

## Purchase Order terms and conditions for the provision of services

### 1 Provision of Services

The Supplier must provide the Services to Victorian Commission for Gambling and Liquor Regulation (VCGLR) in accordance with this Agreement, and must:

- (a) complete the Services by the Completion Date and any other dates for delivery specified in the Purchase Order;
- (b) provide the Services 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;
- (c) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (d) act in good faith and in the best interests of the VCGLR; and
- (e) provide any and all equipment necessary for the performance of the Services.

### 2 Price for the Services

The Rates or Fees applicable to the Services are set out in the Purchase Order and are fixed. Expenses may only be charged in accordance with the Purchase Order.

### 3 Cancellation

The VCGLR may cancel the Services at any time by giving written notice to the Supplier who must, on receipt, immediately cease all work and take appropriate action to mitigate any loss or prevent further costs being incurred with respect to the Services. The VCGLR must pay all reasonable amounts due in accordance with **clause 2** for all work performed by the Supplier up until cancellation (but not any loss of prospective profits).

### 4 Invoicing and payment

- (a) The Supplier must submit to the VCGLR a tax invoice in respect of the Services once they are completed, or at such other time or times as agreed by the parties. A tax invoice submitted for payment must contain the information necessary to be a tax invoice for the purposes of the GST Act together with such other information as the VCGLR may reasonably require and be sent to the address specified in the Purchase Order.
- (b) The VCGLR will pay the invoiced amount within 30 days of receipt of an accurate invoice. However, if the VCGLR disputes the invoiced amount it must pay the undisputed amount (if any) and notify the Supplier of the amount the VCGLR believes is due for payment. The parties will endeavour to resolve any such dispute.
- (c) Payment of an invoice is not to be taken as evidence that the Services have been supplied in accordance with the Agreement but must be taken only as payment on account.
- (d) The VCGLR 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 the *Penalty Interest Rates Act 1983 (Vic)*.

### 5 Failure to perform

- (a) Without limiting any other available remedy, if the Supplier fails to provide any of the Services in accordance with the Agreement, the VCGLR will not be required to pay for those Services (until they are provided correctly) and may require the Supplier to remedy any default or re-perform the Services within the time specified in a notice (which must be reasonable having regard to the nature of the Services).
- (b) If the default referred to in **clause 5(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 VCGLR may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the VCGLR in doing so.

### 6 Warranties

The Supplier warrants to the VCGLR that:

- (a) **(Purpose)** where the VCGLR 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;
- (b) **(Conflict)** it and its employees, agents and contractors do not hold any office or possess any property, are not engaged in any business or activity and do not have any obligations whereby duties or interests are or might be created in conflict with or might appear to be created in conflict with its obligations under the Agreement; and
- (c) **(IP)** 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.

### 7 Liability

- (a) The Supplier must indemnify the VCGLR and each of its employees and agents against any loss, damage, claim, action or expense (including legal expense) which any of them suffers as a direct result of any failure to provide the Services in accordance with these Conditions or any other breach of the Agreement.

- (b) The liability of the Supplier, in relation to this Agreement, is limited in accordance with the Institute of Chartered Accountants in Australia (Vic) scheme approved under the *Professional Standards Act 2003* (Vic) and, where applicable, the *Treasury Legislation Amendment (Professional Standards) Act 2004* (Cth) (Scheme); or
- (c) Where the Scheme does not apply, the aggregate liability of the Supplier and their respective personnel to the organisation, its related bodies corporate and their respective personnel in respect of all losses, damages, liability, costs, expenses, suits and claims (where directly, indirectly or consequential) arising from breach of contract, tort or otherwise and including liability for negligence or under any indemnity under or in respect of any single cause of action or this Agreement is limited to (to the extent permitted by law) to an amount equal to ten times the fees charged or chargeable in relation to this Agreement, up to a maximum of \$20 million.

## **8 Intellectual Property Rights**

- (a) The ownership of any Contract Intellectual Property shall vest in the Supplier upon the time of its creation. The Supplier hereby irrevocably and unconditionally grants to the VCGLR, 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 for any purpose except commercial exploitation.
- (b) All Pre-Existing Intellectual Property used and identified by the Parties in connection with the provision of services or the creation of Contract Intellectual Property remains the property of the Parties or its licensors. The Supplier hereby irrevocably and unconditionally grants to the VCGLR, free of additional charge, a non-exclusive, worldwide licence to use any Pre-Existing Intellectual Property to the extent that it 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. The licence granted to the VCGLR is limited to use of the relevant Pre-Existing Intellectual Property by the VCGLR for the purposes of the VCGLR and for no other purpose.
- (c) The ownership of data, including any Intellectual Property Rights, shall vest in the VCGLR upon the time of its creation.
- (d) The supplier warrants that it has or will procure a written consent from all necessary authors to the VCGLR 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.

## **9 Insurance**

- (a) The Supplier must obtain and maintain insurance coverage at all relevant times sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the provision of the Services including professional indemnity and, if applicable, public and products liability insurance.
- (b) On request, the Supplier must provide the VCGLR with evidence of the currency of any insurance it is required to obtain.

## **10 Confidentiality and privacy**

- (a) The Supplier and its employees, agents, directors, partners, shareholders and consultants must not disclose or otherwise make available any Confidential Information to any other person.
- (b) The Supplier hereby consents to the VCGLR publishing or otherwise making available information in relation to the Supplier (and the provision of the Services) as may be required:
  - (i) to comply with the Contracts Publishing System;
  - (ii) by the Auditor-General; or
  - (iii) to comply with the *Freedom of Information Act 1982* (Vic).
- (c) 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 in connection with the provision of the Services in the same way as the VCGLR would have been bound had the relevant act been done by the VCGLR
- (d) 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 organisation, under or in connection with this Agreement.

## **11 Access**

When entering the premises of the VCGLR, the Supplier must and must ensure that its employees, agents and sub-contractors use reasonable endeavours to protect people and property, prevent nuisance and act and in a safe and lawful manner and comply with the safety standards and policies of the VCGLR (as notified to the Supplier).

## **12 Sub-contracting**

- (a) The Supplier must not sub-contract to any third person any of its obligations in relation to the Services without the prior written consent of the VCGLR (which may be given or withheld in its absolute discretion).
- (b) The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under the Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.

## **13 Compliance with Law**

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

- (b) Without limiting clause 12(a), where, in the course of providing the services, the supplier, or its employees or sub-contractors:
- (i) supervise Public Sector Employees;
  - (ii) undertake work that is of a similar nature to the work undertaken by Public Sector Employees at a premises or location generally regarded as a public sector workplace; or
  - (iii) 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.

#### 14 GST

- (a) Terms used in this clause have the same meanings given to them in the GST Act.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with the Purchase Order or these Conditions are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these Conditions, the VCGLR must pay to the Supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient 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 is required to be made.

#### 15 General

- (a) If at the time the Services are ordered by the VCGLR from the Supplier there is already a contract in existence between the VCGLR and the Supplier which is signed by both parties which expressly governs the supply of such Services, then to the extent of any inconsistency, that contract will prevail and apply to the supply of Services to the exclusion of these Conditions and the Agreement.
- (b) The Agreement is governed by the Laws. Each Party irrevocably and unconditionally submits to the non-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.
- (c) Time is of the essence in relation to the provision of the Services.

#### 16 Interpretation

In these Conditions, unless the context otherwise requires:

**Agreement** means the agreement for the provision of the Services of which these terms and conditions and the purchase Order form part.

**Code of Conduct** means the Code of Conduct for Victorian Public Sector Employees (No.1) 2007 issued by the Public Sector Standards Commissioner pursuant to s63 of the *Public Administration Act 2004* (Vic), as amended from time to time.

**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 set out in the Purchase Order by which provision of the Services must be effected by the Supplier.

**Conditions** means these Purchase order terms and conditions for the provision of services.

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

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

**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 policy of the Victorian Government for publication of details of contracts entered into by Victorian Government departments, as amended from time to time.

**Data** means any 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 the Services.

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

**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.

**Laws** means:

- (a) the law in the 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.

**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 properly rendered by the Supplier in accordance with these Conditions; and

which 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).

**Pre-Existing Intellectual Property** means any and all Intellectual Property Rights in any works, items or systems which are the property of either Party and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services.

**Protective Data Security 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).

**Purchase Order** means any form of order or acknowledgment from the VCGLR for the provision of the Services which incorporates these Terms.

**Rates** means the rates (whether charged on an hourly, daily, weekly or other time-related basis) payable to the Supplier for the provision of the Services.

**Services** means the services (or any of them) specified in the Purchase Order.

**Supplier** means the entity supplying the Services under these Conditions.

**VCGLR** means the Victorian Commission for Gambling and Liquor Regulation, the Agency of the State issuing the Purchase Order. Any reference to the VCGLR will be read as a reference to the State.