to Holmesglen, as notified in writing by Holmesglen to the Supplier; and
- g) any reasonable direction from Holmesglen or any direction from a Governmental Agency, in relation to the matters in paragraphs a) to f) above.

**Public Sector Data** means any 'public sector data' as defined in the Privacy and Data Protection Act 2014 (Vic) that is collected by, generated by or accessible to the Supplier or the Supplier's Personnel, under or in connection with this agreement.

**Purchase Order** means any form of order or purchase issued by Holmesglen for the supply of the goods and/or services, made under or incorporating these General PO conditions for the supply of goods and/or services.

**services** means the services, and includes any deliverables provided as part of the services, specified in the Purchase Order and as provided under this Agreement.

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

**Supplier** means the entity supplying the goods and/or services under the Agreement.

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

**Tax** means any tax, levy, charge, duty, impost, fee, deduction, goods and services tax, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above.

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

**Victorian Public Entity** means:

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

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

## 24. 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' and 'including' are not words of 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) the obligations of the Supplier, if more than one person, under the Agreement are joint and several and each person constituting the Supplier acknowledges and agrees that it will be causally responsible for the acts and omissions, including breaches of the Agreement, of the other as if those acts or omissions were its own;
- (g) the rights of the Supplier, if more than one person, under the Agreement, including the right to payment, jointly benefit each person constituting the Supplier (and not severally or jointly and severally); and
- (h) 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 law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision; and
  - (iv) a party or parties is a reference to Holmesglen and the Supplier (as the case requires).

*These terms and conditions are based on the general conditions for the provision of services and the general conditions for the supply of goods authored by the State of Victoria (Department of Treasury and Finance) as published by the Victorian Government Purchasing Board.*