

## Invitation to supply

# Parliament of Victoria



**Invitation title:** Performance Audit of the Auditor-General and the Victorian Auditor-General's Office

**Reference number:** PAECRFT58012015

**Date of issue:** 18 December 2015

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## Introduction

### The opportunity

The Parliament of Victoria is seeking responses to this Request for Tender (RFT) PAECRFT58012015 for the provision of services to undertake a performance audit of the Victorian Auditor-General and the Victorian Auditor-General's Office (VAGO).

The *Audit Act 1994* (Vic) requires that a performance audit be conducted of the Victorian Auditor-General and VAGO at least once every three years. The Public Accounts and Estimates Committee ('the Committee') of the Parliament of Victoria is responsible under the Audit Act for recommending, to both Houses of Parliament, the appointment of a suitably qualified person to undertake the performance audit.

In issuing this RFT, the Parliament seeks to identify a Tenderer who is:

- able to provide the Services required by the Parliament in the manner set out in the Specification, and not involved in a position that may or does give rise to actual, potential or perceived conflict with his or her duties and interest in performing the Services. This includes a Tenderer who complies with s 19(2A) of the *Audit Act 1994*;
- able to demonstrate a commitment and ability to working in collaboration with the Parliament over the term of any agreed contractual period to continuously seek improvements in value, efficiency and productivity in connection with the provision of the Services; and
- prepared to work with the Parliament to continue to identify opportunities for improvement in the quality and level of the Services provided to the Parliament,

for the mutual benefit of both the Parliament and the Tenderer.

### Legislative requirements – *Audit Act 1994*

Section 19 of the *Audit Act 1994* states that:

- (1) *An audit shall be conducted under this section at least once every 3 years to determine whether the Auditor-General and the Victorian Auditor-General's Office are achieving their objectives effectively and doing so economically and efficiently and in compliance with this Act.*
- (2) *An audit under this section shall be conducted by a suitably qualified person appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Parliamentary Committee.*
- (3) *A person appointed under this section –*
  - (a) *shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and*
  - (b) *in conducting the audit, must comply with directions as to the audit given by that Committee.*

Section 19 (2A) provides that none of the following can be appointed to conduct an audit under this section:

- a person or firm contracted by the Auditor-General to assist in the performance of any function of the Auditor-General (refer Section 7F of the *Audit Act 1994*);
- a person who holds a delegation from the Auditor-General under section 7G of the *Audit Act 1994*; and
- the independent auditor, appointed under section 17 of the *Audit Act 1994*.

**Note to Tenderers:**

Only Tenderers capable of providing all of the Services and complying in full with the conditions set out in this RFT should submit a Tender/ Offer.

The Parliament of Victoria is seeking responses to this invitation for the provision of services as outlined in Part A.2 – Specifications.

The Tenderer's Offer (RFT Part D) must be prepared and submitted in accordance with clause 4 ("Compliance Statement") and clause 3 ("Submission of Offers") of this RFT Part B.2.

**Structure of invitation**

This invitation comprises the following documents:

- Introduction – contains an overview of the opportunity presented;
- Part A – The invitation
  - A.1 – About this invitation provides establishment details about the procurement opportunity;
  - A.2 – Specifications provides the technical requirements for the goods and/or services in respect of which the organisation invites offers;
- Part B – Conditions of participation sets out the conditions applying to the invitation and the invitation process;
- Part C – Proposed contract sets out the proposed terms and conditions that will apply to the provision of the required services as set out in Part A.2 – Specifications; and
- Part D – The offer specifies the information to be provided in an offer and may also specify any information to be provided by an invitee by other means. This part may be in a template format for completion.

**Conditions**

- (a) All invitees wishing to participate in this invitation process for the supply of goods and/or services must comply with the conditions contained within:
  - (i) Part A.1 – About this invitation; and
  - (ii) Part B – Conditions of participation
- (b) By submitting an offer, the invitee agrees to be bound by these conditions.
- (c) The conditions contained in this invitation apply to:
  - (i) the invitation and any other information given, received or made available in connection with the invitation, including any additional materials, revisions, addenda;
  - (ii) the invitation process; and
  - (iii) any communications (including any briefings, presentations, meetings or negotiations) relating to the invitation or the invitation process.

## Part A – The invitation

### A.1 – About this invitation

#### 1. Establishment details

Invitation title	Performance Audit of the Auditor-General and the Victorian Auditor-General's Office
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Invitation reference number	PAECRFT58012015
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#### 2. Organisation details

Organisation name	
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Organisation address	Parliament House, Spring Street, East Melbourne, VIC 3002
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#### 3. Registration

Registration location	Not applicable
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Organisation address	Parliament House, Spring Street, East Melbourne, VIC 3002
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#### 4. Organisation contact

Project manager	[Generally two contact points should be nominated]
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Position title:	Executive Officer
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Business unit:	Public Accounts and Estimates Committee, Parliament of Victoria
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Phone:	(03)8682 2870
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Contact details:	paec@parliament.vic.gov.au
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Second contact person	[Generally two contact points should be nominated]
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Name:	Ms Leah Brohm
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Position title:	Senior Research Officer
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Business unit	Public Accounts and Estimates Committee
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Contact details:	paec@parliament.vic.gov.au
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#### 5. Closing time

Closing time	
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Australian Eastern Daylight Saving Time (AEDST)	2.00pm on Friday 29 January 2016 (29/01/2016)
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#### 6. E-Lodgement details

Internet lodgement	
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Website address	tenderbox@parliament.vic.gov.au
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Access restrictions (if any)	N/A
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Other requirements	<ul style="list-style-type: none"> <li>• Tenderers must provide an electronic copy of the Tenderer's Response in Microsoft Office 2000 format, submitted in accordance with the Conditions of Tender.</li> <li>• All responses/offers in Part D must be provided within the space allowed alongside the requested details and must respond to the Invitation (Part A) in accordance with the Conditions of Participation (Part B) and with regard to the Proposed Contract (Part C).</li> <li>• Do not include graphics or data in responses. Where necessary, any graphics or data should be placed at the end of the documents and referred to in the response.</li> <li>• Include the name of the Tenderer in the footer of the Offer/Tender.</li> <li>• All documents must be virus checked by the Tenderer before lodgement.</li> </ul>
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## 7. Briefing session

No briefing sessions are planned for this invitation.

### Briefing session

Not applicable.

## 8. Indicative timetable

This timetable is an indication of the timing of the invitation process and may be changed by the organisation in accordance with Part B – Conditions of participation, more specifically 5.1 of B.2 Victorian government requirements.

Activity	Date
Invitation issued	18 December 2015
Invitation briefing (if applicable)	N/A
End of period for questions or requests for information (see clause 2.2 of Part B.2)	22 January 2016
Closing time for offers (see clause 3.3 of Part B.2)	2.00pm AEDST Friday 29 January 2016 (29/01/16) [must match Item 5 of A.1]
Intended completion date of short listing process	12 February 2016
Intended completion date for evaluation of offers	19 February 2016
Negotiations with invitee(s) (if applicable)	26 February 2016
Intended date for formal notification of successful Invitee(s)	4 March 2016
Intended date for execution of Proposed contract(s)	11 March 2016
Intended contract commencement date	15 March 2016

## 9. Additional materials

The following information may assist with the development of an offer in response to this invitation.

Item	Description	Location
	Not applicable.	

## 10. Victorian Industry Participation Policy

Not applicable.

## 11. Evaluation criteria

Offers will be assessed in accordance with Part B – Conditions of Participation, more specifically clause 5 of Part B.2.

In evaluating offers, the organisation will have regard to:

- specific evaluation criteria identified in the list below including mandatory requirements, if applicable;
- the overall value for money proposition presented in the Offer; and
- the particular weighting assigned to any or all of the criteria in the table below (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting).

The following mandatory compliance criteria are not weighted and scored. Invitees either meet the standard or they do not.

Mandatory requirements	Complies
Compliance with Specifications - Pre-qualification to Evaluation	Yes/No

The following general evaluation criteria are weighted and scored.

Evaluation criteria	Weighting
<b>(a) Professional competence</b>	<b>45%</b>
<b>Capability:</b>	
- Membership of a leading Australian, Australasian or International organisation in the fields of auditing and/or consulting (with an emphasis on performance evaluation).	
- A good appreciation and understanding of the role of the Auditor-General's Office.	
- Appropriately qualified, skilled and experienced staff to undertake the performance audit.	
- Relevant knowledge and experience in the use of modern performance audit methodologies and performance evaluation techniques.	

**Current and Past Performance work:**

- Relevant knowledge and experience in the application of large scale performance audits/performance evaluations.
- Knowledge and understanding of the nature of public sector organisations and the Victorian public sector's system of financial administration.
- Ability to add value to the operational performance of an entity.

**Quality system for deliverables and Innovation:**

- Comprehensive quality and risk control systems and processes for managing deliverables.
- Demonstrated innovative methodologies/processes for phasing/staging work and meeting execution and reporting timelines.

**Customer service:**

- Willingness and ability to comply with the Parliament's directions and liaise with its staff efficiently.
- Quality and timeliness of communication processes and progress reporting proposed.

**(b) Commercial****30%****Financial viability:**

- Includes support of any associated companies and/or parent company.

**Risk and insurance:**

- Includes evidence of compliance with insurance requirements.

**Compliance with Proposed contract****Conflict of interest:**

- No actual or perceived conflict of interest and complies with section 19 (2A) of the *Audit Act 1994*.
- Willingness to attest to his/her independence.
- Not associated or involved during the course of the performance audit with an audit examination or consultancy in a department or agency in respect of which the Auditor-General has a statutory responsibility.

**(c) Costings****25%**

- Proposed fee structure (fixed fee and other expenses/costs).
- Value for money.

**(d) Environmental commitments****Not weighted**

- Environmental policy
- Environmental management system and environmental approach.

## A.2 – Specifications

### Background and Objective

The *Audit Act 1994* (Vic) requires that a performance audit be conducted of the Victorian Auditor-General and the Victorian Auditor-General's Office ('VAGO') at least once every three years. The Public Accounts and Estimates Committee ('the Committee') of the Parliament of Victoria is responsible under the *Audit Act* for recommending, to both Houses of Parliament, the appointment of a suitably qualified person to undertake the performance audit.

Section 19 of the *Audit Act 1994* states in part that:

- (1) An audit shall be conducted under this section at least once every 3 years to determine whether the Auditor-General and the Victorian Auditor-General's Office are achieving their objectives effectively and doing so economically and efficiently and in compliance with this Act.
- (2) An audit under this section shall be conducted by a suitably qualified person appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Parliamentary Committee.
- (3) A person appointed under this section –
  - (a) shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and
  - (b) in conducting the audit, must comply with directions as to the audit given by that Committee.

The Committee's objective is to recommend to both Houses of Parliament the appointment of a suitably qualified person as performance auditor during the present session of the Parliament. The successful performance auditor is required to conduct a performance audit in accordance with the following Terms of Reference as set out in Part A.2 Specifications of this RFT, over a four month period, (anticipated March 2016 to July 2016 inclusive), with a draft preliminary report to the Committee and the Auditor-General by 1 July 2016 and the final report to be transmitted to the Parliament of Victoria by 1 August 2016.

### Terms of Reference

The Committee wishes to direct the successful tenderer to conduct the performance audit in accordance with the following legislative context and Terms of Reference.

The *Audit Act 1994* provides for the triennial performance audit of the Victorian Auditor-General and VAGO to specifically determine whether the Auditor-General and VAGO are achieving their objectives effectively and doing so economically and efficiently and in compliance with the *Audit Act 1994*, as amended. In this context and without limiting the scope of the audit, the following areas should be considered and assessed as part of the audit:

#### VAGO Governance and Planning

1. Review the governance structure and planning activities of VAGO with particular attention to:
  - (a) The adequacy and appropriateness of the organisational and management structures in place to promote the effective governance of VAGO activities and operations (e.g. the organisational structure facilitates the achievement of VAGO strategic goals and objectives; the roles and responsibilities of groups and sections are clearly defined; roles and responsibilities of steering/management committees are clearly defined and relevant; committees meet regularly and actions are identified and implemented in a timely manner);
  - (b) The quality of Strategic Planning undertaken by VAGO in terms of its comprehensiveness, relevance and clarity of direction;

- (c) The adequacy and effectiveness of VAGO's annual planning processes including intelligence gathering and stakeholder consultation in relation to the identification of areas of audit focus, having regard to risk factors and other relevant considerations across the Victorian public sector;
- (d) The relevance and appropriateness of VAGO's Annual Plans for 2013-14, 2014-15 and 2015-16, to VAGO's legislative mandate and Strategic Plan, and the extent to which the activities identified in the Annual Plans have been, and are being, achieved;
- (e) The extent and quality of internal planning directed at the efficient and effective management of VAGO resources (e.g. workforce management; business continuity planning; fee setting and cost recovery; and budget and expenditure control);
- (f) Any new audit topics identified during the audit cycle, which were not included in VAGO's Annual Plan, are advised to the Public Accounts and Estimates Committee and the relevant audited agency/ies in a timely manner and prior to the commencement of the audit;
- (g) The effectiveness of the Audit Committee in overseeing the scope, quality and effectiveness of the internal audit function within VAGO and in highlighting any risk management issues pertinent to the operations of VAGO; and
- (h) The extent of progress made and the effectiveness of actions and measures implemented by VAGO to address the recommendations made in the 2013 Performance Audit Report. Consider the ongoing validity and application of any recommendations made to VAGO in the 2013 report which have not been implemented.

### Monitoring and measuring performance and effectiveness

2. Review and provide an assessment of key performance management systems and measures together with any identified recommendations for improvement, including but not limited to the following areas:
  - (a) The adequacy and effectiveness of management information systems in place to measure and improve productivity including cost effectiveness and human resource management within VAGO;
  - (b) The appropriateness and veracity of the performance indicators and benchmarks which VAGO uses to measure its performance in relation to the achievement of its strategic objectives;
  - (c) Any initiatives and/or improvements which have flowed from VAGO's evaluation of its own performance over the past three years;
  - (d) The extent to which VAGO has reviewed and considered best practice public sector management and auditing in other relevant national and international jurisdictions over the past three years to benchmark and evaluate its own performance and practices;
  - (e) VAGO's use of the results of independent assessments undertaken by the Australasian Council of Auditors General (ACAG) over the past three years, of the quality of performance audits undertaken by VAGO;
  - (f) VAGO's use of the results of peer reviews to assess the quality of financial audits over the past three years;
  - (g) The processes implemented by VAGO to optimise the quality and relevance of periodic "client" surveys undertaken (including those of Members of Parliament and audited agencies) and the use made of the survey results to improve business processes and outputs. Consider whether any additional independent surveys of the effectiveness of VAGO should be conducted;

- (h) The extent and usefulness of processes and/or measures used by VAGO to assess the impact of its audit activities on the operations and management practices of across the Victorian public sector;
- (i) The adequacy of time recording and costing systems in place to identify all recoverable costs and to ensure the appropriate allocation of costs to prevent any cross subsidisation between chargeable and non-chargeable activities or between performance and financial audits; and
- (j) The adequacy of systems and processes in place to: determine appropriate budgets across VAGO's operations; monitor costs against budget; and explain variances against budgets.

### **Human Resource Management**

3. Review and provide an assessment of VAGO's human resource management systems, policies and practices together with any recommendations for improvement, including but not limited to the following areas:
  - (a) Whether appropriate Occupational Health and Safety (OH&S) and human resource policies are in place to effectively monitor staff wellbeing related to areas such as, staff morale, job satisfaction, and workplace stress, and to take appropriate action where necessary;
  - (b) Whether strategies are in place to assess and manage staff motivation across both financial and performance audit work areas;
  - (c) Whether human resource policies and strategies are in place to manage staff retention and minimise significant staff turnover;
  - (d) The adequacy of performance and staff development strategies and succession/business continuity planning in place to recruit and develop staff relevant to VAGO's objectives and operational needs;
  - (e) Whether VAGO's professional development program adequately identifies and targets staff training needs;
  - (f) Whether processes are in place to evaluate the effectiveness of professional development activities undertaken by staff; and
  - (g) The appropriateness of the mix between specialist expertise, contractors and suitably qualified in-house staff in undertaking particular financial and performance audits.

### **Conduct and management of Financial Audits**

4. Review the efficiency and effectiveness of the management and conduct of financial audits undertaken by the Victorian Auditor-General's Office, considering but not limited to the following:
  - (a) The adequacy of the audit methodology and quality control procedures in place to assist in the identification of any material or significant risks and to ensure that findings and conclusions arising from the financial audits are adequately supported;
  - (b) Compliance of VAGO with all relevant statutory requirements and Australian Auditing Standards for the conduct and reporting of financial audits;
  - (c) Completion of financial audits on time and within budget;
  - (d) Whether audit sampling, selection and testing methodologies employed by VAGO to gather audit evidence comply with all relevant Australian Auditing Standards;

- (e) The adequacy and appropriateness of the methodology used to determine focus areas for detailed internal control assessment in each of the financial audit sectors, consistent with a risk-based approach to financial audit;
- (f) Whether any risks identified during the course of a financial audit, which were not originally anticipated in audit plans, are adequately and effectively considered and addressed in a timely manner;
- (g) Processes for the engagement of contracted financial audit services have considered relevant government purchasing policies and are conducted with due regard to probity and value for money; and
- (h) The effectiveness of quality control and review processes in place to monitor the quality and performance of contracted financial audit services.

### Conduct and management of Performance Audits

5. Review the efficiency and effectiveness of the management and conduct of performance audits (both broad scope and limited scope) undertaken by the Victorian Auditor-General's Office, considering but not limited to:
  - (a) Whether VAGO's performance audit methodology provides comprehensive guidance for the conduct of performance audits and is regularly reviewed and updated to ensure it remains robust and relevant;
  - (b) Compliance with the relevant provisions of the *Audit Act 1994* and Australian Auditing Standards for the conduct and reporting of performance audits;
  - (c) Whether the selection of audit topics and agencies for review is supported by appropriate planning including: an assessment of risk; materiality; preliminary evidence/findings; and/or geographical/character representation;
  - (d) The adequacy and effectiveness of processes in place for the development of appropriate budgets (cost and time) for the conduct of performance audits, to allow sufficient time to ensure a comprehensive assessment of all potentially significant issues for reporting to the Parliament;
  - (e) Regular monitoring and oversight of performance audit budgets from the planning phase through to report tabling;
  - (f) Whether there processes are in place to ensure the timely and appropriate consideration of significant issues arising during the course of a performance audit that were not identified in initial audit plans;
  - (g) The appropriateness of the mix between specialist expertise, contractors and suitably qualified in-house staff in undertaking particular performance audits;
  - (h) Whether processes for the engagement of specialist services and/or consultants comply with relevant government procurement policies and procedures and are conducted with due regard to probity and value-for-money; and
  - (i) Whether specialist skills engaged in relation to performance audits are evaluated in terms of the quality of the expertise and value they have added to the conduct of the audit.

### Conduct and management of ICT audit work

6. Review the efficiency and effectiveness of the management and conduct of information and communication technology (ICT) audit work undertaken by the the Information Systems team within the Victorian Auditor-General's Office, considering but not limited to:
- (a) Whether there is an adequate methodology in place for the planning and conduct of information and communication technology (ICT) audits;
  - (b) Compliance of ICT audit work undertaken with Australian Auditing Standards;
  - (c) Review of the effectiveness of collaboration and working relationships between the Information Systems team and financial and performance audit teams;
  - (d) Whether technical ICT related advice provided to financial and performance audit teams is both relevant and timely;
  - (e) Rigorous processes are in place for the identification of emerging ICT issues relevant to the public sector and for input to VAGO's strategic and audit planning processes;
  - (f) The adequacy and effectiveness of processes in place for the development of appropriate budgets (cost and time) for the conduct of ICT related audit work, to allow sufficient time to ensure a comprehensive assessment of all potentially significant issues for reporting to the Parliament;
  - (g) Regular monitoring and oversight of ICT audit budgets from the planning phase through to report tabling;
  - (h) Appropriate quality control and review processes are in place to ensure that the ICT audit methodology has been applied and all relevant issues and findings have been identified and reported;
  - (i) Whether processes for the engagement of ICT specialist services and/or consultants comply with relevant government procurement policies and procedures and are conducted with due regard to probity and value for money; and
  - (j) Whether specialist skills engaged in relation to ICT audit work are evaluated in terms of the quality of the expertise and value they have added to the conduct of the audit.

### Reporting the findings of this Performance Audit

7. The report of this Performance Audit should:
- (a) specify the performance criteria and measures (both qualitative and quantitative) against which VAGO has been measured and assessed;
  - (b) provide an opinion on VAGO's compliance with Australian Auditing and Accounting Standards and all relevant legislative requirements;
  - (c) provide an independent assessment of the audit evidence, detail the basis for the audit findings and conclusions and include clear, meaningful, and feasible recommendations linked to the audit findings;
  - (d) provide an overall opinion as to whether VAGO is achieving its objectives effectively, economically and efficiently and in compliance with the *Audit Act 1994* (Vic); and

- (e) highlight any leading edge initiatives introduced by the Auditor-General and VAGO over the last three years which have contributed to the enhanced performance of VAGO in serving the needs of the Parliament of Victoria.

### **Proposed Timelines and Key Deliverables**

The Committee expects the Performance Auditor to complete a preliminary report with draft findings for consultation with the Auditor-General and the Committee by 10 October 2013 and a final report transmitted to the Parliament of Victoria, as required by the *Audit Act 1994*, by 14 November 2013.

#### **Key deliverables to the Committee and timelines are:**

- A proposed audit plan by 31 March 2016;
- A progress report on the audit on 9 May 2016;
- A draft preliminary report on audit findings and recommendations by 1 July 2016; and
- A final performance audit report transmitted to the Parliament of Victoria by 1 August 2016

#### **The Committee's feedback on deliverables**

The Committee may provide feedback on the deliverables once they are submitted and request any alterations. The Performance Auditor must accommodate such requests and satisfy the requirements of the Committee.

## Part B – Conditions of participation

### B.1 – Parliament of Victoria specific requirements

#### 1. Complaints procedure

Any complaint about the RFT or the Tendering Process must be submitted to the Project Manager in writing immediately upon the cause of the complaint arising or becoming known to the Tenderer. The written complaint must set out:

- (a) the basis for the complaint (specifying the issues involved);
- (b) how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;
- (c) any relevant background information; and
- (d) the outcome desired by the person or organisation making the complaint.

Any complain submitted to the Project Manager in accordance with this section Part B.1 of this RFT that relates to the conduct or performance of the Project Manager or the manner in which the Project Manager has handled the Tendering Process must also be copied to the Project Sponsor, details as follows:

Mr Danny Pearson MP  
 Chair  
 Public Accounts and Estimates Committee  
 Parliament House, Spring Street  
 East Melbourne VIC 3002

The Victorian Government Purchasing Board (VGPB) will be informed within within five working days by the Project Manager of a complaint which cannot be resolved to the satisfaction of both parties.

If not satisfied with the actions taken by the Project Manager and/or Project Sponsor to resolve the complaint, a complainant can refer the matter to the VGPB for review.

Complaints submitted to the VGPB must be lodged by letter, email or fax within 10 days of the receipt of the findings by the purchaser to:

The Chair  
 Victorian Government Purchasing Board  
 Department of Treasury and Finance  
 GPO Box 4379  
 MELBOURNE VIC 3001

The complainant must provide the following material:

- evidence that the organisation did not correctly apply supply policies in relation to the procurement;
- evidence that the purchaser's complaints management procedures were not applied correctly;
- a copy of all relevant correspondence between the complainant and the purchaser in relation to the nature of the complaint; and

- any additional material requested by the VGPB to assist it in its findings.

## 2. E-lodgement of Tenders/Offers

Tenderers are required to submit their tender/offer electronically to:

[tenderbox@parliament.vic.gov.au](mailto:tenderbox@parliament.vic.gov.au)

## B.2 – Victorian government requirements

### 1. Invitation

#### 1.1. Invitation

- Legal entities, companies, consortiums and alike are invited to submit a proposal for the provision of goods and/or services as set out in Part A.2 – Specifications.
- Nothing in this invitation is to be construed, interpreted or relied upon, whether expressly or implied, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.
- No binding contract or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the goods or services will exist between the organisation and any invitee unless and until the organisation has signed a formal written contract as contemplated in clause 6.1 below.
- All entities (whether or not they submit an offer) having obtained or received this invitation may only use it, and the information contained in it, in compliance with the conditions contained in Part A.1 and Part B.

#### 1.2. Accuracy of invitation

- The organisation does not warrant the accuracy of the content of this invitation and will not be liable for any omission from the invitation documents.
- If an invitee finds any discrepancy, ambiguity, error or inconsistency in the invitation or any other information provided by the organisation (other than minor clerical matters), the invitee must immediately notify the organisation in writing, so that there is fair opportunity to consider what corrective action is necessary (if any).
- If there is any inconsistency between any of the documents, or parts of the documents constituting this invitation, the Project manager will determine the order of precedence. The Project manager will notify all invitees in writing where a determination is made pursuant to this clause 1.2(c).

#### 1.3. Additions and amendments

The organisation reserves the right to change any information and/or to issue addenda to the invitation before the closing time. Where the organisation exercises its right to change information in accordance with this clause 1.3, the organisation may seek amended offers from invitees and may amend the closing time to allow invitees sufficient time to amend their offer.

#### 1.4. Availability of additional materials

Additional Materials (if any) may be accessed in the manner set out in Item 9 of Part A.1. Invitees should familiarise themselves with the Additional materials.

#### 1.5. Representation

No representation made by or on behalf of the organisation in relation to this invitation (or its subject matter) will be binding on the organisation unless the representation is expressly incorporated into the contract(s) ultimately entered into between the organisation and an invitee.

#### 1.6. Licence to use Intellectual Property Rights

Persons obtaining or receiving this invitation and any other documents issued in relation to the invitation may use the documents only for the purpose of preparing an offer.

Such Intellectual Property Rights as may exist in the invitation and any other documents provided to the invitees by or on behalf of the organisation in connection with the invitation process are owned by (and will remain the property of) the organisation except to the extent expressly provided otherwise.

### **1.7. Confidentiality**

- (a) The organisation may require persons and businesses wishing to access or obtain a copy of the invitation or certain parts of it, or any Additional materials, to execute a deed of confidentiality (in a form required by or satisfactory to the organisation) before or after access is granted or a copy is provided.
- (b) Regardless of whether a deed of confidentiality is executed in relation to the invitation, invitees obtaining or receiving the invitation must keep the content of the invitation and such other information confidential and not disclose or use that information except as required for the purpose of developing an offer in response to the invitation.

## **2. Communication**

### **2.1. Communication protocol**

All communications relating to this invitation and the invitation process must be directed to the Project manager.

### **2.2. Requests for clarification**

- (a) Any questions or requests for clarification or further information regarding this invitation or the invitation process must be submitted to Public Accounts and Estimates Committee (paec@parliament.vic.gov.au ) in writing at least five days prior to the closing time (refer organisation contact details in Part A.1).
- (b) The organisation is not obliged to respond to any question or request.
- (c) The organisation may make available to other prospective invitees details of such a question or request together with any response, in which event those details shall form part of this invitation.

### **2.3. Briefing session**

The organisation will hold briefing sessions at the location(s) and time(s) specified in Item 7 of Part A.1. An invitee must attend the briefing session if it is specified as 'mandatory'. If an invitee fails to attend a mandatory briefing session, the organisation may disqualify the invitee from further participating in the invitation process.

### **2.4. Unauthorised communication**

- (a) Communications (including promotional or lobbying activities) with staff of the organisation or consultants assisting the organisation with the invitation process are not permitted during the invitation process except as provided in clause 2.1 above, or otherwise with the prior written consent of the Project manager.
- (b) Nothing in this clause 2.4 is intended to prevent communications with staff of, or consultants to, the organisation to the extent that such communications do not relate to this invitation or the invitation process.
- (c) Invitees must not engage in any activities or obtain or provide improper assistance that may be perceived as, or that may have the effect of, influencing the outcome of the invitation process in any way. Such activities or assistance may, in the absolute discretion of the organisation, lead to disqualification of an invitee.

### **2.5. Anti-competitive conduct**

- (a) Invitees and their representatives must not engage in any collusive, anti-competitive or similar conduct with any other invitee or person in relation to:
  - (i) the preparation, content or lodgement of their offer;
  - (ii) the evaluation and clarification of their offer; and
  - (iii) the conduct of negotiations with the organisation.
- (b) In addition to any other remedies available to it under law or contract, the organisation may, in its absolute discretion, immediately disqualify an invitee that it believes has engaged in such collusive or anti-competitive conduct.

## **2.6. Consortia and trustees**

Where the invitee is a member of a consortium, the offer must stipulate which part(s) of the goods and/or services that each entity comprising the consortium would provide and how the entities would relate to each other to ensure full provision of the required goods or service. All consortium members are to provide details relating to their legal structure, and where applicable, provide details of their special purpose vehicle established to meet the requirements of the invitation.

## **2.7. Complaints about this invitation**

An invitee with a complaint about this invitation or the invitation process which has not been resolved in the first instance with the Project Manager must follow the complaints process of the organisation as detailed in Item 1 of Part B.1.

## **2.8. Conflict of interest**

- (a) Invitees and their representatives must not place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interest of the State and the invitee's interests during the invitation process.
- (b) Invitees are required to disclose any conflicts of interest in their offer and also notify the organisation if any conflict of interest arises after lodgement of their offer.
- (c) The organisation may disqualify an invitee from the invitation process if the invitee fails to notify the organisation of any conflict of interest.

## **3. Submission of offers**

### **3.1. Lodgement**

- (a) Offers must be lodged by the closing time and only by the means set out in Item 6 of Part A.1. The closing time may be extended by the organisation in its absolute discretion. Where the organisation extends the closing time, it will provide written notice to invitees.
- (b) All offers lodged after the closing time will be recorded by the organisation. The determination of the organisation as to the actual time that the invitee's response is lodged is final.
- (c) Where this invitation requires or permits offers to be lodged via the internet through the website nominated at Item 6 of Part A.1:
  - (i) invitees must submit documentation that has been virus checked and is free from viruses; and
  - (ii) invitees are deemed to accept the online user agreement applying to that website and must comply with the requirements set out on that website.
- (d) Where this invitation requires or permits offers to be lodged in hard copy, packages containing the offer must be marked with the information set out in Item 6 of Part A.1 and must be placed in the Tender Box at the address which is set out in Item 6 of Part A.1. Failure to do may result in disqualification from the invitation process.

### **3.2. Late offers**

- (a) If an offer is lodged after the closing time, it may be disqualified from the invitation process and may be ineligible for consideration unless:
  - (i) the invitee can clearly document to the satisfaction of the organisation that an event of exceptional circumstances caused the offer to be lodged after the closing time; and
  - (ii) the organisation is satisfied that accepting a late submission would not compromise the integrity of the market approach.
- (b) The determination of the organisation as to the actual time that the invitee's response is lodged is final. All offers lodged after the closing time will be recorded by the organisation.
- (c) The organisation will inform an invitee whose offer was lodged after the closing time of their ineligibility for consideration.

### 3.3. Providing an offer

It is the responsibility of all invitees to:

- (a) understand the requirements of the invitation, the invitation process, any reference documentation or other information in relation to the invitation;
- (b) ensure that their offer addresses all the information fields in Part D with the information requested, is presented in the required format as set out in Part D, conforms with word limits (if specified) and is accurate and complete;
- (c) make their own enquiries and assess all risks regarding this invitation and the invitation process;
- (d) ensure that they comply with all applicable laws with regard to preparing their offer and participating in the invitation process (including Chapter 2 of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*);
- (e) meet all costs and expenses related to the preparation and lodgement of its offer, any subsequent negotiation, and any future process connected with or relating to the invitation process;
- (f) ensure that offers remain valid and open for acceptance for a minimum of 120 days from the closing time. (This period may be altered by mutual agreement between the organisation and the invitee);
- (g) ensure that the offer is not conditional on:
  - (i) any type of board, committee, third party or regulatory approval or consent;
  - (ii) conducting due diligence or any other form of enquiry or investigation; or
  - (iii) the invitee stating that it wishes to discuss or negotiate any commercial terms of the Proposed contract;
- (h) ensure the offer includes a GST exclusive price, the GST payable and the total cost for the goods and/or services; and
- (i) provide additional information in a timely manner as requested by the organisation.

### 3.4. Errors in an offer

If an invitee identifies an error in their offer (excluding clerical errors which would have no bearing on the evaluation) they must promptly notify the organisation.

The organisation may permit an invitee to correct an unintentional error in their offer where that error becomes known or apparent after the closing time, but in no event will any correction be permitted if the organisation reasonably considers that the correction would materially alter the offer.

### 3.5. Use of an offer

Upon submission, all offers become the property of the organisation. The invitee will retain all ownership rights in any intellectual property contained in their offer however each invitee, by submission of their offer, is deemed to have granted a licence to the organisation to reproduce the whole, or any portion of their offer for the purposes of enabling the organisation to evaluate the offer.

## 4. Compliance with specifications and proposed contract

### 4.1. Compliance statement

Invitees are required to provide a statement of its compliance with Part A.2 – Specification and Part C – Proposed contract. Further instructions regarding requirements of the Compliance statement are contained within Part D – the offer.

## 5. Evaluation

### 5.1. Evaluation process

- (a) The organisation will evaluate all offers complying with the conditions of this invitation, including late offers where the organisation is satisfied of the matters referred to in Item 3.2 of Part B.2.
- (b) The organisation will evaluate offers in accordance with the Evaluation criteria stipulated at Item 11 of Part A.1. In the event that one or more of the evaluation criteria are subjective, then the organisation reserves the right to exercise discretion.
- (c) An offer from an invitee will not be deemed to be unsuccessful until such time as the invitee is formally notified of that fact by the organisation.
- (d) The organisation may in its absolute discretion:
  - (i) reject an offer that does not include all the information requested or is not in the format required;
  - (ii) after concluding a preliminary evaluation, reject any offer that in its opinion is unacceptable;
  - (iii) disregard any content in an offer that is illegible without any obligation whatsoever to seek clarification from the invitee;
  - (iv) disqualify an incomplete offer or evaluate it solely on the information contained within the offer;
  - (v) alter the structure and/or the timing of the invitation or the invitation process;
  - (vi) vary or extend any time or date specified in the invitation for any or all invitees;
  - (vii) elect not to appoint any invitee or enter into a contract with any invitee;
  - (viii) cease to proceed with or suspend the invitation process prior to the execution of a formal written contract;
  - (ix) consider alternative offers; or
  - (x) call for new offers.

### 5.2. Clarification of an Offer

- (a) If in the opinion of the organisation, an offer is unclear in any respect, the organisation may seek clarification from an invitee. Failure to supply clarification to the satisfaction of the organisation may render the offer liable to disqualification.
- (b) The organisation is under no obligation to seek clarification and reserves the right to disregard any clarification that the organisation considers to be unsolicited or otherwise impermissible in accordance with the conditions set out in Part A – About this invitation and Part B – Conditions of participation.

### 5.3. Discussion with invitees

The organisation may:

- (a) negotiate with one or more invitees and allow any invitee to vary its offer;
- (b) interview, negotiate or hold discussions with any invitee or prospective invitee on any matter contained (or proposed to be contained) in an offer to the exclusion of others; or

- (c) request some or all invitees to conduct site visits, provide references and additional information, and/or make themselves available for panel interviews.

## 6. Preferred invitee

### 6.1. No legally binding contract

Selection as a preferred invitee does not give rise to a contract (express or implied) between the preferred invitee and the organisation for the supply of goods and/or services. No legal relationship will exist between the organisation and the preferred invitee until such time as a binding contract is executed by both parties.

### 6.2. Pre contractual negotiations

- (a) The organisation may in its absolute discretion decide not to enter into pre-contractual negotiations with a successful invitee.
- (b) The invitee is bound by its offer and if selected as the successful invitee, must enter into a contract on the basis of the offer without negotiation.

## 7. Disclosure requirements

### 7.1. Disclosure of offer contents and offer information

Offers will be treated as confidential by the organisation. The State will not disclose offer contents and information except:

- (a) as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic) (FOI Act);
- (b) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- (c) to external consultants and advisers of the organisation engaged to assist with the invitation process; or
- (d) general information from invitees required to be disclosed by government policy.

### 7.2. Contract disclosure

The Victorian Government Purchasing Board' 'Contract management and contract disclosure policy' requires organisations to disclose key details of contracts it enters into, including contracts under head agreements and variations to contracts, with a total estimate value exceeding \$100 000 (including GST). Where the value of the contract is estimated to exceed \$10 million (including GST) full contract details are to be provided on the Contracts Publishing System.

In submitting an offer, the invitee accepts that the organisation may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):

- (a) the name of the Contractor;
- (b) the estimated value of the offer of the Contractor; and
- (c) the Contractor's name together with the provisions of the contract generally.

### 7.3. Exemptions from disclosure

The organisation will consider requests for exemption from disclosure in the evaluation of invitees' submissions and negotiations with invitees.

In determining whether any contractual clauses should be kept confidential, the organisation will apply the exemptions from disclosure under the FOI Act. These exemptions include a public interest test under s36 of the FOI Act.

Any request by the successful invitee for non-disclosure of contract provisions must be justified by the successful invitee in accordance with s34(1) of the FOI Act. Under s34(1), information acquired by an

organisation or a Minister from a business, commercial or financial undertaking is exempt from disclosure if the information relates to:

- (a) trade secrets; or
- (b) other matters of a business, commercial or financial nature and the disclosure would be likely to expose the undertaking unreasonably to disadvantage.

However, even if certain contractual clauses are redacted by agreement between the organisation and the successful invitee, this will not:

- (a) exempt the redacted clauses from the further operation of the FOI Act; or
- (b) constrain the Auditor General's power to secure and publish documents in accordance with the *Audit Act 1994*.

#### **7.4. Unreasonable disadvantage**

In determining whether disclosure of specific information will expose an invitee's business unreasonably to disadvantage, the invitee should consider s34(2) of the FOI Act. Broadly, the invitee should consider:

- (a) whether the information is generally available to competitors; and
- (b) whether the information could be disclosed without causing substantial harm to the competitive position of the business.

### **8. Victorian Industry Participation Policy (VIPP)**

VIPP applies to procurement over \$1 million in regional Victoria and over \$3 million in metropolitan Melbourne or state wide activities. Information about the policy can be viewed at <http://dsdbi.vic.gov.au/vipp>. If this policy applies, short-listed invitees will be required to provide additional information and requirements will be detailed in Item 10 of Part A.1.

### **9. Invitee warranties**

By submitting an offer, an invitee warrants that:

- (a) in lodging its offer it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the organisation or its Representatives other than any statement, warranty or representation expressly contained in the invitation;
- (b) it has examined this invitation, and any other documents referenced or referred to herein, and any other information made available in writing by the organisation to invitees for the purposes of submitting an offer;
- (c) it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its offer;
- (d) it otherwise accepts and will comply with the rules set out in this Part A.1- About this invitation and Part B – Conditions of Participation; and
- (e) it will provide additional information in a timely manner as requested by the organisation to clarify any matters contained in the offer.

### **10. Organisation rights**

Notwithstanding anything else in this invitation, and without limiting its rights at law or otherwise, the organisation reserves the right, in its absolute discretion at any time, to:

- (a) vary or extend any time or date specified in this invitation for all or any invitees; or
- (b) terminate the participation of any invitee or any other person in the invitation process.

## 11. Law

### 11.1. Governing Law

This invitation process is governed by the Laws.

### 11.2. Compliance with Law

Invitees must comply with all applicable Laws in preparing and lodging its offer and in taking part in the invitation process.

Any invitee, if requested by the Project Manager, must submit evidence of its compliance with any relevant Laws.

## 12. Interpretation

### 12.1. Definitions

Additional materials	means any of the materials or all of them as specified at Item 9 of Part A.1.
Alternative offer	means an offer made by an invitee as an alternative to their primary offer. An Alternative offer may be made by an invitee as part of their offer or may be sought by the organisation following the Closing Time.
Closing Time	means the time specified in Item 5 of Part A.1 by which offers must be received by the organisation.
Contracts publishing system	means the Contracts Publishing System of the Victorian Government for the publication of information about contracts entered into by the Victorian Government and some agencies.
Evaluation criteria	means the criteria set out at Item 11 of Part A.1.
Goods	means the goods or other products required by the organisation as set out in Part A.2 – <i>Specifications</i> .
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 each of the documents identified in the Introduction to the invitation including this Part B – <i>Conditions of Participation</i> , the invitation process, any Additional Materials and any other documents so designated by the organisation.
Invitation process	means the process commenced by the issuing of this invitation (be it a request for quote, request for tender or any other process by which the organisation seeks an offer for the supply of goods and or services) and concluding upon formal announcement by the organisation of the selection of a preferred invitee(s) or upon the termination of the process.
Invitee	means any entity that submits an offer in response to the invitation. An invitee may also be known as a tenderer, provider, registrant, bidder or supplier.
Item	means an item of this invitation.
Late offer	means an offer deemed to be a late offer under clause 3.2(a) of Part B.2.
Laws	means: <ol style="list-style-type: none"> <li>(a) the law in force in Victoria, including common law, legislation and subordinate legislation; and</li> <li>(b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.</li> </ol>
Offer	means a document lodged by an invitee in response to an invitation containing an

offer to provide goods and or services in accordance with the invitation. This may also be referred to as a quote, tender, submission, registration or bid.

Organisation	means the government department or agency issuing this invitation. In the case of an aggregated demand procurement, the organisation is the lead department or agency issuing the invitation.
Organisation contact	means the person(s) so designated at Item 4 of Part A.1.
Part	means a part of this invitation
Project manager	means the person designated at item 4 of Part A.1.
Proposed contract	means the agreement and any other terms and conditions contained in or referred to in Part C – <i>Proposed contract</i> .
Representative	means a party and its agents, servants, employees, contractors, associates, invitees and anyone else for whom that party is responsible.
Services	means the services required by the organisation as stipulated in Part A.2 – <i>Specifications</i> .
Specifications	means any specifications or description of the organisation’s requirements contained in Part A.2 – <i>Specifications</i> .
State	means the Crown in right of the State of Victoria.
Tender box	a secure location within which offers are placed.

## 12.2. Interpretation

In this invitation, unless expressly provided otherwise:

- (a) The singular includes the plural and vice versa;
- (b) a reference to
  - (i) ‘includes’ or ‘including’ means includes or including without limitation;
  - (ii) ‘\$’ or dollars is a reference to the lawful currency of the Commonwealth of Australia; and
- (c) if a word or phrase is defined, its other grammatical forms have corresponding meanings.

Part C – Proposed contract

The State of Victoria through the Parliament of Victoria

# **Agreement for the Provision of Services for the Performance Audit of the Victorian Auditor-General and the VAGO**

(Single Purchase)

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**Date:**

## Parties

**The State of Victoria through the Parliament of Victoria**, ABN 57 505 521 939 of Parliament House, Spring Street, East Melbourne, Victoria 3002 (**Parliament**)

[Insert] ABN [#] of [Insert]

(Service Provider)

## Background

- A. Section 19 of the *Audit Act 1994* (Vic) requires an audit to be conducted to determine whether the Victorian Auditor-General and the Victorian Auditor-General's Office (**VAGO**) is achieving its objectives effectively and doing so economically and efficiently and in compliance with the Audit Act.
- B. The Service Provider is appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Public Accounts and Estimates Committee of the Parliament, to conduct such performance audit of the Victorian Auditor-General and the VAGO.
- C. The Service Provider has fully informed itself on all aspects of the performance audit of the Victorian Auditor-General and the VAGO required to be conducted, and has represented that it has the requisite skills and experience to deliver such audit to the Parliament.
- D. This Agreement sets out the agreed terms and conditions and remuneration between the Parliament and the Service Provider pursuant to section 19 of the Audit Act.

## Agreed terms and conditions

### 1. 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 Parliament and/or the Victorian Auditor-General and/or the VAGO, including any information designated by the Parliament as confidential, which is disclosed, made available, communicated or delivered to the Service Provider 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 Service Provider can demonstrate was in its possession prior to the date of this Agreement;
- (c) which the Service Provider can demonstrate was independently developed by the Service Provider;
- (d) which is lawfully obtained by the Service Provider 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 Service Provider in the course of providing the Services.

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

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

**Fees** means a fixed fee payable to the Service Provider for the provision of the Services, 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** or **IP 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 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.

**Parliament Supplied Material** means any material provided by the Parliament to the Service Provider for the purposes of this Agreement which includes, but not limited to, equipment,

documents, software, hardware, information, data stored by any means and any other materials.

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

**Price Schedule** means the schedule of Rates and Fees payable by the Parliament to the Service Provider 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 Service Provider for the provision of the Services, determined in accordance with the Price Schedule.

**Representative** means the person or persons nominated by the Parliament and the Service Provider in **Item 2 of Schedule 1** or any other person who is subsequently appointed in accordance with **clause 7.1**.

**Request for Tender or RFT** means the request for tender issued by the Parliament in relation to "Performance Audit of the Victorian Auditor-General and the Victorian Auditor-General's Office" on 18 December 2015.

**Service Levels** means the service levels the Service Provider 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 7.2(c)**.

**Services** means the services to be provided by the Service Provider specified in **Schedule 2**.

**Specified Personnel** means the personnel nominated by the Service Provider for the roles provided by **Item 3 of Schedule 1**.

**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).

**Tender Documentation** means the documentation submitted by the Service Provider in response to the Request for Tender, in the form finally accepted by the Parliament, as set out in **Annexure B**.

**Term** means the period of time from the earlier of:

- (a) the Commencement Date; and
- (b) the date the Service Provider commenced providing the Services,

until the Service Provider has provided all of the Services and the Parliament has made all payments as required under this Agreement (unless the Agreement is terminated earlier in accordance with the terms of this Agreement).

**VAGO** has the meaning given to it in paragraph A of "Background" section.

## 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; and
  - (vi) the Parliament is a reference to the Parliament of Victoria in right of the Parliament of Victoria; and
- (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. Commencement and Completion

The Service Provider 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.

### **3. Performance of the Services**

#### **3.1 Provision of Services**

- (a) The Service Provider must provide the Services for the Parliament in accordance with the terms of this Agreement.
- (b) The terms of this Agreement shall be binding on the parties for the Term.

#### **3.2 Service Levels**

The Service Provider 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 Service Provider must:

- (a) provide the Services to the reasonable satisfaction of the Parliament 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 Parliament;
- (d) comply with all statements or representations as to its performance or the provision of the Services set out in the Tender Documentation; and
- (e) keep the Parliament 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 Parliament.

#### **3.3 Compliance with Parliament's directions**

In performing the Services, the Service Provider must comply with all the directions given by the Parliament from time to time.

#### **3.4 Service Provider to provide facilities**

The Service Provider must provide and maintain suitable and sufficient facilities (including but not limited to computer software, hardware and other equipment) staff and resources to perform the Services.

#### **3.5 Cooperation with other service providers**

The Service Provider must cooperate with any third party service provider appointed by the Parliament where this is necessary to ensure the integrated and efficient achievement of the Parliament's objectives. Without limiting the foregoing, the Service Provider must provide such reasonable assistance to other service providers as the Parliament may request from time to time.

#### **3.6 Time of the Essence**

Time is of the essence in relation to the provision of the Services under this Agreement. Without limiting any other provisions of this Agreement, if, at any time during the Term, the

Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, or is delayed or is likely to be delayed in the supply of the Services, the Service Provider must immediately notify Parliament's Representative of that fact. Parliament's Representative may agree, in its sole discretion, to extend the Completion Date.

### 3.7 Variations

The Parliament may at any time give written notice to the Service Provider proposing a variation to the scope of the Services (including any necessary extension to the Completion Date). The Service Provider must, within 5 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 Parliament may accept such proposal within 5 Business Days of its receipt from the Service Provider. In the absence of such acceptance, the Services must be performed in accordance with this Agreement without such variation.

## 4. Service Provider's staff

### 4.1 Personnel to comply with this Agreement

The Service Provider must ensure that:

- (a) the Services are provided by personnel with appropriate skills, qualifications and experience; and
- (b) all of its personnel comply with the obligations of the Service Provider under this Agreement.

### 4.2 Specified Personnel

The Service Provider must at all times ensure that the Specified Personnel perform their designated roles in the provision of the Services as detailed in **Item 3 of Schedule 1**.

### 4.3 Replacement of Specified Personnel

- (a) If the Specified Personnel are unavailable or otherwise unable to provide the Services, the Service Provider must promptly notify the Parliament of that fact and provide details of alternate, suitably qualified and experienced staff to replace the Specified Personnel (**Replacement Personnel**).
- (b) The Parliament must notify the Service Provider in writing within 2 Business Days as to whether or not it accepts the Replacement Personnel proposed by the Service Provider pursuant to **clause 4.3(a)**. The Service Provider acknowledges and agrees that the Parliament will be under no obligation to accept any person proposed by the Service Provider if the Parliament is not satisfied as to the qualifications and experience of such person.

### 4.4 Parliament's right to remove

- (a) If the Parliament is dissatisfied with the performance of particular personnel (not limited to the Specified Personnel or Replacement Personnel), the Parliament may request that the Service Provider remove that personnel from their involvement in the provision of the Services. Subject to any applicable law, the Service Provider must comply with such a request.

- (b) Subject to this **clause 4**, the Service Provider must promptly replace the relevant personnel at no additional cost to the Parliament with another person who has the appropriate skills, qualifications and experience.

## 5. Price for the Services

- (a) The Price Schedule (including the Rates and the Fees) according to which the Service Provider will charge the Parliament 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.
- (b) Expenses or other disbursements may only be charged by the Service Provider in accordance with **Schedule 2**.

## 6. Invoicing and payment

### 6.1 Invoicing

- (a) The Service Provider must submit to the Parliament a tax invoice (or invoices) in respect of the Services as soon as practicable after the completion of the Services, or at such other time or times set out in **Schedule 2** or as otherwise agreed by the parties in writing.
- (b) A tax invoice submitted for payment pursuant to **clause 6.1(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**.

### 6.2 Payment of invoice

- (a) Subject to the remainder of this **clause 6.2**, the Parliament will pay the invoiced amount to the Service Provider 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 Parliament's Representative. An invoice will not be certified for payment unless the Parliament's Representative is satisfied that it is correctly calculated with respect to the Services for which payment is sought and that the Service Provider is entitled to claim payment.
- (c) If the Parliament's Representative disputes the invoiced amount (whether in whole or in part) for any reason, the Parliament must pay the undisputed amount of such invoice (if any), and notify the Service Provider of the amount the Parliament believes is due for payment. If the Parliament and the Service Provider are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with **clause 21**.
- (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 Levels and otherwise in accordance with this Agreement;
  - (ii) evidence of the value of the Services supplied; or
  - (iii) an admission of liability,
 but must be taken only as payment on account.

### 6.3 Fair Payment

- (a) The Parliament will, on demand by the Service Provider, 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 6.3(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 (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) properly rendered by the Service Provider 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.

## 7. Contract management

### 7.1 Parties' Representatives

- (a) For the purposes of ensuring a productive and efficient relationship between the Parliament and the Service Provider, each of the Parliament and the Service Provider 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 Service Provider will have regard to all requirements of the Parliament's Representative and will comply with all reasonable directions of the Parliament'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.

### 7.2 Service Levels

- (a) The Service Provider 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.

### 7.3 Progress report

The Service Provider must provide to the Parliament's Representative:

- (a) a progress report in respect of the Service Provider'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 Parliament's Representative may request to enable it to adequately assess the performance of the Service Provider.

**8. Not Used****9. Access to Records****9.1 Service Provider to retain records**

The Service Provider must, for a period of seven years after the expiry or termination of this Agreement or completion of the Services (whichever is the earlier):

- (a) keep full, true and accurate 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 to the Parliament in respect of the Services; and
- (b) keep such other records in relation to the Services as the Parliament reasonably requires from time to time,

to the satisfaction of the Parliament, in a manner that enables them to be conveniently and properly audited.

**9.2 Right to access and audit**

The Parliament or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit such accounts and records of the Service Provider described in **clause 9.1**. Such representatives will be entitled (at the expense of the Parliament) to take copies of or extracts from any such records, and interview any of the Service Provider's personnel as they think necessary.

**9.3 Cost and responsibility**

Subject to any agreement between the parties to the contrary and **clause 9.2**, each party must bear its own costs of any audit.

**9.4 Subcontracts**

The Service Provider must ensure that any subcontract entered into for the purpose of this Agreement contains a clause equivalent to this **clause 9**.

**10. Intellectual Property Rights****10.1 Warranty and indemnity by Service Provider**

The Service Provider warrants to the Parliament 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.

**10.2 Ownership of Contract Intellectual Property**

- (a) Subject to **clauses 10.3** and **10.4**, all Contract Intellectual Property vests in and is the property of the Parliament from the time of its creation.
- (b) Subject to **clauses 10.3** and **10.4**, the Service Provider hereby irrevocably and unconditionally assigns to the Parliament, free of additional charge, all of its right, title and interest in and to the Contract Intellectual Property, and the Service Provider must sign all documents and do all things reasonably required to ensure that such assignment is effected.

- (c) The Service Provider must procure from all of its employees, agents, contractors and other third parties who are authors or makers of any Contract Intellectual Property (and must procure that any contract with any third party for the creation of any Contract Intellectual Property includes a provision that requires such person to obtain from its employees, agents and contractors) a written assignment of all Intellectual Property Rights of the employee, agent, contractor or third party in the Contract Intellectual Property as necessary to give effect to **clauses 10.2(a) and (b)** and a written consent from all individuals involved in the creation of any Contract Intellectual Property irrevocably consenting to the Parliament exercising its rights in the Contract Intellectual Property in a manner that, but for the consent, would otherwise infringe the moral rights of those individuals.

### **10.3 Ownership of Pre-Existing Intellectual Property**

All Pre-Existing Intellectual Property used and identified to the Parliament by the Service Provider in connection with the provision of the Services or the creation of Contract Intellectual Property remains the property of the Service Provider or its licensors.

### **10.4 Licence of Pre-Existing Intellectual Property**

- (a) Subject to **clause 10.4(b)**, the Service Provider hereby irrevocably and unconditionally grants to the Parliament, free of additional charge, a non-exclusive, worldwide 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 Service Provider in connection with the provision of Services or the creation of Contract Intellectual Property.
- (b) The licence granted to the Parliament in **clause 10.4(a)** is limited to use of the relevant Pre-Existing Intellectual Property by the Parliament for the purposes of the Parliament and for no other purpose.

## **11. Parliament Supplied Materials**

### **11.1 Provision of Parliament Supplied Materials**

- (a) Where the Parliament Supplied Materials are provided by the Parliament to the Service Provider, the Service Provider must:
- (i) utilise the Parliament Supplied Materials in the performance of the Services in accordance with this Agreement;
  - (ii) not use the Parliament Supplied Materials other than for the purposes of this Agreement without the prior written approval of the Parliament; and
  - (iii) not, except with the consent of the Parliament, part with possession of the Parliament Supplied Materials nor create or suffer to be created any lien, charge or mortgage over any the Parliament Supplied Materials or any part of it.
- (b) The Parliament Supplied Materials and any IP Rights in them remain the property of the Parliament or a relevant third party (as the case may be).

### **11.2 Use of Parliament Supplied Materials**

- (a) The Service Provider must:
- (i) take all reasonable care of all the Parliament Supplied Materials;

- (ii) indemnify the Parliament and the Parliament for any loss or destruction of, or damage to, the Parliament Supplied Materials caused by the act or omission of the Service Provider or its personnel;
  - (iii) promptly inform the Parliament of any loss, destruction of, or damage to, the Parliament Supplied Materials; and
  - (iv) comply with any directions of the Parliament for preservation, forwarding or disposal of any damaged part of the Parliament Supplied Materials.
- (b) Other than as provided in this Agreement, the Service Provider must not modify the Parliament Supplied Materials without the prior approval of the Parliament.

### **11.3 Risk and maintenance**

- (a) The risk in the Parliament Supplied Material is born by the Service Provider while such material is provided to the Service Provider.
- (b) The Service Provider is responsible for the safe keeping and maintenance of all the Parliament Supplied Materials until the Service Provider is required to return it to the Parliament in accordance with this Agreement.
- (c) The Service Provider must, at its own cost, promptly make good, replacement or damage to the Parliament Supplied Materials except to the extent that the loss or damages is solely caused by:
  - (i) fair wear and tear; or
  - (ii) the Parliament or its personnel while such materials are under its care.

### **11.4 IP Rights of third parties**

- (a) The Parliament will inform the Service Provider whether or not any of the Parliament Supplied Materials are subject to any third party's IP Rights and any associated conditions applicable because of those IP Rights.
- (b) The Service Provider must only use the Parliament Supplied Materials in accordance with these conditions.

### **11.5 Return of Parliament Supplied Material**

Upon termination or expiry of this Agreement or any other time specified by the Parliament, the Service Provider must return all the Parliament Supplied Material to the Parliament. Unless otherwise agreed between the parties, the Service Provider will bear all the costs associated with such return.

## **12. Failure to perform**

- (a) Without limiting any other clause of this Agreement, or any other remedy the Parliament may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of this Agreement (including the applicable Service Levels), the Parliament will not be required to pay for those Services and may, by notice in writing to the Service Provider, require the Service Provider to:

- (i) remedy any default (if the default is capable of being remedied) at the Service Provider's own expense; or
- (ii) re-perform the Services (if the Services are capable of being re performed by the Service Provider),

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 Parliament, then the Parliament 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 Service Provider of remedying or re performing the Services).
- (c) If the default referred to in clause 12(a) is not capable of being remedied or the Services are not capable of being re-performed, or the Service Provider fails within the time specified to remedy the default or re-perform the Services, the Parliament 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 Service Provider must pay the reasonable costs incurred by the Parliament in doing so.

## 13. Liability

### 13.1 Liability

The Service Provider must indemnify the Parliament 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 Service Provider, including any failure to provide the Services in accordance with this Agreement;
- (ii) any warranty given by the Service Provider under this Agreement being incorrect or misleading in any way;
- (iii) any negligent act or failure to act by the Service Provider or any of the Service Provider'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 Parliament, its officers or employees.

### 13.2 Tax on indemnity payment

If any indemnity payment is made by the Service Provider under this **clause 13**, the Service Provider 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.

## 14. Warranties

The Service Provider warrants that:

- (a) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable Australian auditing 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 Tender Documentation for the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during the Term;
- (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 Parliament, the Service Provider and its employees, agents and contractors will at all times comply with the Parliament's lawful directions and policies of which the Service Provider is notified or is otherwise aware, including any applicable occupational health and safety and security policies;
- (e) where the Parliament has, either expressly or by implication, made known to the Service Provider 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 Service Provider in or in connection with the Tender Documentation were and remain accurate and the Service Provider has and will maintain at all relevant times the quality assurance arrangements set out in the RFT and Tender Documentation.

## 15. Conflict of Interest

- (a) The Service Provider warrants to the Parliament 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 Service Provider must promptly inform the Parliament of any matter which may give rise to an actual or potential conflict of interest.
- (c) The Service Provider acknowledges and agrees that failure to comply with this **clause 15** will constitute a breach of a fundamental term of this Agreement.

## 16. Change in Control

- (a) The Service Provider must notify the Parliament in writing of any impending change in Control of the Service Provider's parent/associated company or partnership of which it becomes aware.

- (b) In determining whether or not to provide its consent to a change in Control, the Parliament may consider such information as it considers relevant or necessary, including:
- (i) compliance by the proposed owner with Governmental policies;
  - (ii) insurance coverage maintained by the proposed owner;
  - (iii) the financial viability of the proposed owner; and
  - (iv) the likely ability of the proposed owner to satisfy the requirements set out in the Tender Documentation, and the obligations of the Service Provider under the Agreement.
- (c) If the Parliament notifies the Service Provider that it does not consent to the proposed change in Control or consent is not sought, and the change in Control occurs notwithstanding, the Parliament may, by notice in writing to the Service Provider, terminate this Agreement, such termination to take effect at any nominated time within the immediately succeeding 12 months.

## 17. Termination

### 17.1 Grounds for termination by the Parliament

The Parliament may terminate this Agreement by notice in writing to the Service Provider if:

- (a) the Service Provider fails to provide the Services in accordance with the Service Levels or otherwise in accordance with the requirements of this Agreement;
- (b) the Service Provider fails to remedy, to the satisfaction of the Parliament, any breach of this Agreement (which in the reasonable opinion of the Parliament is able to be remedied) within 14 days after the date on which the Parliament issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
- (c) the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the Parliament such breach cannot be remedied;
- (d) the Service Provider or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;
- (e) the Replacement Staff proposed by Service Provider under **clause 4.3(b)** are unacceptable to the Parliament;
- (f) the Service Provider 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 Service Provider into disrepute and as a consequence the Parliament believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the Parliament; or
- (g) the Service Provider becomes bankrupt or enters into a scheme or arrangement with creditors.

### 17.2 Termination without cause

The Parliament may terminate this Agreement without cause by giving the Service Provider 24 hours' notice in writing.

### 17.3 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 Parliament pursuant to **clause 17.2**:
  - (i) the Service Provider 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 Parliament will pay to the Service Provider 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 Parliament, been performed in accordance with the Service Levels and the requirements of this Agreement.

### 17.4 Knowledge Transfer

Without limiting any other provisions of this Agreement, if requested by the Parliament the Service Provider must:

- (a) transfer to the Parliament data and information stored by whatever means, held by the Service Provider or under the control of the Service Provider, in connection with this Agreement; and
- (b) make the persons specified in **Item 3 of Schedule 1** or any other Service Provider's personnel available for discussions with the Parliament as may be required. The time, length and subject of these discussions will be at the sole discretion of the Parliament, provided that any matter discussed is not considered to reveal any 'Commercial in Confidence' information of the Service Provider,

to facilitate the smooth transition of the relevant information and knowledge or any remaining Services from the Service Provider to the Parliament (or to any other service provider nominated by the Parliament) upon termination or expiry of this Agreement.

### 17.5 Survival

**Clauses 9, 10, 13, 14, 17.3 and 20** of this Agreement survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at any time.

## 18. Insurance

### 18.1 Service Provider to maintain insurance

- (a) The Service Provider must (and must ensure that any sub-contractors appointed by it under **clause 23**) obtain and maintain the insurances specified in **Item 7 of Schedule 1**.
- (b) On request, the Service Provider must provide the Parliament with evidence of the currency of any insurance it is required to obtain.
- (c) Where any insurance the Service Provider is required to obtain and maintain expires (**Initial Insurance**), the Service Provider must provide the Parliament with evidence of the currency of relevant replacement insurance prior to the expiration of the Initial Insurance.

- (d) Any insurance obtained pursuant to **clause 18.1(a)** or **(c)** must:
- (i) be taken out with an insurer acceptable to the Parliament;
  - (ii) be on terms (including any excess) which are acceptable to the Parliament; and
  - (iii) note the interest of the Parliament.

## 18.2 Accident Compensation

The Service Provider must ensure that, in respect of its employees and contractors and any other persons engaged by the Service Provider 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 Parliament on request any certificates or like documentation required by the *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

## 19. Not Used

## 20. Confidentiality, Privacy and Data Protection

### 20.1 Use of Confidential Information

- (a) The Service Provider 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 Service Provider to perform its obligations under this Agreement;
  - (iii) ensure that the Confidential Information is stored in a safe and secure manner, and protect it against unauthorised copying, use, disclosure, access and damage or destruction, at all times; and
  - (iv) comply with all the Parliament's policies (as notified to the Service Provider from time to time by the Parliament) and the applicable law in relation to the Confidential Information and take all necessary precautions to prevent any unauthorised access to the Confidential Information.
- (b) If requested, the Service Provider must arrange for its personnel (including sub-contractor and its employees) to execute a deed of confidentiality in the form specified in **Schedule 4**.
- (c) All Confidential Information will remain the property of the Parliament (or the VAGO as the case may be) and all copies or other records containing the Confidential Information (or any part of it) must be returned by the Service Provider to the Parliament (or the VAGO as the case may be) or destroyed by the Service Provider as the Parliament directs, on termination or expiry of this Agreement. The Service Provider must promptly

provide the Parliament with reasonable proof of destruction, upon request, on termination or expiry of this Agreement.

- (d) The Service Provider acknowledges that the Parliament 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 Service Provider of this clause and without the need on the part of the Parliament to prove any special damage.

## 20.2 Disclosure of Service Provider's Information

- (a) Subject to **clause 20.2(b)**, the Parliament agrees to treat as confidential all information of or relating to the Service Provider that is provided to it, whether under this Agreement or the Tender Documentation, by or on behalf of the Service Provider.
- (b) The Service Provider hereby acknowledges and/or consents to:
- (i) the Parliament (or such other Governmental agency 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;
  - (ii) the Parliament making available to the Victorian Auditor-General all information that is requested by the Auditor-General;
  - (iii) the Parliament making available all information in relation to the Service Provider or this Agreement as may be required to comply with its obligations under the Law; and
  - (iv) the Parliament making available to any other government bodies or any other person as it is necessary to meet the requirement under, or in connection with, the *Audit Act 1994* (Vic).

## 20.3 Privacy

The Service Provider 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 Service Provider under or in connection with this Agreement in the same way and to the same extent as the Parliament would have been bound had it been directly done or engaged in by the Parliament.

## 20.4 Data Protection

The Service Provider 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 Service Provider, on behalf of the Parliament, under or in connection with this Agreement.

## 21. Disputes

### 21.1 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 Parliament (on the one hand)

and the Service Provider (on the other hand) will promptly meet and discuss in good faith with a view to resolving such Dispute.

## 21.2 Mediation

- (a) If any Dispute is unable to be resolved in accordance with **clause 21.1** 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.

## 21.3 Arbitration or litigation

- (a) If the parties fail to settle any Dispute in accordance with **clause 21.2**, 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 21.3(a)**, either party may submit the dispute for resolution to the non-exclusive jurisdiction of the Courts of Victoria, Australia.

## 21.4 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 21**.

## 21.5 Interlocutory relief

Nothing in this **clause 21** is to be taken as preventing any party to a dispute from seeking interlocutory relief in respect of such dispute.

## 22. Compliance with Law and Policy

### 22.1 General Law

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

### 22.2 Code of Conduct

Where, in the course of providing the Services, the Service Provider, or its employees or sub-contractors:

- (i) supervise or work with Public Sector Employees;
- (ii) 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

- (iii) use or have access to public sector resources or information that are not normally accessible or available to the public,

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

### **22.3 Employment Policy**

- (a) The Service Provider 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 Service Provider, or by a sub-contractor, in the provision of the Services, the conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

### **23. Sub-contracting**

- (a) Except as expressly provided in this Agreement, the Service Provider must not sub-contract to any third person any of its obligations under this Agreement without the prior written consent of the Parliament, which consent may be given or withheld by the Parliament in its absolute discretion.
- (b) The Service Provider must ensure that any person engaged by it complies with all obligations imposed on the Service Provider by this Agreement. The Service Provider 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 Service Provider itself.

### **24. Access and safety**

#### **24.1 Access to premises**

If the Service Provider requires access to the premises of the Parliament and/or the VAGO in connection with the provision of the Services, the Parliament will, subject to its usual security requirements, permit (or seek permission from the VAGO) the Service Provider reasonable access to the premises at such times as may be reasonably necessary to enable the Service Provider to provide the Services.

#### **24.2 Obligations**

When the Service Provider enters the premises of the Parliament, the Service Provider 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 Parliament (as notified to the Service Provider); and

- (d) comply with the Occupational Health and Safety Act 2004 (Vic) and any applicable regulations made under that Act.

## 25. GST

### 25.1 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).

### 25.2 Consideration is inclusive 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 inclusive of GST. The recipient's obligation to pay the GST component of the consideration is subject to it receiving a valid tax invoice in respect of the supply at or before the time of payment.

### 25.3 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.

## 26. Staff Costs

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

## 27. Notices

### 27.1 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 (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

- (a) to the Parliament: at the address which is set out in **Item 8 of Schedule 1**; and
- (b) to the Service Provider: at the address which is set out in **Item 8 of Schedule 1**.

### 27.2 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 facsimile transmission, on receipt by the sender of a transmission report from the despatching machine showing: the date of transmission, the relevant number of pages, the correct telephone number of the destination facsimile machine and the result of the transmission as satisfactory; 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.

### **27.3 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.

## **28. General**

### **28.1 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.

### **28.2 Amendment**

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

### **28.3 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 by the first party.

### **28.4 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.

### **28.5 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.

**28.6 Set off**

The Parliament may set off against any sum owing to the Service Provider under this Agreement any amount then owing by the Service Provider to the Parliament.

**28.7 Time of the essence**

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

**28.8 Governing law and jurisdiction**

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

**28.9 Counterparts**

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

**28.10 Entire understanding**

- (a) This Agreement, together with:
  - (i) the Tender Documentation; and
  - (ii) any other documents or representations specified in **Item 9 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 28.10(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.

**28.11 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 1.1)

---

Commencement Date: [TBA]

Completion Date: [TBA]

#### Item 2: Parliament and Service Provider Representatives (Clause 7.1)

---

##### Parliament's Representative

Name: [TBA]

Title: [TBA]

Telephone: [TBA]

Mobile: [TBA]

Email: [TBA]

##### Service Provider's Representative

Name: [TBA]

Title: [TBA]

Telephone: [TBA]

Mobile: [TBA]

Email: [TBA]

#### Item 3: Service Provider's staff (Clause 4)

---

Insert details of Service Provider's employees or contractors who will be engaged in the provision of the Services:

[TBA]

#### Item 4: Invoicing (Clause 6)

---

##### Invoice requirements:

Invoices must contain the information necessary to be a tax invoice for the purposes of the *A New Tax System (Services and Services Tax) Act 1999* (Cth)

##### Address for invoice:

Business Support Officer  
Public Accounts and Estimates Committee  
Parliament House  
Spring Street  
East Melbourne VIC 3002

#### Item 5: Payment (Clause 6)

---

Payment for Services is to be made in accordance with any of the following methods:

[TBA]

**Item 6: Progress report (Clause 7.3)**

---

[TBA]

**Item 7: Insurance (Clause 18.1)**

---

<b>Type of coverage</b>	<b>Amount (AUD)</b>
Public liability insurance	\$10 million
Professional indemnity insurance	\$5 million
Workers Compensation	As required by law

**Item 8: Notice particulars (Clause 27)**

---

**Parliament:**

Address: Parliament House, Spring Street, East Melbourne 3002

Email: paec@parliament.vic.gov.au

Addressee: The Executive Officer, Public Accounts and Estimates Committee, Parliament of Victoria

**Service Provider:**

Address: [TBA]

Fax: [TBA]

Email: [TBA]

Addressee: [TBA]

**Item 9: Documentation (Clause 28.9)**

---

Insert details of any additional documentation (other than the Tender Documentation) that forms part of this Agreement:

[TBA]

## Schedule 2

### Services and Price Schedule

#### 1. Services

The Services are described in the following documents (which documents are hereby incorporated into this Agreement) namely:

- (a) Part B of the Request for Tender dated [TBA] issued by the Parliament attached to this Agreement as Annexure A;
- (b) the Service Provider's Tender dated [TBA] attached to this Agreement as Annexure B [Tender Documentation];
- (c) any published specifications and other representations (including advertised claims) of the Service Provider and in relation to the Services; and
- (d) the following documents which modify the original specifications [insert details of documents].

In interpreting the documents which describe the Services, the following order of precedence will apply to the extent of any inconsistency:

- (a) The Agreement;
- (b) The Schedules;
- (c) Part B of the Request for Tender;
- (d) The Tender Documentation.

#### Work program

	Milestones/deliverables	Due date
1	Proposed audit plan	31 March 2016
2	Progress report on the audit	9 May 2016
3	First draft preliminary report on audit findings and recommendations	1 July 2016
4	Final performance audit report transmitted to the Parliament of Victoria	1 August 2016

**2. Price Schedule**

The Fees payable to the Service Provider for the Services are as follows:

Payment events	Instalment (% of total Fee)	Amount (GST inclusive)
1 The Parliament's acceptance of the draft preliminary report	50%	[TBA]
2 The Parliament's acceptance of the final report	50%	[TBA]
<b>Total</b>	<b>100%</b>	<b>[TBA]</b>

## Schedule 3

### Service Levels

Without limiting any other provisions of this Agreement, the Service Provider must maintain the requisite capacity, capability, experience and depth of resources to ensure that the Services provided to the Parliament:

- are high quality and reliable;
- represent best value for money; and
- support the Parliament in successful management, negotiation and mitigation of commercial risks.

Generally, the performance of the Service Providers will adhere to the following principles:

- Services provided to time, quality and cost parameters;
- consistent performance, continuity and quality of staff;
- ensuring advisory independence and adherence to probity, conflict of interest and confidentiality requirements;
- having advisory recommendations acknowledged and acted upon and consistent with industry standards;
- ability to meet engagement deliverables and any key performance indicators specified in this Agreement; and
- responsive and pro-active project management.

In providing the required Services and otherwise performing its obligations under the Agreement, the Service Provider must comply with the Service Levels described in the above including the following key performance indicators:

Key Performance Indicator	Measure
Parliament's satisfaction with the Services provided	A specific review by the Parliament of the Service Provider's reports (as described in Part A of the RFT).
Quality and impartiality of analysis, findings and recommendations.	That the advice facilitates delivery of the primary objectives and Specifications of the RFT as set out in Part A.2 of the RFT and as attached to this Agreement as <b>Annexure A</b> .  That the advice provided is sufficiently clear, detailed and documented to allow the Parliament to make informed decisions in relation to the audit findings and recommendations.  That the advice provided has regard to any relevant and/or applicable legislative objectives and constraints.
Timeliness of advice received	That the timelines for reporting and tabling in Parliament as set out in this Agreement are met by the Service Provider.  That the Parliament is satisfied with the quality and timeliness of the advice provided.

Retention of Specified Personnel	<p>That the Service Provider's Specified Personnel remain substantially unchanged during the performance of the Services.</p> <p>If the Service Provider's Specified Personnel vary, that the Service Provider can continue to meet the engagement requirements as detailed in Part A.2 Specifications of the RFT.</p>
No adverse feedback on the draft Preliminary Report	<p>That the Parliament provides no significant or serious adverse/ negative feedback in respect to the quality and detail indicated in the evidence, analysis, and conclusions/ findings contained in the draft preliminary report provided by the Service Provider.</p>

## Schedule 4

### Deed Poll of Confidentiality

**Date:**

**By** [NAME] of [address] (**'the Confidant'**)

**in favour of**

The State of Victoria through the Parliament of Victoria (**'Parliament'**)

#### Recitals

- A. The Parliament has entered into an Agreement with [insert name of Service Provider] (**"the Service Provider"**) for the provision of Performance Audit of the Victorian Auditor-General and the VAGO dated [insert date] (**"the Agreement"**).
- B. In order to supply the services under the Agreement, the Service Provider and the Confidant have entered into a subcontract, employment or agency arrangement (**"the Contract"**).
- C. In performance of the Contract, information of a secret and confidential nature concerning the State of Victoria including the Parliament of Victoria, the Victorian Auditor-General's Office or any other government departments and/or agencies whether it is in the possession of the Victorian Auditor-General's Office or not may be inadvertently provided to or otherwise become known to the Confidant.
- D. The Confidant agrees to keep information confidential pursuant to the following terms and conditions.

#### Operative Provisions

##### 1. Interpretation

For the purposes of this Deed –

**"Information"** includes anything capable of being known and communicated obtained or coming into the possession of the Confidant in performance of the Contract and includes –

- (a) each and every item, Part and component of such information; and
- (b) any copy (in whatever form) of such information, including any form in which the information is recorded or stored, whether or not it is the same form in which it was first conveyed to or came into the possession of the Confidant.

##### 2. Confidentiality

###### 2.1 Duty to project information

The Confidant will protect all Information from unauthorised access or use, and will take and enforce proper and adequate precautions at all times to preserve the secrecy and the confidentiality of all information.

###### 2.2 Exception

This Deed does not apply to Information –

- (a) that, when it is provided to or obtained by the Confidant, is in the public domain through having been published or otherwise made available to the public;
- (b) that becomes available to the public after the date on which it is provided to the Confidant, other than through a breach by the Confidant of [his/her] obligations, whether those obligations arise under this Deed, at common law, or in any other way;
- (c) that was known to the Confidant as at the date of this Deed and was not derived either directly or indirectly from the Parliament or any instrumentality of the Parliament;
- (d) that is required to be disclosed by an Order of a court of competent jurisdiction;
- (e) that is disclosed pursuant to the requirements of a law; or
- (f) that is disclosed for the purposes of any dispute or difference between the Confidant and the Parliament for the purpose of obtaining advice from professional advisers in connection with any such dispute or difference.

### **3. Protection of Information**

#### **3.1 Limitations on distribution, disclosure and use**

- (a) Except as otherwise provided in this Deed –
  - (i) distribute Information or cause or allow it to be available to any person;
  - (ii) disclose to any person that she has the Information or the terms on which she has access to or has been supplied with Information; or
  - (iii) use the Information for her own purposes, or for the purposes of any other person.
- (b) In particular, the Confidant will not represent to any other person that [he/she] is able to use Information for the benefit of that person, or enter into a contract by which [he/she] agrees to use Information for the benefit of another person.
- (c) The Confidant will not:
  - (i) copy or reproduce;
  - (ii) make available any reproductions of, or
  - (iii) store, to enable reproduction of (in any form) –

any document, or other record which contains, is based on or uses, Information, unless [he/she] is expressly permitted to do so by the Parliament.

#### **3.2 Limitations on retention**

- (a) Upon request by the Parliament, the Confidant will immediately:
  - (i) deliver to the Parliament all Information in [his/her] possession that is capable of being delivered; and
  - (ii) delete, erase or otherwise destroy all information contained in computer memory, magnetic, optical, laser, electronic, or other media in [his/her] possession or control which is not capable of delivery to the Parliament and certify by way of

statutory declaration to the Parliament that such Information has been deleted, erased or otherwise destroyed.

- (b) Without in any way limiting the scope and meaning of sub clause 3.2(a) and the words and expression in that sub clause, and for the purposes only of clarification, the Confidant:
- (i) will not retain in any form any note, report, summary, memorandum or other document containing or referring to Information; and
  - (ii) will institute and use a system to enable all copies, notes, reports, summaries, memoranda and other documents containing, pertaining to or referring to Information to be traced and returned.

### **3.3 Non Derogation**

The provisions of this Deed shall not derogate from but shall be in addition to the obligations of the Confidant at law or in equity.

### **3.4 Damages not Sufficient**

If there is any conduct or threatened conduct which is or will be a breach of this Deed, the Confidant acknowledges that damages may be inadequate compensation for such a breach and the Parliament shall be entitled to apply to any court of competent jurisdiction for interim and permanent injunctive relief restraining the Confidant from committing any breach or threatened breach of this Deed without showing or proving any actual damage sustained by the Parliament, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Parliament may be entitled at law or in equity.

Executed as a deed poll

**Signed sealed and delivered by**

.....  
**(Confidant's Name)**

.....  
**(Confidant's Signature)**

**in the presence of:**

.....  
**(Witness Name)**

.....  
**(Witness Signature)**

**Executed** as an agreement.

Signed by Hon Telmo Languiller MP, Speaker of the Legislative Assembly, a duly authorised officer of the **Parliament of Victoria** for and on behalf of the **STATE OF VICTORIA** in the presence of:

.....  
Witness

.....  
Name of Witness (print)

Signed by Hon Bruce Atkinson MLC, President of the Legislative Council, a duly authorised officer of the **Parliament of Victoria** for and on behalf of the **STATE OF VICTORIA** in the presence of:

.....  
Witness

.....  
Name of Witness (print)

The Service Provider:  
**Signed** by [*Insert*] in the presence of:

.....  
Witness

.....  
Name of Witness (print)



## Part D – The offer

### Tender document

As noted in Part A.1 clause 6 'E-Lodgement details':

- Tenderers must provide an electronic copy of the Tenderer's Offer in Microsoft Office 2000 format, submitted in accordance with the Conditions of Tender.
- All responses/offers must be provided within the space allowed alongside the requested details and must respond to the Invitation (Part A) in accordance with the Conditions of Participation (Part B) and with regard to the Proposed Contract (Part C).
- Do not include graphics or data in responses. Where necessary, any graphics or data should be placed at the end of the documents and referred to in the response.
- Include the name of the Tenderer in the footer of the Tender/Offer.
- All documents must be virus checked by the Tenderer before lodgement.

#### Note to Tenderers:

- The Parliament may in its absolute discretion reject a Tender that does not include the information requested or is not in the format required.
- The Parliament will assume that a Tenderer's Offer complies in all relevant respects with the Specification unless the Tenderer states otherwise. Failure to notify the Parliament of any non-compliance may result in a Tenderer's Offer being disregarded.
- The Parliament will assume that a Tenderer is able to and will in fact comply in all relevant respects with the Proposed Contract unless the Tenderer expressly states otherwise. Failure to notify the Parliament of any non-compliance may result in a Tenderer's Offer being disregarded.

Parliament of Victoria

Request for Tender for: Performance Audit of the Victorian Auditor-General and the Victorian Auditor-General’s Office

I/we accept the provisions contained in the Conditions of Tendering.

Name: [Redacted]

Title: \_\_\_\_\_

Signature of Tenderer: \_\_\_\_\_

Tenderer’s Information

Name of Tenderer (natural person) and address: \_\_\_\_\_

Parent/Associated Company or Partnership Details:

Name: \_\_\_\_\_

Place of registration: \_\_\_\_\_

Australian Company Number (or equivalent): \_\_\_\_\_

Australian Business Number (or equivalent): \_\_\_\_\_

Principal office in Victoria (if any): \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Email: \_\_\_\_\_

Name and title of Tenderer's  
authorised agent:

Date:

### Executive summary

Provide a brief executive  
summary providing an overview  
of the Tender.

### Compliance with the Specification

A Tenderer must provide a tabulated statement showing in order of the relevant clauses, its level of compliance with Part A.2 (Specifications). Refer clause 4.1, Part B (Conditions of Participation).

Tenderers must state if they will not comply with the Specification or will only comply with the Specification subject to conditions. Full details of non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be provided in the tabulated statement.

**No response is required in respect of a particular section of the Specification where a Tenderer will comply with that section. Only sections that Tenderers will not comply with, or will only comply with subject to conditions, should be noted in the tabulated statement.**

Section	Compliance Statement	Explanation / Comment
	<b>Note to Tenderers:</b>	<b>Note to Tenderers:</b>
	<i>The cells in this column need to state one of the following:</i>	<b>Where the statement in column 2 is "Will comply subject to conditions", Tenderers should state in this column 3 the applicable conditions and the reason why those conditions are applicable.</b>
	<b>Will not comply; or</b>	<b>Where the statement in column 2 is "Will not comply" Tenderers should state in this column 3 the reasons for such non-compliance.</b>
	<b>Will comply subject to conditions.</b>	<b>In both cases, the nature and extent of non-compliance must be clearly stated.</b>
	<i>Remove this note when you prepare your Tender.</i>	<i>Remove this note when you prepare your Tender.</i>

**Capability:**

- Membership of a leading Australian, Australasian or International organisation in the fields of auditing and/or consulting (with an emphasis on performance evaluation).
- Has a good appreciation of the role of the Auditor-General's Office.
- Has appropriately qualified, skilled and experienced staff to undertake the performance audit.
- Has relevant knowledge and experience in the use of modern performance audit methodologies and evaluation techniques.

**Knowledge and experience in the service area:**

(a) Provide details of required professional membership.

(b) Provide details of your knowledge and experience in the industry, as it applies to the required Services.

(c) Provide details of your knowledge and understanding of the role of the Auditor-General's Office.

**Infrastructure and other support**

Provide details of your and your parent company /associated entities or partnerships and support which will be used to provide the required Services.

**Staff resources**

Provide a brief 'Curriculum Vitae' for yourself and each member of the staff proposed to provide the required Services including details of qualifications, experience and skills.

**Schedule of proposed sub-contractors****Subcontractor's name:**

Provide details of each proposed sub-contractor (if any) to be engaged in connection with the required Services. Also, define the scope and extent of services to be provided by sub-contractors.

**Address:****Services to be provided:****Methodology/ Evaluation techniques**

(a) Provide details of the methodology you propose to use to provide the required Services.

(b) Provide details of the proposed planning arrangements to be implemented in the provision of the required Services and in meeting specified timelines.

**Past Performance and Current Work**

- Has relevant knowledge and experience in the application of large scale performance audits/performance evaluations.
- Has a general knowledge and understanding of the nature of public sector organisations and the Victorian public sector's system of financial administration and can add value to the operational performance.

**Previous and current work**

(a) Detail knowledge and experience related to the application of large scale performance audits/performance evaluations.

(b) Detail previous work related to the requirements detailed in the Specifications.

(c) Detail current work related to the requirements detailed in the Specifications.

(d) Briefly detail relevant public sector experience and knowledge of public sector financial administration.

(e) Provide information to demonstrate ability to make recommendations aimed at improving operational performance/add value.

**References**

Provide three referees that the Parliament could contact regarding your ability to provide the required Services.

Client and contract details:

Description of service:

Period:

Client and contract details:

Description of service:

Period:

**Note: The Parliament reserves the right to contact any of the Tenderer's previous customers.**

Client and contract details:

Description of service:

Period:

**Related Tenderers**

Provide details of any other Tenderer that is a related body corporate of the Tenderer.

Quality system for deliverables and innovation

- Has comprehensive quality and risk control systems and processes in place for managing deliverables.
- Innovative methodologies or processes for staging/phasing work and meeting specified timelines.

(a) Do you have a certified Quality Management (QA) System?

If YES, to which standard are you accredited?

(b) If you are not currently certified, are you in the process of achieving certification?

If YES:

- To which standard?
- When did you commence?
- Targeted date for completion?
- Accreditation body being used?

(c) If you are not in the process of achieving certification, provide details of how you intend to ensure that the Services provided meet the Parliament’s requirements and industry standards for quality?

(d) If required, are you prepared to undergo a quality assessment by the Parliament or its representatives?

(e) What is the current QA level of proposed sub-contractors (if any)?

**Sub-Contractor**

Name:

QA level:

(f) State your use of any specific leading technologies, innovative solutions and best practice that have assisted with staging/phasing work to meet specified timelines.

**Customer service**

- Willingness and ability to comply with the Parliament's directions and liaise with its staff efficiently.
- Quality and relevance of communication processes and progress reports proposed.

**Customer Service Plan**

(a) The Parliament requires some indication of the level of customer service you would offer. Provide details of the Customer Service Plan you are proposing for this engagement.

(b) What methods will you employ to gather end user feedback?

(c) What strategies will be used to ensure continuous improvement over the Services you provide?

(d) Are there any other customer service orientated proposals that you are offering as part of your tender?

**Benchmarking**

Provide details of what you consider to be appropriate performance measures and benchmarks for the Services you provide.

**Transition**

(a) **Transition-In Plan** – Provide a brief Transition-In Plan identifying the tasks and responsibilities attributed to the Tenderer and to the Parliament.

(b) **Transition-Out Plan** – Provide a brief Transition-Out Plan identifying the tasks and responsibilities attributed to the Tenderer and to the Parliament.

**Strategic**

(a) Provide details of the location of your head office and any networking facilities which you believe may support your ability to provide the required Services at a high level.

(b) State details of any non-metropolitan Victoria based offices within your parent/associated company or partnership (or affiliated companies, if any) that could service any regional requirements.

### Financial viability

- Includes the support of parent companies and associated entities and/or partnerships.

Tenderers are required to demonstrate that they have the financial capacity to provide, over the term of the contract, all the requirements specified in this RFT. Accordingly, you are required to provide the following information.

If the answer to any of the following questions is “yes”, please provide an explanation.

---

(a) Do you have support of a parent company, any associated entities and/or partnerships?

---

(b) Are there any significant events, matters or circumstances which have arisen since the end of the last financial year which may significantly affect your (the Tenderer’s) business operations?

---

(c) Are there any mergers/acquisitions either recent (within the past 12 months) or which are imminent?

---

(d) Are there any proceedings, either actual or threatened, against the Tenderer, its parent or associated entities/partnerships or have there been any such proceedings within the past five years? If so, what (if any) remedial action has been taken in respect of such proceedings?

---

(e) Are there any bankruptcy actions against the Tenderer, its parent or associated entities/partnerships, or has there been within the past five years?

---

(f) Are there any de-registration actions against the Tenderer, its parent or associated entities/partnerships on foot, or have there been any within the past five years?

---

(g) Are there any insolvency proceedings, actual or threatened (including voluntary administration, application to wind up, or other like action) against the Tenderer, its parent or associated entities/partnerships on foot, or have there been any within the past five years?

---

(h) Is the Tenderer, its parent or associated entities/partnerships currently in default of any agreement, contract, order or award that would or would be likely to adversely affect the financial capacity of the Tenderer to provide the Services contemplated by this RFT?

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(i) Are there any other factors which could adversely impact on the financial ability of the Tenderer to successfully perform the obligations contemplated by this RFT?

(j) Is the Tenderer solvent and able to meet its debts as and when they fall due in the normal course of business?

In addition to the information required above, Tenderers are required to undertake to provide to the Parliament (or its nominated agent) upon request all such information as the Parliament reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to provide the Services for which they are tendering and to otherwise meet their obligations under the Proposed Contract.

Provide your undertaking to comply with this request.

#### Risk and insurance

- Includes evidence of compliance with insurance requirements.

#### Schedule of insurance information

Name of insurance companies:

Provide details of all relevant insurances maintained by the Tenderer.

Policy type (eg public liability, professional indemnity, etc):

Policy number(s):

Expiry dates:

Limit of liability:

**Relevant exclusions:**

#### Pending claims

Please detail any pending active claims that may impact on the Tenderer's insurance liability.

#### Risk management strategies

Provide details of all risk management strategies and practices of the Tenderer that would be applicable or relevant in the context of the supply of the required Services.

### Compliance with the Proposed Contract

A Tenderer must provide a tabulated statement showing in order of the relevant clauses, its level of compliance with Part C (Proposed Contract). Refer clause 4.1, Part B (Conditions of Participation).

Tenderers must state if they will not comply with the Proposed Contract, or will only comply with the Proposed Contract subject to conditions. Full details of non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be provided in the tabulated statement, together with any proposed amendments that would render the contractual provision acceptable to the Tenderer.

**No response is required in respect of a particular clause of the Proposed Contract where a Tenderer will comply with that clause. Only clauses that Tenderers will not comply with, or will only comply with subject to conditions, should be noted in the tabulated statement.**

Clause number	Compliance Statement	Explanation/Comment
	<b>Note to Tenderers:</b>	<b>Note to Tenderers:</b>
	<i>The cells in this column need to state one of the following:</i>	
	<b>Will not comply; or</b>	<b>Where the statement in column 2 is "Will not comply" Tenderers should state in this column 3, the reasons for such non-compliance.</b>
	<b>Will only comply subject to conditions.</b>	<b>Where the statement in column 2 is "Will comply subject to conditions", Tenderers should state in this column 3, the applicable conditions and any amendments that would make the relevant clause acceptable to the Tenderer.</b>
	<i>Remove this note when you prepare your Tender</i>	<b>In both cases, the nature and extent of non-compliance must be clearly stated.</b>
		<i>Remove this note when you prepare your Tender.</i>

### Conflict of interest

- No actual or perceived conflict of interest and comply with section 19 (2A) of the *Audit Act 1994* and be willing to attest to this and his/her independence.
- Not associated or involved during the course of the performance audit with an audit examination or consultancy in a department or agency in respect of which the Auditor-General has a statutory responsibility so as to avoid any possible conflict of interest.

Provide details of:

- Any interests, relationships or clients which may or do give rise to a conflict of interest; and
- The area of expertise in which that conflict or potential conflict does or may arise; and
- Details of any strategy for preventing conflicts of interest.

Outline the processes you have in place to handle any future conflicts of interest (actual or perceived).

Whether, if requested by the Parliament, the Tenderer is willing to make a declaration that, he or she has no actual or perceived conflicts of interest in performing the Services, and complies with section 19 (2A) of the *Audit Act 1994*.

### Costings

(a) Pricing schedule (fixed fee).

(b) Provide details of any other costs or additional expenses associated with the offer.

### Environmental Sustainability

All goods and services have some impact on the environment through their production and provision or from their interface with the environment.

Minimising the environmental impacts of these processes and quantifying the results is a key Government priority. Tenderers may be asked to demonstrate their commitment to improving the sustainability of their operations.

An environmental management assessment of a Tenderer may be conducted by or on behalf of the Parliament.

Sub Criteria	Tenderer's Response
1) Do you have an environmental management policy?	<input type="checkbox"/> Yes - Attach Copy <input type="checkbox"/> No - Go to 3 <input type="checkbox"/> Under development (expected completion date ___/___/___)
2) Do you have an environmental management system?	<input type="checkbox"/> Yes - Certified or attach copy <input type="checkbox"/> No - Go to 3 <input type="checkbox"/> Under development (expected completion date ___/___/___)
3) If the response was NO to 1 and/or 2: <ul style="list-style-type: none"> <li>what approach are you taking towards environmental issues?</li> </ul>	
4) Have you undertaken any other initiatives in reducing your environmental impact?	
5) Has any form of enforcement action relating to the environment been taken against you in the last 2 years and what remedial action was implemented?	



Any other matters

Detail any matters which have not been covered in previous sections and which you believe need to be taken into consideration when your Offer is evaluated.

Disclosure of Contract Information

The Conditions of Participation include a provision for disclosure of contract information (refer Attachment A to this Part D). Identify any information in your Offer which you consider falls within the following categories and which you consider should not be published.

(a) Trade secrets.

(b) Unreasonable disadvantage.

## Attachment A

### Contract disclosure

The Conditions of Participation includes a provision for the disclosure of contract information (refer section 7 of Part B of the RFT dealing with “Disclosure requirements”).

The provisions of the Proposed Contract in regard to “Confidentiality and Privacy” should also be noted.

If a Tenderer wishes to withhold the disclosure of specific contract information, the Tenderer must clearly outline how the release of this information will expose trade secrets or expose the business unreasonably to disadvantage (refer Part B Section 7.3 “Exemptions from disclosure” and Section 7.4 “Unreasonable disadvantage”).

### Trade secrets

In considering whether specific information should be categorised as a trade secret, Tenderers should assess:

- the extent to which it is known outside of the Tenderer’s business;
- the extent to which it is known by the persons engaged in the Tenderer’s business;
- any measures taken to guard its secrecy;
- its value to the Tenderer’s business and to any competitors;
- the amount of money and effort invested in developing the information; and
- the ease or difficulty with which others may acquire or develop this information.

### Unreasonable disadvantage

In determining whether disclosure of specific information will expose a Tenderer’s business unreasonably to disadvantage, you should consider:

- whether the information is generally available to competitors; and
- whether it could be disclosed without causing substantial harm to the competitive position of the business.

The Parliament will consider these applications in the Tender evaluation and negotiations with Tenderers.



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