



PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

REPORT ON THE APPOINTMENT  
OF A PERSON TO CONDUCT THE  
PERFORMANCE AUDIT OF THE  
VICTORIAN AUDITOR-GENERAL  
AND THE VICTORIAN AUDITOR-  
GENERAL'S OFFICE UNDER SECTION  
19 OF THE *AUDIT ACT 1994*

JUNE 2013

117<sup>th</sup> REPORT TO PARLIAMENT





# **PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE**

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Section 19 of the *Audit Act*  
1994**

**June 2013**

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Parliament of Victoria  
Public Accounts and Estimates Committee

**Report on the Appointment of a Person to Conduct the Performance Audit of the  
Victorian Auditor-General and the Victorian Auditor-General's Office Under Section  
19 of the *Audit Act 1994***

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## **CHAIR'S FOREWORD**

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It is with pleasure that I present the 117th Report to Parliament of the Public Accounts and Estimates Committee, the Report on the Appointment of a Person to Conduct the Performance Audit of the Victorian Auditor-General and the Victorian Auditor-General's Office Under Section 19 of the Audit Act 1994.

This report is the culmination of a thorough selection process. The successful tenderer, Andrew Nicolaou, Lead Partner - Victorian Government, Price Waterhouse Coopers (PwC), brings to this important task a wealth of experience and a highly qualified team, backed by the resources of the largest financial services firm in Australia. This is a particularly important performance audit as a new Auditor General, Mr John Doyle, commences work shortly. I expect this performance audit will be a valuable resource as he sets the direction for VAGO for the next seven years. The Committee was pleased to see that the successful tenderer clearly understood the environment in which they would be undertaking the audit and recognised the challenges that the Victorian public sector and its Auditor General would be facing in the years to come.

I would like to express my appreciation of the work done by Members of the Committee in making the recommendation, and in particular the Members of the Tender Evaluation Panel. I would also like to thank the staff of the Secretariat for the professional support they have provided throughout the process.

**DAVID MORRIS MP**  
Chair





# CHAPTER 1 APPOINTMENT OF A PERSON TO CONDUCT THE PERFORMANCE AUDIT OF THE VICTORIAN AUDITOR-GENERAL AND THE VICTORIAN AUDITOR-GENERAL'S OFFICE

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## 1.1 Legislative requirements

The *Audit Act 1994*, as amended, requires that a performance audit be conducted of the Victorian Auditor-General's Office (VAGO) at least once every three years. The Public Accounts and Estimates Committee ('the Committee') is responsible under the 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.*
- (4) *the remuneration payable to a person appointed under this section shall be paid from money appropriated to the Parliament.*

## 1.2 Selection process

A detailed Request for Tender (RFT) contained in Appendix 1 was developed for a performance auditor of the Auditor-General and VAGO. This RFT also contained the proposed terms and conditions of the appointment. Between 1 and 4 May 2013 advertisements were placed in major newspapers, namely, *The Age*, *The Australian*, *The Australian Financial Review*, and *The New Zealand Herald* seeking tenders from suitably qualified persons to undertake the performance audit.

The closing date for submissions was 2:00pm, Friday 24 May 2013.

Minimum requirements were established for tenderers, including meeting the following criteria:

- Must be a member of a leading Australian, Australasian or international organisation in the fields of auditing and/or consulting (with an emphasis on performance evaluation);
- An appreciation of the role of the Auditor-General as an independent officer of Parliament;
- Knowledge and experience in the application of large scale performance reviews of organisations, including public sector organisations; and
- No conflicts of interest are presented in relation to performing this audit work.

On 9 May 2013, the Committee approved the establishment of a tender evaluation sub-panel to assist the Committee's Audit Sub-Committee on tender assessment. The tender evaluation subpanel comprised:

- Mr David Morris MP, Chair, Public Accounts and Estimates Committee;
- Hon Martin Pakula, MP, Deputy Chair, Public Accounts and Estimates Committee; and
- Mr Neil Angus, MP, Public Accounts and Estimates Committee

The tender evaluation panel was supported by the Committee's Senior Research Officers, Michael Baker, Leah Brohm and Christopher Gribbin.

The Committee received five tenders for the performance audit by the closing date.

On receipt of all of the tenders, an analysis was undertaken using a Tender Evaluation matrix based on the evaluation criteria set out in Clause 9.2 of Part A of the RFT document. Each tender was scored against the criteria set out in the RFT. A score out of 10 was assigned to each criterion following which assigned weightings were applied. These weightings are detailed in section 9.2.4 of the RFT document.

## **1.3 Directions for the Performance Auditor**

The *Audit Act 1994* provides for the triennial performance audit of VAGO to specifically determine whether the current 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 matters that should be addressed are outlined below.

### **1.3.1 VAGO Governance and Planning**

Review the governance structure and planning activities of VAGO with particular attention to:

- (1) 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 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);
- (2) The quality of Strategic Planning undertaken by VAGO in terms of its comprehensiveness, relevance and clarity of direction;

- (3) The adequacy and effectiveness of VAGO's annual planning process 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;
- (4) The relevance and appropriateness of VAGO's Annual Plans for 2010-11, 2011-12 and 2012-13, 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;
- (5) The extent and quality of internal planning directed at the efficient and effective management of VAGO (e.g. workforce management; succession planning; fee setting and cost recovery; and budget and expenditure control);
- (6) The effectiveness of VAGO's 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 the VAGO appointed Committee; and
- (7) Consider the extent of progress made and the effectiveness of actions and measures implemented by VAGO to address the recommendations made in the 2010 Performance Audit report. Notwithstanding that the previous Auditor-General had not accepted 50 per cent of the recommendations made, consider the ongoing validity and application of those recommendations to VAGO.

### **1.3.2 Conduct and management of Attest Audits**

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:

- (1) The adequacy of the audit methodology and quality control procedures to assist in the identification of any material or significant risks and to ensure that findings and conclusions arising from the attest audits are adequately supported;
- (2) Compliance with the relevant statutory requirements and Australian Auditing Standards for the conduct and reporting of attest audits;
- (3) Completion of attest audits on time and within budget;
- (4) Whether the selection techniques employed by VAGO to gather audit evidence comply with all relevant Australian auditing standards;
- (5) 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;
- (6) Whether any risks identified during the course of an attest audit, which were not originally anticipated in audit plans, are adequately and effectively considered and addressed in a timely manner;
- (7) Processes for the engagement of contracted financial audit services have considered relevant government purchasing policies and good practice and procedures and are conducted with due regard to probity and value for money; and
- (8) The effectiveness of procedures in place to monitor the quality and performance of contracted financial audit services.

### **1.3.3 Conduct and management of Performance Audits**

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, with particular attention to:

- (1) Whether VAGO's performance audit methodology provides comprehensive guidance for the conduct of performance audits and is regularly reviewed and updated to ensure it retains its rigor and relevance;
- (2) Compliance with the relevant provisions of the *Audit Act 1994* and Australian Auditing Standards for the conduct and reporting of performance audits;
- (3) Whether the selection of agencies for review is supported by an appropriate rationale (e.g. such as risk; preliminary evidence/findings; materiality; or geographical/character representation);
- (4) The adequacy and effectiveness of methodologies and/or processes in place for the development of realistic budgets (cost and time) for the conduct of performance audits and for monitoring performance audit budgets from the planning phase through to report tabling;
- (5) Any instances of pressures in adhering to time and cost budgets resulting in curtailed planned audit activity and potentially impacting on the comprehensiveness of issues reported to Parliament;
- (6) Whether significant issues arising during the course of a performance audit, that were not identified in audit plans, are adequately and effectively considered and addressed in a timely manner;
- (7) The appropriateness of the mix between specialist expertise, contractors and suitably qualified in house staff in undertaking particular performance audits;
- (8) 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
- (9) Whether specialist skills engaged in relation to performance audits are evaluated in terms of the usefulness and value they have added to the conduct of the audit.

### **1.3.4 Monitoring and measuring performance and effectiveness**

Review and provide an assessment of key performance management systems and measures together with any recommendations for improvement, including but not limited to the following areas:

- (1) The adequacy and effectiveness of management information systems in place to measure and improve productivity including cost effectiveness and human resource management within VAGO;
- (2) 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;
- (3) Any initiatives and/or improvements which have flowed from VAGO's evaluation of its performance over the past three years;
- (4) 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 evaluate its own performance and practices;
- (5) Assess VAGO's use of the results of independent assessments of the quality of performance audits by the Australasian Council of Auditors General (ACAG) over the past three years;
- (6) Assess VAGO's use of the results of peer reviews to assess the quality of attest audits over the past three years;
- (7) Assess the soundness and comprehensiveness of processes followed by VAGO in undertaking periodic client surveys (including those of Members of Parliament and audited agencies) and the uses made of the results to improve business processes and outputs. Consider whether an additional independent survey of the effectiveness of VAGO should be conducted;

- (8) The extent and usefulness of processes and/or measures used by VAGO to assess the impact of its audit activities on operations and management practices across the Victorian public sector;
- (9) The adequacy of time recording and costing systems in identifying all recoverable costs and the appropriate allocation of costs to ensure there is no cross subsidisation between chargeable and non-chargeable activities or between performance and attest audits; and
- (10) 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.

### **1.3.5 Human resource management**

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:

- (1) The appropriateness of the mix between specialist expertise, contractors and suitably qualified in house staff in undertaking particular attest and performance audits;
- (2) The adequacy of performance and development strategies and succession planning in place to recruit and develop staff relevant to VAGO's objectives and operational needs;
- (3) Whether strategies are in place to assess and manage staff motivation across both attest and performance audit work areas;
- (4) Whether appropriate OH&S and human resource policies are in place to effectively monitor staff well-being related to areas such as, staff morale, job satisfaction and workplace stress, and to take appropriate action where necessary;
- (5) Whether human resource policies and strategies are in place to manage staff retention and reduce staff turnover;
- (6) Whether VAGO's professional development program adequately identifies and targets staff training needs; and
- (7) Whether processes are in place to evaluate the effectiveness of professional development activities undertaken by staff.

### **1.3.6 Reporting the audit findings**

The report of the performance audit should:

- (1) specify the performance criteria and measures (both qualitative and quantitative) against which VAGO has been measured and assessed;
- (2) provide an opinion on VAGO's compliance with Australian Auditing and Accounting Standards and relevant legislative requirements;
- (3) provide an independent assessment of the facts, detail the basis for findings and conclusions and include clear, meaningful and feasible recommendations linked to findings;
- (4) provide an overall opinion as to whether VAGO is achieving its objectives effectively, economically and efficiently and in compliance with the *Audit Act 1994*, as amended; and
- (5) give adequate visibility to any leading edge initiatives introduced by the Auditor-General over the last three years which have contributed to the enhanced performance of VAGO in serving the needs of Parliament.

## 1.4 Timelines and key deliverables

The tender evaluation process was completed with the adoption of a Recommended Appointment by the Public Accounts and Estimates Committee on 24 June 2013. Subsequent to the tabling of this report, it is intended that the following milestones will be met by the successful tenderer:

- (1) Contract commencement on 1 July 2013;
- (2) Auditor's audit plan to the Committee by 12 July 2013;
- (3) Auditor's progress report to the Committee by 23 August 2013;
- (4) A first preliminary draft report to the Committee by 10 October 2013; and
- (5) A final performance audit report tabled in the Parliament by 14 November 2013

## 1.5 Recommended appointment

After examining the evaluation approach and assessments made by the tender evaluation subpanel, the Committee resolved to recommend the appointment of Andrew Nicolaou, Lead Partner - Victorian Government, Price Waterhouse Coopers (PwC), to undertake the statutory performance audit of the Victorian Auditor General's Office.

## 1.6 Recommendation

The Committee recommends that:

**RECOMMENDATION:** In accordance with section 19 of the *Audit Act 1994*, as amended, the Legislative Council and the Legislative Assembly appoint Andrew Nicolaou, Lead Partner - Victorian Government, Price Waterhouse Coopers (PwC) :

- (a) to conduct the performance audit of the Auditor-General and the Victorian Auditor-General's Office;
- (b) in accordance with the Agreement for the Provision of Performance Audit of the Victorian Auditor-General and the VAGO, as detailed in the Request for Tender attached as Appendix 1 of this Report;
- (c) at a fixed fee level of remuneration of \$270,000 plus GST, plus \$2,000 plus GST in capped costs for expenses.

This recommendation, chapter and this full report were adopted by the Public Accounts and Estimates Committee at its meeting held 24 June 2013.

# **APPENDIX 1 REQUEST FOR TENDER ISSUED FOR THE PERFORMANCE AUDIT OF THE AUDITOR-GENERAL AND THE VICTORIAN AUDITOR-GENERAL'S OFFICE**

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# THE PARLIAMENT OF VICTORIA

**Request for Tender (RFT) for:** Performance Audit of the Victorian Auditor-General and the Victorian Auditor-General's Office

**Reference number:** PAECRFT052013

**Issue Date:** 1 May 2013

**Place for lodgement:** paec@parliament.vic.gov.au or the Tender Box, Ground Floor, 55 St Andrews Place, East Melbourne, VIC 3002

**Please note:**

Tenderers are advised to register at the tenders page of the Tenders Website (<http://www.tenders.vic.gov.au>) in order to receive any further information (including amendments, addenda, and further conditions) that may apply to this RFT.

The Tenderer's Response (RFT Part D) must be completed in the format specified and submitted [insert method by which Tender is to be submitted (eg electronically through the electronic tender box)].

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# INTRODUCTION

## The Opportunity

The *Audit Act 1994* (Vic) requires that a performance audit of the Victorian Auditor-General and the Victorian Auditor-General's Office (VAGO) should be conducted at least once every three years.

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 –
  - (i) shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and
  - (ii) in conducting the audit, must comply with directions as to the audit given by that Committee.

The Parliament is seeking responses to this Request for Tender (RFT) PAECRFT052013 for the provision of the services to undertake the performance audit of the Victorian Auditor-General and the VAGO.

## Structure of RFT

THIS RFT COMPRISES THE FOLLOWING SECTIONS –

- **Introduction** – contains an overview of the opportunity presented in, and the objectives of, this RFT.
- **RFT Part A – Conditions of Tendering** sets out the rules applying to the RFT documents and to the Tendering Process. These rules are deemed to be accepted by all Tenderers and by all persons having received or obtained the RFT.
- **RFT Part B – Specification** describes the Services in respect of which the Parliament invites Tenders from interested persons.
- **RFT Part C – Proposed Contract** contains the terms and conditions in compliance with which the Parliament desires the Services set out in RFT Part B to be provided.
- **RFT Part D – Tenderer's Response** specifies the information to be provided in a Tender and may also specify any information to be provided by a Tenderer by other means. RFT Part D may include templates to be completed and included in a Tender.

- **RFT Part E – Ethical Employment Statement** contains the statement to be completed by shortlisted Tenderers demonstrating their ability to satisfy the ethical employment standard. ***Tenderers should not complete and return RFT Part E unless and until requested to do so by the Parliament.***

## RFT Objectives

The Parliament is seeking responses to this RFT for the provision of the services to undertake the performance audit of the Victorian Auditor-General and the VAGO.

The Parliament's specific requirements in relation to the Services are set out in RFT Part B (Specification).

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

- (a) 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*, which requires that a person appointed by the Parliament as a Performance Auditor must not be a person engaged by the Auditor-General to assist the Auditor-General under s 7F of the Audit Act or holds a delegation from the Auditor-General under s 7G of the Audit Act or is the independent financial auditor of VAGO appointed by Parliament under s 17 of the Audit Act;
- (b) 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
- (c) prepared to work with the Parliament to continue to identify opportunities for improvement in the quality and level of service provided to the Parliament,

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

### 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 Tenderer's Response.

# RFT PART A – CONDITIONS OF TENDERING

## Reference Schedule

The information contained in this Reference Schedule must be read in conjunction with the remainder of this RFT Part A.

Capitalised terms used in this RFT have defined meanings which are explained in clause 17.1 (Interpretation) of this RFT Part A. Capitalised terms defined elsewhere in this RFT but not referred to in clause 17.1 have the same meaning wherever used throughout this RFT.

### Note to Tenderers:

Tenderers are advised to register at the Tenders page of the Tenders Website <http://www.Tenders.vic.gov.au> in order to receive any further information (i.e. including amendments, addendum, and further conditions that may apply to this RFT).

The Tenderer's Response (RFT Part D) must be prepared in accordance with clause 6 (Tender Documents) and submitted in accordance with clause 5 (Submission of Tenders) of this RFT Part A.

## 1. Establishment Details

### 1.1 Parliament

The State of Victoria through the Parliament of Victoria Tender Reference Number PAECRFT052013

### 1.2 Project Manager and Tender Sponsor

Project Manager	
Name and title	Valerie Cheong Executive Officer Parliament of Victoria
Address for correspondence by post	Parliament House, Spring Street, East Melbourne, VIC 3002
Email Address	valerie.cheong@parliament.vic.gov.au
Tender Sponsor	
Name and title	The Public Accounts and Estimates Committee
Address for correspondence by post	Parliament House, Spring Street, East Melbourne, VIC 3002

### 1.3 Indicative timetable\*

Parliament of Victoria – Performance Audit of Performance Audit of the Victorian Auditor-General and the Victorian Auditor-General's Office – Request for Tender – VGPB Version 3.5

<b>Activity</b>	<b>Date</b>
RFT issued	1 May 2013
End of period for questions or requests for information (see clause 4.2 (Requests for clarification or further information))	20 May 2013
Closing Time (See clause 5.2 (Late Tenders))	<b>2.00pm Australian Eastern Standard Time, 24 May 2013</b>
Intended completion of shortlisting process	31 May 2013
Intended completion of evaluation of Tenders	7 June 2013
Negotiations with Tenderer(s) (if applicable)	12 June 2013
Intended notification of preferred Tenderer(s)	14 June 2013
Intended execution of Proposed Contract(s)	28 June 2013
Intended commencement date	1 July 2013

**\* Note to Tenderers:**

This timetable is provided to give Tenderers an indication of the timing of the Tendering Process. The timetable is indicative only and may be changed by the Parliament in accordance with the Conditions of Tendering set out in RFT Part A.

A debrief with unsuccessful Tenderers will be held after the conclusion of the Tender process, if requested.

**1.4 Additional materials**

Not applicable



## 1.5 Lodgement of Tenders

### 1.5.1 Hardcopy lodgement

Address of tender box	Ground floor at 55 St Andrews Place, East Melbourne, VIC 3002  (Next to the security desk)
Hours of access to tender box	8:00am – 5:00pm
Access restrictions (if any)	<b>No access after the tender closing time of 2.00 pm Australian Eastern Standard Time, 24 May 2013</b>
Information to be marked on package containing the Tender	PLEASE CLEARLY MARK THE TENDER AS: <i>Confidential</i> <i>Tender document – Performance Audit</i> <i>Victorian Auditor-General's Office</i>
Other requirements	Tender must be addressed to:  Mr David Morris MP Chair Public Accounts and Estimates Committee Parliament House Spring Street EAST MELBOURNE, VIC 3002

### 1.5.2 Email lodgement

Email address	paec@parliament.vic.gov.au
Access restrictions (if any)	<b>No lodgements will be accepted after a receipt time of 2.00 pm Australian Eastern Standard Time, 24 May 2013</b>
Other requirements	Tender must be addressed to:  Mr David Morris MP Chair Public Accounts and Estimates Committee Parliament House Spring Street EAST MELBOURNE, VIC 3002

## 1.6 Additional rules

Not applicable

## **2. Rules governing this Request for Tender and the Tendering Process**

### **2.1 Application of these Rules**

- 2.1.1 Participation in the Tendering Process is subject to compliance with the rules contained in this RFT Part A.
- 2.1.2 All persons (whether or not they submit a Tender) having obtained or received this RFT may only use it, and the information contained in it, in compliance with the rules contained in this RFT Part A.
- 2.1.3 All Tenderers are deemed to accept the rules contained in this RFT Part A.
- 2.1.4 The rules contained in this RFT Part A apply to:
- (a) the RFT and any other information given, received or made available in connection with the RFT, including any additional materials specified in item 1.5 (Additional Materials) of RFT Part A and any revisions or addenda;
  - (b) the Tendering Process; and
  - (c) any communications (including any Tender Briefings, presentations, meetings or negotiations) relating to the RFT or the Tendering Process.

## **3. Request for Tender**

### **3.1 Status of Request for Tender**

- 3.1.1 This RFT is an invitation for persons to submit a proposal for the provision of the services set out in the specification contained in RFT Part B. accordingly, this RFT must not be construed, interpreted, or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.
- 3.1.2 No binding contract (including a process contract) or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the services will exist between the Parliament and any Tenderer unless and until:
- (a) the successful Tenderer is appointed as a suitably qualified person by resolution of the Legislative Council and the Legislative Assembly on the recommendation of the Parliamentary Committee under the section 19 of the Audit Act (Vic); and
  - (b) the Parliament has signed a formal written contract as contemplated in clause 10.1 (No Legally Binding Contract) of this RFT Part A.

## **3.2 Accuracy of Request for Tender**

- 3.2.1 While all due care has been taken in connection with the preparation of this RFT, the Parliament makes no representations or warranties that the content in this RFT or any information communicated to or provided to Tenderers during the Tendering process is, or will be, accurate, current or complete. the Parliament and its officers, employees and advisors will not be liable with respect to any information communicated or provided which is not accurate, current or complete.
- 3.2.2 If a Tenderer finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by the Parliament (other than minor clerical matters), the Tenderer must promptly notify the Parliament in writing of such discrepancy, ambiguity, error or inconsistency to give the Parliament an opportunity to consider what corrective action is necessary (if any).
- 3.2.3 Any actual discrepancy, ambiguity, error or inconsistency in the RFT or any other information provided by the Parliament will, if possible, be corrected by the Parliament and provided (or the proper information made available) to all Tenderers without attribution to the Tenderer that provided the notice.

## **3.3 Additions and amendments to Request for Tender**

- 3.3.1 The Parliament reserves the right to change any information in, or to issue addenda to, this RFT before the closing time. the Parliament and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise, this right.
- 3.3.2 If the Parliament exercises its right to change information under clause 3.3.1, it may seek amended Tenders from all Tenderers.

## **3.4 Representations**

- 3.4.1 No representation made by or on behalf of the Parliament in relation to this RFT (or its subject matter) will be binding on the Parliament unless that representation is expressly incorporated into the contract(s) ultimately entered into between the Parliament and a Tenderer.

## **3.5 Confidentiality**

- 3.5.1 The Parliament may require persons and organisations wishing to access or obtain a copy of this RFT or certain parts of it, or any additional materials (as referred to below in clause 3.7 (availability of additional materials) of this RFT Part A) to execute a deed of confidentiality (in a form required by, or satisfactory to, the Parliament) before or after access is granted.
- 3.5.2 Whether or not execution of a deed of confidentiality under clause 3.5.1 is required by the Parliament, all persons (including Tenderers) obtaining or receiving this RFT and any other information in connection with the RFT or the Tendering process must:
- (a) keep the contents of the RFT and such other information confidential; and

- (b) not disclose or use that information except as required for the purpose of developing a Tender in response to this RFT.

### **3.6 Licence to use Intellectual Property Rights**

- 3.6.1 Persons obtaining or receiving this RFT and any other documents issued in relation to the Tendering process may use the RFT and such documents only for the purpose of preparing a Tender.
- 3.6.2 Such intellectual property rights as may exist in the RFT and any other documents provided to Tenderers by or on behalf of the Parliament in connection with the Tendering process are owned by (and will remain the property of) the Parliament except to the extent expressly provided otherwise.

### **3.7 Availability of additional materials**

- 3.7.1 Additional materials (if any) may be accessed in the manner set out in item 1.5 of the Establishment Details. Tenderers should familiarise themselves with these additional materials.

## **4. Communications during the Tendering Process**

### **4.1 Email Communication**

- 4.1.1 All communications relating to the RFT and the Tendering Process must be directed to:  
  
paec@parliament.vic.gov.au

### **4.2 Requests for clarification or further information**

- 4.2.1 Any questions or requests for further information or clarification of the RFT (or any other document issued in connection with the Tendering process) must be submitted by email to the email address specified in clause 4.1.1 before the time and date specified in clause 1.4 under "End of period for questions or requests for information".
- 4.2.2 Any communication by a Tenderer to the Parliament will be effective upon receipt by the Parliament (provided such communication is in the required format).
- 4.2.3 The Parliament may restrict the period during which it will accept questions or requests for further information or for clarification and reserves the right not to respond to any question or request, irrespective of when such question or request is received.
- 4.2.4 Except where the Parliament is of the opinion that issues raised apply only to an individual Tenderer, questions submitted and answers provided will be made available on [www.parliament.vic.gov.au/paec/inquiries/article/2082](http://www.parliament.vic.gov.au/paec/inquiries/article/2082) to all Tenderers without identifying the person or organisation having submitted the question. In all other cases, the Parliament may deliver any written notification or response to a Tenderer by leaving or delivering it to the address of the Tenderer.

4.2.5 A Tenderer may, by notifying the Parliament by email to the email address specified in clause 4.1.1, withdraw a question submitted in accordance with this clause 4.2 (Requests for clarification or further information) in circumstances where the Tenderer does not wish the Parliament to publish its response to the question on [www.parliament.vic.gov.au/paec](http://www.parliament.vic.gov.au/paec).

### **4.3 Unauthorised communications**

4.3.1 Communications (including promotional or advertising activities) with staff of the Parliament or consultants assisting the Parliament with the Tendering Process are not permitted during the Tendering process except as provided in clause 4.2 (Requests for Clarification or Further Information) above, or otherwise with the prior written consent of the Project Manager. nothing in this clause 4.3 (unauthorised communications) is intended to prevent communications with staff of, or consultants to, the Parliament to the extent that such communications do not relate to this RFT or the Tendering Process.

4.3.2 Tenderers must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

4.3.3 Unauthorised communications with such persons may, in the absolute discretion of the Parliament, lead to disqualification of a Tenderer.

### **4.4 Improper assistance**

4.4.1 Tenderers must not seek or obtain the assistance of employees, agents or contractors of the Parliament or the State in the preparation of their Tenders. in addition to any other remedies available to it under law or contract, the Parliament may, in its absolute discretion, immediately disqualify a Tenderer that it believes has sought or obtained such assistance.

### **4.5 Anti-competitive conduct**

4.5.1 Tenderers and their respective officers, employees, agents and advisers must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other Tenderer or any other person in relation to:

- (a) the preparation or lodgement of their Tender;
- (b) the evaluation and clarification of their Tender; and
- (c) the conduct of negotiations with the Parliament,

in respect of this Tendering process.

4.5.2 For the purposes of clause 4.5.1, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to the Parliament or any other Tenderer or any person or organisation.

4.5.3 In addition to any other remedies available to it under law or contract, the Parliament may, in its absolute discretion, immediately disqualify a Tenderer that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct in respect of this Tendering Process.

## **4.6 Complaints about Tendering Process**

4.6.1 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.

4.6.2 If the matter relates to the conduct of a department official, the complaint should also be brought to the attention of the Project Sponsor.

## **4.7 Conflict of Interest**

4.7.1 A Tenderer must not, and must ensure that its officers, employees, agents and advisers do not place themselves in a position that may or does give rise to actual, potential or perceived conflict of interest between the interests of the Parliament and the Tenderer's interests during the Tendering Process.

4.7.2 The Tenderer's response in RFT Part D requires Tenderers to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of services under any contract that may result from this RFT.

4.7.3 If the Tenderer submits its Tender and a conflict of interest arises, or is likely to arise, which was not disclosed in the Tender, the Tenderer must notify the Parliament immediately in writing of that conflict.

4.7.4 The Parliament may disqualify a Tenderer from the Tendering Process if the Tenderer fails to notify the Parliament of the conflict as required.

## **5. Submission of Tenders**

### **5.1 Lodgement**

5.1.1 Tenders must be lodged only by the means set out in item 1.6 of the Establishment Details of RFT Part A.

5.1.2 Where the Reference Schedule requires or permits Tenders to be lodged in hard copy, packages containing the Tender must be marked with the information set out in clause 1.6.1 (Hardcopy lodgement) of RFT Part A and must be placed in the tender box at the address which is set out in clause 1.6.1 (Hardcopy lodgement) of RFT Part A.

## 5.2 Late Tenders

5.2.1 Tenders must be lodged by the Closing Time. The Closing Time may be extended by the Parliament in its absolute discretion by providing written notice to Tenderers.

5.2.2 Tenders lodged after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFT will be disqualified from the Tendering Process and will be ineligible for consideration.

## 6. Tender Documents

### 6.1 Tenderers' Responsibilities

6.1.1 Tenderers are responsible for:

- (a) examining this RFT and any documents referenced or attached to this RFT and any other information made available by the Parliament to Tenderers in connection with this RFT;
- (b) fully informing themselves in relation to all matters arising from this RFT, including all matters regarding the Parliament's requirements for the provision of the Services;
- (c) ensuring that their Tenders are accurate and complete;
- (d) making their own enquiries and assessing all risks regarding the RFT, and fully incorporating the impact of any known and unknown risks into their Tender; and
- (e) ensuring that they comply with all applicable laws in regards to the Tendering Process (including Part 2 of the *Fair Trading Act 1999*).

### 6.2 Preparation of Tenders

6.2.1 Tenderers must ensure that:

- (a) their Tender is presented in the required format as set out in RFT Part D; and
- (b) all the information fields in RFT Part D are completed and contain the information requested.

#### 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.

- 6.2.2 If the Parliament elects to shortlist any Tenderers, those shortlisted Tenderers may be required to provide the information requested in RFT Parts E and F. Tenderers may wish to prepare Parts E and F in order to ensure that they can respond to a request by the Parliament within the applicable timeframes, but should not submit those parts unless and until required to do so by the Parliament.
- 6.2.3 Unnecessarily elaborate responses or other presentations beyond what is sufficient to present a complete and effective proposal are not desired or required. Elaborate artwork and expensive visual and other presentation aids are not necessary.
- 6.2.4 Word limits where specified should be observed and the Parliament reserves the right to disregard any parts of the Tender that significantly exceed the specified word limit.

### **6.3 Illegible content, alteration and erasures**

- 6.3.1 Incomplete Tenders may be disqualified or evaluated solely on the information contained in the Tender.
- 6.3.2 the Parliament may disregard any content in a Tender that is illegible and will be under no obligation whatsoever to seek clarification from the Tenderer.
- 6.3.3 the Parliament may permit a Tenderer to correct an unintentional error in their Tender where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if the Parliament reasonably considers that the correction would materially alter the substance of the Tenderer's Response.

### **6.4 Obligation to notify errors**

- 6.4.1 If, after a Tenderer's Response has been submitted, the Tenderer becomes aware of an error in the Tenderer's Response (including an error in pricing, but excluding clerical errors which would have no bearing on the evaluation of the Tender), the Tenderer must promptly notify the Parliament of such error.

### **6.5 Responsibility for Tendering Costs**

- 6.5.1 The Tenderer's participation or involvement in any stage of the Tendering Process is at the Tenderer's sole risk, cost and expense. The Parliament will not be responsible for, nor pay for, any expense or loss that may be incurred by Tenderers in relation to the preparation or lodgement of their Tenders.
- 6.5.2 In addition to clauses 3.1.1 and 3.1.2, the Parliament is not liable to the Tenderer for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Tenderer's participation in the Tendering process, including without limitation, instances where:
- (a) the Tenderer is not engaged to perform under any contract; or
  - (b) the Parliament exercises any right under this RFT or at law.



## **6.6 Disclosure of Tender contents and Tender information**

6.6.1 Tenders will be treated as confidential by the Parliament. The Parliament will not disclose Tender contents and Tender information, except:

- (a) as required by law;
- (b) as it is necessary to meet the requirement under, or in connection with, the *Audit Act 1994* (Vic);
- (c) for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- (d) to external consultants and advisers of the Parliament engaged to assist with the Tendering Process; or
- (e) general information from Tenderers required to be disclosed by government policy.

## **6.7 Use of Tenders**

6.7.1 Upon submission in accordance with the requirements of clause 5 (Submission of Tenders) of RFT Part A and clause 1.7 of the Establishment Details of RFT Part A, all Tenders become the property of the Parliament. Tenderers will retain all ownership rights in any intellectual property contained in the Tender. the submission of a Tender does not transfer to the Parliament any ownership interest in the Tenderer's intellectual property rights, or give the Parliament any rights in relation to the Tender, except as expressly set out below.

6.7.2 Each Tenderer, by submission of their Tender, is deemed to have licensed the Parliament to reproduce the whole, or any portion, of their Tender for the purposes of enabling the Parliament to evaluate the Tender.

6.7.3 further, in submitting a Tender, the Tenderer accepts that the Parliament may, in accordance with the requirements of applicable Victorian Government policy, publish (on the internet or otherwise):

- (a) the name of the successful or recommended Tenderer(s);
- (b) the value of the successful Tender; and
- (c) the Tenderer's name together with the provisions of the contract generally.

## **6.8 Period of validity**

6.8.1 All Tenders must remain valid and open for acceptance for a minimum of 120 days from the Closing Time. This period may be extended by mutual agreement between the Parliament and the Tenderer.

## **6.9 Status of Tender**

- 6.9.1 Each Tender constitutes an irrevocable offer by the Tenderer to the Parliament to provide the Services required under, and otherwise to satisfy the requirements of, the Specification (RFT Part B) on the terms and conditions of the Proposed Contract (subject to the Statement of Compliance contained in RFT Part D).
- 6.9.2 A Tender must not be conditional on:
- (a) board approval of the Tenderer or any related body corporate of the Tenderer being obtained;
  - (b) the Tenderer conducting due diligence or any other form of enquiry or investigation;
  - (c) the Tenderer (or any other party) obtaining any regulatory approval or consent;
  - (d) the Tenderer obtaining the consent or approval of any third party; or
  - (e) the Tenderer stating that it wishes to discuss or negotiate any commercial terms of the contract.
- 6.9.3 The Parliament may, in its absolute discretion, disregard any Tender that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other conditions).
- 6.9.4 The Parliament reserves the right to accept a Tender in part or in whole or to negotiate with a Tenderer in accordance with clause 8.3 (Unreasonable disadvantage) of RFT Part A.

## **7. Compliance with Specification and Proposed Contract**

### **7.1 Compliance with Specification**

- 7.1.1 Under RFT Part D, a Tenderer must submit a tabulated statement showing, in order of the relevant clauses, its level of compliance with the Specification contained in RFT Part B.
- 7.1.2 In particular, Tenderers must state if they will not comply with the Specification, or will only comply with the Specification subject to conditions. Full details of the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 3 (Compliance with the Specification) of RFT Part D. No response is required in respect of a particular section of the Specification where Tenderers will comply with the Specification. Only sections that Tenderers will not comply with, or will only comply with subject to conditions, should be noted in the tabulated statement.

- 7.1.3 The Parliament is prepared to contemplate minor variations or departures from the Specifications proposed by Tenderers. However, Tenderers should note that significant or substantive variations or departures from the Specifications will not be viewed favourably unless the Tenderer is able to demonstrate to the satisfaction of the Parliament the necessity for such variations or departures.

**Note to Tenderers:**

The Parliament will assume that a Tenderer's Response 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 Response being disregarded.

- 7.1.4 For the purposes of this clause 7.1:
- (a) **Complies** means that in all respects the Tenderer's Response meets or otherwise satisfies all specified outputs, characteristics or standards.
  - (b) **Will comply subject to conditions** means that the specified outputs, characteristic or performance standard can only be met by the Tenderer subject to certain conditions.
  - (c) **Will not comply** means that the specified outputs, characteristic or performance standard is not met by the Tenderer's Response.

## **7.2 Compliance with the proposed contract**

- 7.2.1 Under RFT Part D, a Tenderer must also submit a tabulated statement, with numbering corresponding to the relevant clauses, detailing its level of compliance with the Proposed Contract contained in RFT Part C.
- 7.2.2 in particular, 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 the non-compliance (including the nature and extent of the non-compliance and any reasons for such non-compliance) must be stated in the space provided in the tabulated statement contained in section 10 (Risk and insurance) of RFT Part D, 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 Tenderers will comply with the Proposed Contract. Only clauses that Tenderers will not comply with, or will only comply with subject to conditions should be noted in the tabulated statement.
- 7.2.3 the Parliament is prepared to contemplate minor variations or departures from the Proposed Contract proposed by Tenderers. However, Tenderers should note that significant or substantive variations or departures from the Proposed Contract will not be viewed favourably unless the Tenderer is able to demonstrate the necessity for such variations or departures.

## Note to Tenderers:

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 Response being disregarded.

7.2.4 For the purposes of this clause 7.2:

- (a) **Complies** means that the Tenderer accepts the contractual provision in every respect (including the wording of the provision).
- (b) **Will comply subject to conditions** means that the Tenderer will comply with the relevant contractual provision subject to certain specified conditions.
- (c) **Will not comply** means that the Tenderer does not accept the contractual provision.

## 7.3 General

7.3.1 Indefinite responses such as "noted", "to be discussed" or "to be negotiated" are not acceptable.

7.3.2 Where the Tenderer is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appear only as part of an attachment to the Tender, or be included in a general statement of the Tenderer's usual operating conditions.

7.3.3 An incomplete Tender may be disqualified or assessed solely on the information received with the Tender.

## 8. Contract Disclosure Requirements

### 8.1 Contract disclosure

8.1.1 The Conditions of Tendering include a provision for the disclosure of contract information (refer clause 6.7 (Use of Tender) in RFT Part A dealing with "Use of Tenders").

8.1.2 The provisions of the Proposed Contract in regard to confidentiality and disclosure should also be noted.

8.1.3 If a Tenderer wishes to withhold the disclosure of specific contract information, the Tenderer must clearly outline how the release of this information will unreasonably expose trade secrets or expose the business to disadvantage.

## **8.2 Environmental claims**

The Parliament wishes to be informed of any claims made by Tenderers about the benefit, including environmental benefits, of the Services that are offered by them.

The environmental benefits of the Services being offered and/or the environmental benefits in their sourcing, production and manufacture, should be brought to the attention of the Parliament.

## **8.3 Trade secrets**

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

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

## **8.4 Unreasonable disadvantage**

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

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

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

## **9. Evaluation of Tenders**

### **9.1 Evaluation process**

9.1.1 Following the Closing Time, the Parliament intends to evaluate the Tenders received. Tenders will be evaluated against the Evaluation Criteria specified in clause 9.2 (Evaluation Criteria Format) of RFT Part A.

9.1.2 Without limiting the Parliament's rights in this RFT, the Parliament may at any time during the Tendering Process choose to:

- (a) shortlist one or more Tenderers;
- (b) commence or continue discussions with all or some Tenderers without shortlisting any Tenderers; or
- (c) accept one or more of the Tenders.

9.1.3 Unless the Evaluation Criteria explicitly require, the Parliament may, but is not in any way bound to, shortlist, to select as successful, or to accept the Tender offering the lowest price.

9.1.4 Should the Parliament choose to include a shortlisting stage in its evaluation process, the Parliament is not, at any time, required to notify Tenderers or any other person or organisation interested in submitting a Tender.

9.1.5 A Tenderer's Response will not be deemed to be unsuccessful until such time as the Tenderer is formally notified of that fact by the Parliament. the commencement of negotiations by the Parliament with one or more other Tenderers is not to be taken as an indication that any particular Tenderer's Response has not been successful.

## **9.2 Evaluation criteria format**

9.2.1 The evaluation criteria can be weighted to reflect the importance of project requirements noted in RFT Part B of the Specifications.

9.2.2 In evaluating Tenderer's Responses, the Parliament will have regard to:

- (a) specific evaluation criteria identified in the list below;
- (b) the overall value for money proposition presented in the Tenderer's Response; and
- (c) particular weighting assigned to any or all of the criteria specified in the table below (noting that any criteria for which a weighting has not been assigned should be assumed to have equal weighting).

9.2.3 For the purposes of clause 9.2.2, "value for money" is a measurement of financial and non-financial factors, including:

- (a) quality levels;
- (b) performance standards; and
- (c) environmental benefits/impacts.

9.2.4 Value for money will be assessed on a 'whole of life' basis (including the transitioning-in, the contract term and the transitioning out phases of the relationship between the Parliament and a Tenderer), with a view to long term sustainability of the value for money proposition and with a focus on ensuring that value for money outcomes are promoted and protected following the conclusion of any contract that may result from this RFT.

Evaluation criteria:	Weighting
<b>Compliance with Specifications - Pre-qualification to evaluation</b>	<b>100%</b>
<p data-bbox="336 342 1254 394"><b>a) Professional competence</b></p> <p data-bbox="336 409 1254 1639"> <b>Capability:</b> <ul style="list-style-type: none"> <li data-bbox="336 454 1254 555">• must be a member of a leading Australian, Australasian or international organisation in the fields of auditing and/or consulting (with an emphasis on performance evaluation).</li> <li data-bbox="336 577 1254 645">• has appropriately qualified, skilled and experienced staff to undertake the audit.</li> <li data-bbox="336 667 1254 701">• has an appreciation of the role of the Auditor-General’s Office.</li> <li data-bbox="336 723 1254 790">• has relevant knowledge and experience in the use of modern performance audit methodologies and evaluation techniques.</li> </ul> <b>Past Performance and current work:</b> <ul style="list-style-type: none"> <li data-bbox="336 880 1254 947">• has relevant knowledge and experience in the application of large scale performance reviews.</li> <li data-bbox="336 969 1254 1070">• 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 role.</li> </ul> <b>Quality system for deliverables and Innovation:</b> <ul style="list-style-type: none"> <li data-bbox="336 1160 1254 1227">• has comprehensive quality and risk control systems and processes for deliverables.</li> <li data-bbox="336 1249 1254 1317">• methodology proposed including any innovation, phasing / staging and timelines.</li> </ul> <b>Customer Service:</b> <ul style="list-style-type: none"> <li data-bbox="336 1406 1254 1473">• comply with the Parliament's directions and liaise with its staff efficiently.</li> <li data-bbox="336 1496 1254 1563">• good progress reports and effective communication processes proposed</li> </ul> <b>Strategic:</b> </p>	<b>45%</b>

<b>b) Commercial</b>	<b>30%</b>
<p><b>Financial Viability</b></p> <ul style="list-style-type: none"> <li>includes support of associated companies and/or parent company.</li> </ul> <p><b>Risk and Insurance</b></p> <ul style="list-style-type: none"> <li>includes evidence of compliance with insurance requirements</li> </ul> <p><b>Compliance with Proposed Contract (not weighted)</b></p> <p><b>Conflict of Interest:</b></p> <ul style="list-style-type: none"> <li>no actual or perceived conflict of interest and comply with section 19 (2A) of the <i>Audit Act 1994</i> and be willing to attest to this and his/her independence.</li> <li>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.</li> </ul>	
<b>c) Financial</b>	<b>25%</b>
<b>Costings</b>	
<b>d) Environmental Commitments</b>	<b>Not weighted</b>
<ul style="list-style-type: none"> <li>Environmental Policy</li> <li>Environmental Management System and Environmental approach</li> </ul>	
<b>e) Ethical Purchasing Policy</b>	<b>Not weighted</b>
<ul style="list-style-type: none"> <li>Breaches of industrial instruments and industrial relations legislation</li> <li>Breaches of occupational health and safety legislation</li> <li>Remedial measures to rectify breaches</li> <li>Number of current proceedings or prosecutions</li> </ul>	

### 9.3 Clarification of Tender

- 9.3.1 The Parliament may seek clarification from and enter into discussions with any or all of the Tenderers in relation to their Tender. The Parliament may use such information in interpreting the Tender and evaluating the cost and risk to the Parliament of accepting the Tender. Failure to supply clarification to the satisfaction of the Parliament may render the Tender liable to disqualification.



9.3.2 the Parliament is under no obligation to seek clarification of anything in a Tender and the Parliament reserves the right to disregard any clarification that the Parliament considers to be unsolicited or otherwise impermissible in accordance with the rules set out in this RFT Part A.

## **9.4 Discussion with Tenderers**

9.4.1 The Parliament may elect to engage in detailed discussions with any one or more Tenderers, with a view to maximising the benefits of the RFT as measured against the evaluation criteria set out in clause 9.2 and fully understanding a Tenderer's offer, including risk allocation.

9.4.2 As part of this process, the Parliament may request such Tenderer(s) to improve one or more aspects of their Tender, including any technical, financial, corporate or legal components.

9.4.3 In its absolute discretion, the Parliament may invite some or all Tenderers to give a presentation to the Parliament in relation to their submissions.

9.4.4 In addition to presentations and discussions, the Parliament may request some or all Tenderers to:

- (a) conduct a site visit;
- (b) provide references or additional information; and/or
- (c) make themselves available for panel interviews.

9.4.5 The Parliament may contact any of the Tenderer's previous customers that the Tenderer lists in its Tender.

9.4.6 The Parliament is under no obligation to undertake discussions with, or to invite any presentations from, Tenderers.

## **9.5 Best and final offers**

9.5.1 Tenderers or, where the Tendering Process involves a shortlisting process, shortlisted Tenderers, may be invited by the Parliament to submit a best and final offer in relation to all or certain aspects of their respective Tenders.

9.5.2 The Parliament is under no obligation to give Tenderers the opportunity to submit a best and final offer. If the Parliament chooses to give Tenderers the opportunity to submit a best and final offer, it is under no obligation to give notification before the Closing Time that such opportunity will be given.

9.5.3 Notwithstanding the possibility that the Parliament may give Tenderers the opportunity to submit a best and final offer, Tenderers should be aware that the Parliament will, in conducting its evaluation of Tenders, rely on all information (including all representations) contained in such Tenders. Tenderers are therefore encouraged to submit their best and final offers in the first instance.

- 9.5.4 Any one or more Tenderers may be required to submit an executed contract based on the Tender as part of their best and final offer. Unless and until the Parliament executes such contract, submission of a contract capable of acceptance by the Parliament does not and will not be taken to give rise to a binding contract (express or implied) between a Tenderer and the Parliament.

## **10. Successful Tenders**

### **10.1 No legally binding contract**

- 10.1.1 Selection as a successful Tenderer does not give rise to a contract (express or implied) between the successful Tenderer and the Parliament for the supply of the Services. No legal relationship will exist between the Parliament and a successful Tenderer for the supply of the Services until such time as a binding contract is executed by them.

### **10.2 Pre-contractual negotiations**

- 10.2.1 The Parliament may, in its absolute discretion, decide not to enter into pre contractual negotiations with a successful Tenderer.

- 10.2.2 A Tenderer is bound by its Tender (including the Statement of Compliance to the Proposed Contract forming part of the Tenderer's Response) and, if selected as a successful Tenderer, must enter into a contract on the basis of the Tender without negotiation.

### **10.3 No Obligation to enter into contract**

- 10.3.1 The Parliament is under no obligation to appoint a successful Tenderer or Tenderers (as the case may be), or to enter into a contract with a successful Tenderer or any other person, if it is unable to identify a Tender that complies in all relevant respects with the requirements of the Parliament, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances the Parliament will be free to proceed via any alternative process.
- 10.3.2 The Parliament may conduct a debriefing session for all Tenderers (successful and unsuccessful). Attendance at such debriefing session is optional.

## **11. Ethical Purchasing Policy**

- 11.1.1 For this RFT, the Parliament supports the Victorian Government's Ethical Purchasing Policy (EPP). The EPP applies to Tendering processes and contracts for the purchase of goods and services valued at or above \$100,000 (including the establishment of State Purchase Contracts) which commenced on or were entered into after 1 January 2004. The policy will also be applied to purchases under \$100,000 for goods and services in industries which are considered by the Parliament to be high risk, such as textiles, clothing and footwear, cleaning and security services. Further information about the Ethical Purchasing Policy is detailed in RFT Part E and on the Procurement Portal at [www.procurement.vic.gov.au](http://www.procurement.vic.gov.au).

- 11.1.2 It is a condition of all Tendering processes to which the EPP applies that all shortlisted Tenderers will be required to complete an Ethical Employment Statement (RFT Part E) in the timeframe specified by the Parliament. Tenderers should not submit an Ethical Employment Statement (as set out in RFT Part E) unless and until requested to do so by the Parliament.
- 11.1.3 A Tenderer who does not submit an Ethical Employment Statement when required to do so by the Parliament may be disqualified from the Tendering Process.
- 11.1.4 Once a Tenderer is offered a contract to which the EPP applies, it must continue to satisfy the ethical employment standard during the period of the contract. Contract conditions will allow the Parliament to request further Ethical Employment Statements from the Tenderer. The contract will also permit the termination of a contract if a Tenderer does not satisfy its disclosure obligations or maintain the ethical employment standard during the term of the contract.

## **12. Not Used**

## **13. Additional Rules**

- 13.1.1 Any rules governing the RFT or the Tendering Process in addition to those set out in this RFT Part A, are set out in clause 1.7 Additional Rules of RFT Part A.

## **14. Tenderer Warranties**

- 14.1.1 By submitting a Tender, a Tenderer warrants that:
- (a) in lodging its Tender 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 Parliament, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT;
  - (b) it did not use the improper assistance of Parliament employees or information unlawfully obtained from the Parliament in compiling its Tender;
  - (c) it is responsible for all costs and expenses related to the preparation and lodgement of its Tender, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
  - (d) it otherwise accepts and will comply with the rules set out in this RFT Part A; and
  - (e) it will provide additional information in a timely manner as requested by the Parliament to clarify any matters contained in the Tender.

## 15. Parliament's Rights

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

- (a) cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;
- (b) alter the structure and/or the timing of the RFT or the Tendering Process;
- (c) vary or extend any time or date specified in this RFT for all or any Tenderers or other persons;
- (d) terminate the participation of any Tenderer or any other person in the Tendering Process;
- (e) require additional information or clarification from any Tenderer or any other person or provide additional information or clarification;
- (f) negotiate with any one or more Tenderers and allow any Tenderer to alter its Tender;
- (g) call for new Tenders;
- (h) reject any Tender received after the Closing Time;
- (i) reject any Tender that does not comply with the requirements of this RFT; and/or
- (j) consider and accept or reject any alternative Tender.

## 16. Governing Law

16.1.1 This RFT and the Tendering Process is governed by the laws applying in the State of Victoria.

16.1.2 Each Tenderer must comply with all relevant laws in preparing and lodging its Tender and in taking part in the Tendering Process.

## 17. Interpretation

### 17.1 Definitions

17.1.1 In this request for Tender, unless a contrary intention is apparent:

**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.

**Closing Time** means the time specified as such in clause 1.4 (Indicative Timetable) of RFT Part A by which Tenders must be received.

**Evaluation Criteria** means the criteria set out in clause 9.2 (Evaluation Criteria Format) of RFT Part A.

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

**Parliament** means the Parliament of Victoria (as specified in clause 1.1 (Parliament) of RFT Part A) responsible for the Tendering Process.

**Project Manager** means the person so designated in clause 1.3 (Project Manager and Project Sponsor) of RFT Part A.

**Project Sponsor** means the person so designated in clause 1.3 (Project Manager and Project Sponsor) of RFT Part A.

**Proposed Contract** means the agreement and any other terms and conditions contained in or referred to in RFT Part C.

**Reference Schedule** means the schedule so designated forming part of RFT Part A.

**Request for Tender** or **RFT** means this document (comprising each of the parts identified in clause 2 Rules Governing this RFT and the Tendering Process of this RFT Part A) and any other documents so designated by the Parliament.

**Services** means the services required by the Parliament, as specified in RFT Part B.

**Specification** means any specification or description of the Parliament's requirements contained in RFT Part B.

**State** means the State of Victoria.

**Statement of Compliance** means the statement forming part of a tender indicating the Tenderer's compliance with the Specification and the Proposed Contract.

**Tender** means a document lodged by a Tenderer in response to this RFT containing an offer to provide Services in accordance with the Specification.

**Tenderer** means a person or organisation that submits a Tender.

**Tendering Process** means the process commenced by the issuing of this Request for Tender and concluding upon formal announcement by the Parliament of the selection of a successful Tenderer(s) or upon the earlier termination of the process.

**Tenders Website** means the website administered by the Victorian Department of Treasury and Finance located at universal resource locator [www.Tenders.vic.gov.au](http://www.Tenders.vic.gov.au).

## 17.2 Interpretation

### 17.2.1 In this RFT, unless expressly provided otherwise:

- (a) a reference to:
  - i) “includes” or “including” means includes or including without limitation; and
  - ii) “\$” or “dollars” is a reference to the lawful currency of the Commonwealth of Australia; and
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings.

### **17.3 Inconsistency**

17.3.1 If there is any inconsistency between any part of this RFT, a descending order of precedence must be accorded to:

- (a) the conditions of tendering in Part A and any annexes or attachments;
- (b) the Tenderer’s response in Part D;
- (c) the Proposed Contract in Part C;
- (d) any other part of this RFT,

so that the provision in the higher ranked document, to the extent of the inconsistency, prevails.

# **RFT PART B – SPECIFICATION**

The Parliament of Victoria

Request for Tender (RFT)

for

Performance Audit of the Victorian Auditor-General and the Victorian Auditor-General's Office

## 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:

- (a) 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.
- (b) 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.
- (c) A person appointed under this section –
  - (i) shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and
  - (ii) 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 directions contained within the terms of reference, over a four month period, (anticipated July 2013 to October 2013 inclusive), with a preliminary report to the Committee and the Auditor-General by 10 October 2013 and the final report to be transmitted to the Parliament of Victoria by no later than 14 November 2013.

Tenderers should note that in its 2010 Report on the Inquiry into Victoria's *Audit Act 1994*, the Committee conducted a detailed review of the audit legislation and made recommendations aimed at improving the legislative mandate of the Auditor-General. As such, the Committee does not consider it necessary for the performance auditor to undertake any additional work in reviewing matters related to this area.

## 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 the VAGO to specifically determine whether the Auditor-General and the 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 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);
  - (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 process 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 2010-11, 2011-12 and 2012-13, 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 (e.g. workforce management; succession planning; fee setting and cost recovery; and budget and expenditure control);
  - (f) 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 the VAGO appointed Committee; and
  - (g) Consider the extent of progress made and the effectiveness of actions and measures implemented by VAGO to address the recommendations made in the 2010 Performance Audit report. Notwithstanding that the previous Auditor-General had not accepted 50 per cent of the recommendations made, consider the ongoing validity and application of those recommendations to VAGO.

## **Conduct and management of Attest Audits**

2. 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 to assist in the identification of any material or significant risks and to ensure that findings and conclusions arising from the attest audits are adequately supported;
  - (b) Compliance with the relevant statutory requirements and Australian Auditing Standards for the conduct and reporting of attest audits;

- (c) Completion of attest audits on time and within budget;
- (d) Whether the selection techniques 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 an attest 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 good practice and procedures and are conducted with due regard to probity and value for money; and
- (h) The effectiveness of procedures in place to monitor the quality and performance of contracted financial audit services.

### **Conduct and management of Performance Audits**

3. 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, with particular attention 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 retains its rigor and relevance;
  - (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 agencies for review is supported by an appropriate rationale (e.g. such as risk; preliminary evidence/findings; materiality; or geographical/character representation);
  - (d) The adequacy and effectiveness of methodologies and/or processes in place for the development of realistic budgets (cost and time) for the conduct of performance audits and for monitoring performance audit budgets from the planning phase through to report tabling;
  - (e) Any instances of pressures in adhering to time and cost budgets resulting in curtailed planned audit activity and potentially impacting on the comprehensiveness of issues reported to Parliament;
  - (f) Whether significant issues arising during the course of a performance audit, that were not identified in audit plans, are adequately and effectively considered and addressed in a timely manner;
  - (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 usefulness and value they have added to the conduct of the audit.

### **Monitoring and measuring performance and effectiveness**

4. Review and provide an assessment of key performance management systems and measures together with any 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 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 evaluate its own performance and practices;
  - (e) Assess VAGO's use of the results of independent assessments of the quality of performance audits by the Australasian Council of Auditors General (ACAG) over the past three years;
  - (f) Assess VAGO's use of the results of peer reviews to assess the quality of attest audits over the past three years;
  - (g) Assess the soundness and comprehensiveness of processes followed by VAGO in undertaking periodic "client" surveys (including those of Members of Parliament and audited agencies) and the uses made of the results to improve business processes and outputs. Consider whether an additional independent survey 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 operations and management practices across the Victorian public sector;
  - (i) The adequacy of time recording and costing systems in identifying all recoverable costs and the appropriate allocation of costs to ensure there is no cross subsidisation between chargeable and non-chargeable activities or between performance and attest 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**

- 5. 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) The appropriateness of the mix between specialist expertise, contractors and suitably qualified in house staff in undertaking particular attest and performance audits;
  - (b) The adequacy of performance and development strategies and succession planning in place to recruit and develop staff relevant to VAGO's objectives and operational needs;
  - (c) Whether strategies are in place to assess and manage staff motivation across both attest and performance audit work areas;
  - (d) Whether appropriate OH&S and human resource policies are in place to effectively monitor staff well-being related to areas such as, staff morale, job satisfaction and workplace stress, and to take appropriate action where necessary;
  - (e) Whether human resource policies and strategies are in place to manage staff retention and reduce staff turnover;
  - (f) Whether VAGO's professional development program adequately identifies and targets staff training needs; and
  - (g) Whether processes are in place to evaluate the effectiveness of professional development activities undertaken by staff.

### **Reporting the audit findings**

- 6. The report of the 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 relevant legislative requirements;
  - (c) provide an independent assessment of the facts, detail the basis for findings and conclusions and include clear, meaningful and feasible recommendations linked to 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*, as amended; and

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

## **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 12 July 2013;
- A progress report on the audit on 23 August 2013;
- A first draft preliminary report on audit findings and recommendations by 10 October 2013; and
- A final performance audit report transmitted to the Parliament of Victoria by 14 November 2013.

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

The Committee may provide feedback on the deliverables once it is submitted and request alterations. The Performance Auditor must accommodate such request and satisfy the requirements of the Committee.

# RFT PART C – PROPOSED CONTRACT

See the separate document entitled "Agreement for the Provision of Performance Audit of the Victorian Auditor-General and the VAGO".

The State of Victoria through the Parliament of Victoria

# **Agreement for the Provision of 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)

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## 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.

**Background IP** means any and all IP Rights in any works, items or systems which are the property of the Service Provider or licensed to the Service Provider (except from the Parliament) and which existed in substantially the same form and with substantially the same contents prior to the commencement of the provision of the Services or which is developed independently of the Service Provider's performance of this Agreement.

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

**Code of Practice** means a code of practice as defined in, and approved under, the *Information Privacy Act 2000* (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 department or any successor system (including variations).

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

**Expiry Date** means the date set out in **Item 1 of Schedule 1**.

**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 *Information Privacy Act 2000* (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 the Parliament and the Commonwealth of Australia, including common law, legislation and subordinate legislation; and
- (b) ordinances, regulations 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**.

**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 1 May 2013.

**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 a request for tender or request for proposal, in the form finally accepted by the Parliament, as set out in **Annexure B**.

**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. Term**

### **2.1 Term**

This Agreement commences on the Commencement Date and, unless terminated earlier under this Agreement or extended in accordance with **clause 2.2** will end on the Expiry Date.

### **2.2 Extension of term**

- (a) The Parliament may elect, by notice in writing to the Service Provider not later than two months prior to the expiry of the then current Term, to extend the Term of this Agreement for one or more further periods, as set out in **Item 1 of Schedule 1**.
- (b) Any such further term or terms will be on the same terms and conditions as this Agreement (excluding, in respect of the final further period, this **clause 2.2**).

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

### **3.1 Provision of Services**

The Service Provider must provide the Services for the Parliament in accordance with the terms of this Agreement.

### **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 Documents; 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 or in delay, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify the Parliament of that fact.

### **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. 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 of this Agreement.

- (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 20**.
- (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**

- (a) The Service Provider must provide to the Parliament's Representative:
- (b) 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
- (c) 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 Users 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 9.3**, 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**

- (a) 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 of this Agreement;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with the Service Levels;
- (d) whilst on premises owned or controlled by the 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 Specifications.

## **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 including in relating to ethical employment standards;
  - (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) making the person 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 be:
  - (i) taken out with an insurer acceptable to the Parliament; and
  - (ii) on terms (including any excess) which are acceptable to the Parliament.

### 18.2 Cross Liability

In addition to the requirements of **clause 18.1(d)**, any insurance that the Service Provider is required to obtain and maintain under this Agreement must:

- (a) be in the joint names of the Service Provider and the Parliament; and
- (b) include a cross liability clause under which the insurer agrees to waive all rights of subrogation or action against any of the persons named in the relevant insurance policy as the “insured” and for the purpose of which the insurer accepts the term “insured” as applying to each of the persons so named as if a separate policy of insurance had been issued to each of them.

## 19. 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 *Accident Compensation Act 1985 (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 *Accident Compensation Act 1985* (Vic).

## 20. Confidentiality and Privacy

### 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 or the Parliament would have been bound had it been directly done or engaged in by the Parliament or the Parliament.

## 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 20**.

### **21.5 Interlocutory relief**

Nothing in this **clause 20** is to be taken as preventing any party to a dispute from seeking interlocutory relief in respect of such dispute.

## **22. Compliance with 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. Without limitation to the foregoing, the Service Provider must comply with the provisions set out in **Schedule 5**.

## **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.

### **24.1 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**,
  - (iii) 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)

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Commencement Date: [TBA]

Completion Date: [TBA]

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

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#### 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:**

The Executive 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

Fax: (03) 8682 2898

Email: paec@parliament.vic.gov.au

Addressee: Valerie Cheong (Executive Officer)

### **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 Tenders 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 Tenders;
- (d) The Tender Documentation.

### Work program

Milestones/deliverables		Due date
1	Proposed audit plan	12 July 2013
2	Progress report on the audit	27 August 2013
3	First draft preliminary report on audit findings and recommendations	10 October 2013
4	Final performance audit report transmitted to the Parliament of Victoria	14 November 2013



## 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
- 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 pro-active project management.

In providing the 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 Representative satisfaction with the Services	A specific review of the Service Provider’s reports in clause 5 by the Parliament.
Quality and impartiality of analysis, findings and recommendations.	That the advice facilitates delivery of the primary objectives of the RFT as set out in Part B of the RFT as attached to this Agreement as <b>Annexure A</b> .  That the advice provided is sufficiently clear, precise and documented to allow the Parliament to make informed decisions in relation to the audit findings and recommendations.

	That the advice provided has regard applicable to 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	That the Service Provider's Specified Personnel remains substantially unchanged during the performance of the Services, or if Specified Personnel vary, that the Service Provider can continue to meet the engagement requirements.
No adverse feedback on the Preliminary Report	The Parliament provides no adverse feedback related to the outcomes of the preliminary report provided by the Service Provider.

# 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 Auditing Services 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 or to the extent permitted under clause 24.1 of the Agreement, the Confidant will not –
  - (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 5.1 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)**

# Schedule 5

## Compliance with Law

In performing its obligations under this Agreement, the Service Provider must comply with the following (without limiting any of its other obligations under this Agreement):

### 1. Employment Policy

- (a) The Service Provider must comply with Anti-Discrimination Law.
- (b) 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.
- (c) 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.

### 2. Ethical Purchasing Policy

- 2.1 Without limiting or derogating from the Service Provider's obligation to comply with any Law, the Service Provider must satisfy the Ethical Employment Standard at all times.
- 2.2 The Parliament may make an Adverse Assessment if, at any time during the term of the Agreement:
  - (a) a court, tribunal, commission or board makes a finding of serious breach of an Applicable Industrial Instrument against the Service Provider or convicts the Service Provider of a serious offence under Applicable Legislation; or
  - (b) a court, tribunal, commission or board makes a finding of a breach of an Applicable Industrial Instrument against the Service Provider or convicts the Service Provider of an offence under Applicable Legislation that is part of a pattern of repeated or ongoing breaches or offences; or
  - (c) the Service Provider fails to meet its disclosure obligations under **paragraph 2.3**.
- 2.3 The Service Provider must, on request by the Parliament and within the time period required by the Parliament in writing (which must not be less than 30 days) provide an up to date Ethical Employment Statement setting out Full Details of:
  - (a) any adverse finding against the Service Provider by a court, tribunal, commission or board in respect of a breach of an Applicable Industrial Instrument;



- (b) any conviction by a court, tribunal, commission or board of an offence committed by the Service Provider under Applicable Legislation;
- (c) any finding by a court, tribunal, commission or board that the Supplier has breached a penalty provision of Applicable Legislation; and
- (d) any proceeding or prosecution against the Service Provider in respect of a breach of an Applicable Industrial Instrument or an offence under or breach of Applicable Legislation commenced since the date of this Agreement that has not previously been disclosed to the Parliament.

The up-to-date Ethical Employment Statement may, at the option of the Service Provider, also include details of remedial measures implemented to ensure future compliance with Applicable Industrial Instruments and Legislation.

2.4 The parties acknowledge and agree that:

- (a) if this Agreement is terminated pursuant to **paragraph 2.9**, the Service Provider's name and details (including its Australian Business Number) will be included in the Ethical Employment Reference Register for a period of 24 months from the date that termination takes effect;
- (b) the Victorian Government department will access the Ethical Employment Reference Register for the purpose of applying the Ethical Purchasing Policy; and
- (c) the inclusion of any details in the Ethical Employment Reference Register is one factor in the assessment process of whether a tenderer satisfies the Ethical Employment Standard, and will not automatically exclude the Service Provider from participation in future tender processes.

2.5 In connection with the requirements of the Ethical Purchasing Policy, the Service Provider will:

- (a) permit an accountant or auditor on behalf of the Parliament from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained by the Service Provider for the purposes of this Agreement; and
- (b) give such accountant or auditor all reasonable assistance to facilitate the conduct of such audit or inspection.

Any information provided, or to which an accountant or auditor has access under this clause, shall be treated as confidential information and shall not be used other than for the purposes of this Agreement or disclosed other than as required at law or to meet any requirements of the Parliament of Victoria.

2.6 The confidentiality obligations of the parties shall not extend to:

- (a) information already in the public domain other than due to a breach of this Agreement;
- (b) any disclosure required by Law;

- (c) any disclosure reasonably required in order to comply with a request for information made by the Auditor-General of Victoria; or
  - (d) information reasonably required in order to publish appropriate and comprehensive performance data relating to the provision of the Services under this Agreement.
- 2.7 Notwithstanding any other obligation in this Agreement, the Service Provider acknowledges that the Parliament (or such other Victorian Government department as may be charged with the responsibility of monitoring compliance with the Ethical Purchasing Policy from time to time) may publish (whether on the internet or otherwise) the name of the Service Provider and the value of the Services to be provided under this Agreement, together with the conditions of this Agreement generally.
- 2.8 If at any time during the term of the Agreement, the Parliament notifies the Service Provider in writing that it has made an Adverse Assessment pursuant to **paragraph 2.2**, the Service Provider must, within 14 days of receipt of such notice, or such longer period agreed by the Parliament, provide a statutory declaration from a director or company secretary of the Service Provider, setting out:
- (a) any additional information that in the opinion of the Service Provider is relevant to the Adverse Assessment, including the Service Provider's grounds for any objection to the Adverse Assessment;
  - (b) details of any information on which the Adverse Assessment is based that in the opinion of the Service Provider is incorrect, incomplete or otherwise unfairly prejudicial to the Service Provider; and
  - (c) any existing or planned remedial measures that the Service Provider has taken or will be taking to prevent a breach or offence similar to the breach or offence on which the Adverse Assessment is based from recurring.
- 2.9 Following receipt of the statutory declaration or expiration of the period described in **paragraph 2.8**, whichever comes first, the Parliament may, in its discretion, do one or more of the following:
- (a) request the Service Provider show cause as to why this Agreement should not be suspended or terminated with effect from 14 days; and/or
  - (b) suspend the operation of this Agreement for a specified period of up to 6 months with 14 days' notice; and/or
  - (c) terminate this Agreement with 14 days' notice.
- 2.10 In exercising its discretion under **paragraph 2.9**, the Parliament will take into consideration:
- (a) whether the Service Provider has taken or will take measures that, in the reasonable opinion of the Parliament, are commensurate with the breach or the offence on which the Adverse Assessment is based and can be reasonably expected to prevent such breach or offence from recurring; or

- (b) whether the Parliament is otherwise satisfied that the Service Provider has shown good cause why the Agreement should not be suspended or terminated.

2.11 The remedies under **paragraph 2.9** are in addition to and do not limit any other rights or remedies of the Parliament under this Agreement or otherwise at Law.

2.12 In this **paragraph 2:**

**Adverse Assessment** means an assessment by the Parliament pursuant to the Ethical Purchasing Policy that, in the opinion of the Parliament, the Service Provider does not satisfy the Ethical Employment Standard.

**AFPCS** means that Australian Fair Pay and Conditions Standard within the meaning of the *Workplace Relations Act 1996* (Cth).

**Applicable Industrial Instruments** means an Award, Enterprise Agreement or AFPCS that applies to the employment of any of the employees of the Service Provider and is binding on the Service Provider.

**Applicable Industrial Instruments and Legislation** means all Applicable Industrial Instruments and all Applicable Legislation.

**Applicable Legislation** means:

- (a) *Federal Awards (Uniform System) Act 2003* (Vic);
- (b) *Outworkers (Improved Protection) Act 2003* (Vic);
- (c) *Dangerous Goods Act 1985* (Vic);
- (d) *Equipment (Public Safety) Act 1994* (Vic);
- (e) *Occupational Health and Safety Act 2004* (Vic);
- (f) *Workplace Relations Act 1996* (Cth);
- (g) *Long Service Leave Act 1992* (Vic);
- (h) Anti-Discrimination Laws;
- (i) any corresponding State (other than Victoria) or territory legislation dealing with any of the matters dealt with in paragraphs (a) to (h) above; and
- (j) any other legislation designated by the Victorian Government as Applicable Legislation under the Ethical Purchasing Policy from time to time.

**Anti-Discrimination Law** means the *Equal Opportunity for Women in the Workplace Act 1999* (Cth), the *Equal Opportunity Act 1995* (Vic), the *Disability Discrimination Act 1992* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Racial Discrimination Act 1975* (Cth), the *Age Discrimination Act 2004* (Cth) and the *Workplace Relations Act 1996* (Cth).

**Award** means any award within the meaning of the *Workplace Relations Act 1996* (Cth) or of any tribunal empowered to make industrial awards applying to the employment of employees.

**Enterprise Agreement** means any Workplace Agreement, Pre reform Certified Agreement, pre reform AWA, Preserved State Agreement, Notional Agreement Preserving a State Award (as these terms are defined in the *Workplace Relations Act 1996* (Cth)) or any agreement made, lodged or registered under a law of a State.

**Ethical Employment Reference Register** has the meaning given to that term in the Ethical Purchasing Policy.

**Ethical Employment Standard** means, in the context of this Agreement, the requirement for the Service Provider to demonstrate, to the reasonable satisfaction of the Parliament, and in accordance with the requirements of the Ethical Purchasing Policy, that the Service Provider has, and will continue during the term of the Agreement, to meet its obligations to its employees under Applicable Industrial Instruments and Legislation.

**Ethical Employment Statement** has the meaning given to that term in the Ethical Purchasing Policy.

**Ethical Purchasing Policy** means the Victorian Government's Ethical Purchasing Policy supporting fair and safe workplaces, which is published by the Victorian Government, as amended from time to time.

**Full details** means details of:

- (a) the nature of the breach or offence or alleged breach or offence;
- (b) any conviction recorded or adverse finding made in respect of the breach or offence;
- (c) any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and Legislation;
- (d) the name of the court, tribunal, commission or board, the State or Territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
- (e) the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
- (f) this Agreement; and
- (g) any further information regarding the matters set out in paragraphs (a) – (f) above that may be requested by the Parliament.

**Executed** as an agreement.

Signed by Hon Ken Smith 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)

# **Annexure A**

## **Part B of RFT**

[Annex Part B of RFT]

# **Annexure B**

## **Tender Documentation**

[Annex Tender Documentation]

## RFT PART D – TENDERER’S RESPONSE

### Tender document

- In the case of electronic lodgement of this RFT, Tenderers must provide an electronic copy of the Tenderer’s Response in Microsoft Office 2000 format, submitted in accordance with the Conditions of Tender.
- All responses must be provided within the specified boxes and must respond to the Specification (Part B) and Proposed Contract (Part C) in accordance with the Conditions of Tendering (Part A).
- 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.
- All documents must be virus checked by the Tenderer before lodgement.



**Parliament of [Name Of Parliament]**

**Request for Tender  
for [description of Services]**

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

<b>Name:</b>	
<b>Title:</b>	
<b>Signature of Tenderer:</b>	

<b>Tenderer's Information</b>	
<b>Name of Tenderer (natural person) and address:</b>	
<b>Parent/Associated Company or Partnership Details:</b> <b>Name:</b> <b>Place of registration:</b> <b>Australian Company Number (or equivalent):</b> <b>Australian Business Number (or equivalent):</b> <b>Principal office in Victoria (if any):</b>	
<b>Telephone:</b>	
<b>Facsimile:</b>	
<b>Email:</b>	
<b>Name and title of Tenderer's authorised agent:</b>	

<b>Date:</b>	
<b>Executive summary</b>	
<b>Provide a brief executive summary providing an overview of the Tender.</b>	

<b>Compliance with the Specification</b>		
<p>A Tenderer must provide a tabulated statement showing clearly, and in order of the relevant sections, its level of compliance with Part B (Specification). Refer section 7.1, Part A (Conditions of Tender) for further instructions.</p> <p><b>Note: No response is required in respect of a particular section of the Specification where a Tenderer will comply with that section.</b></p>		
<b>Section</b>	<b>Compliance Statement</b>	<b>Explanation / Comment</b>
	<p><b>Note to Tenderers:</b></p> <p><i>The cells in this column need to state one of the following:</i></p> <p><b>Will comply subject to conditions; or</b></p> <p><b>Will not comply.</b></p> <p><i>Remove this note when you prepare your Tender.</i></p>	<p><b>Note to Tenderers:</b></p> <p><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></p> <p><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></p> <p><b>In both cases, the nature and extent of non-compliance must be clearly stated.</b></p> <p><i>Remove this note when you prepare your Tender.</i></p>

<b>Capability:</b>	
<ul style="list-style-type: none"> <li>• <b>must be a member of a leading Australian, Australasian or international organisation in the fields of auditing and/or consulting (with an emphasis on performance evaluation).</b></li> <li>• <b>has appropriately qualified, skilled and experienced staff to undertake the audit.</b></li> <li>• <b>has an appreciation of the role of the Auditor-General’s Office.</b></li> <li>• <b>has relevant knowledge and experience in the use of modern performance audit methodologies and evaluation techniques</b></li> </ul>	
<b>Knowledge of and experience in the industry:</b>	
Provide details of your knowledge and experience in the industry, as it applies to the required Services.	

<p><b>Infrastructure and other support</b></p> <p>Provide details of your and your parent/associated company or partnership and support which will be used to provide the requirement.</p>	
<p><b>Staff resources</b></p> <p>Provide a brief curriculum vitae for you and each member of staff you are proposing for the work including details of qualifications, experience and skills.</p>	
<p><b>Schedule of proposed sub-contractors</b></p> <p>Provide details of each proposed sub-contractor (if any) to be engaged in connection with the provision of the Services. Also, define the scope and extent of services to be provided by sub-contractors.</p>	<p><b>Subcontractor's name:</b></p> <p><b>Address:</b></p> <p><b>Services to be provided:</b></p>
<p><b>Methodology</b></p>	
<p>(a) Provide details of the methodology you propose to use to provide the Services.</p>	
<p>(b) Provide details of the proposed planning arrangements to be implemented in the provision of the Services, in particular meeting deadlines.</p>	

### Past Performance and Current Work

- has relevant knowledge and experience in the application of large scale performance reviews.
- 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 role.

### Previous and current work

<p>(a) Detail previous work related to the requirements detailed in the Specification.</p>	
<p>(b) Detail current work related to the requirements detailed in the Specification.</p>	
<p>(c) Briefly detail all previous public sector experience in the past three years as it relates to the requirements detailed in the Specification.</p>	

<p><b>References</b></p> <p>Provide three referees that the Parliament could contact regarding your ability to provide to the Services required under the Specification.</p> <p><b>Note: The Parliament reserves the right to contact any of the Tenderer's previous customers.</b></p>	<p>Client and contract details: Description of service: Period:</p> <p>Client and contract details: Description of service: Period:</p> <p>Client and contract details: Description of service: Period:</p>
<p><b>Related Tenderers</b></p> <p>Provide details of any other Tenderer that is a related body corporate of the Tenderer.</p>	

<p><b>Quality system for deliverables and innovation</b></p> <ul style="list-style-type: none"> <li>• has comprehensive quality and risk control systems and processes for deliverables.</li> <li>• methodology proposed including any innovation, phasing / staging and timelines.</li> </ul>	
<p>(a) Do you have a certified Quality Management System?</p> <p>If YES, to which standard are you accredited?</p>	
<p>(b) If you are not currently certified, are you in the process of achieving certification?</p> <p>If YES:</p> <ul style="list-style-type: none"> <li>• To which standard?</li> <li>• When did you commence?</li> <li>• Targeted date for completion?</li> <li>• Accreditation body being used?</li> </ul>	
<p>(c) If you are not in the process of achieving certification, provide details of how you intend to ensure that the Services meet the client's requirements and industry standards for quality.</p>	
<p>(d) If required, are you prepared to undergo a quality assessment by the Parliament or its representatives?</p>	
<p>(e) What is the current QA level of proposed sub-contractors (if any)?</p>	<p><b>Sub-Contractor</b> Name: QA level:</p>

(f) State your involvement in activities which involve the use of leading technologies, innovative solutions and best practice that have resulted in “value for money” improvements.	
(g) Provide details of any online systems that can provide e-commerce solutions to Government.	

## Customer service

- **comply with the Parliament's directions and liaise with its staff efficiently.**
- **good progress reports and effective communication processes 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 would undertake for this contract.	
(b) What methods will you employ to gather end user feedback?	
(c) What strategies will be used to ensure continuous improvement for the service?	
(d) What other customer service orientated proposals do you have which will enhance your bid?	
<b>Benchmarking</b>  Provide details of what you consider to be appropriate performance measures and benchmarks.	
<b>Transition</b>	
(a) <b>Transition In Plan</b> – Provide a Transition In Plan identifying the tasks and responsibilities attributed to the Tenderer and to the Parliament.	
(b) <b>Transition Out Plan</b> – 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 perform the contract 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 regional requirements.

## Financial viability

- includes support of parent/associated companies or partnership.

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”, provide an explanation.

(a) Do you have support of your parent/associated companies or partnership?

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

(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 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, or has there been within the past five years?

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

<p><b>Schedule of insurance information</b></p> <p>Provide details of all relevant insurances maintained by the Tenderer.</p>	<p>Name of insurance companies:</p> <p>Policy type (eg public liability, professional indemnity, etc):</p> <p>Policy number(s):</p> <p>Expiry dates:</p> <p>Limit of liability:</p> <p><b>Relevant exclusions:</b></p>
<p><b>Pending claims</b></p> <p>Please detail any pending active claims that may impact on the Tenderer's insurance liability</p>	

<p><b>Risk management strategies</b></p> <p>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 Services.</p>	
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## Compliance with the Proposed Contract

A Tenderer must provide a tabulated statement showing clearly, and in order of the relevant clauses, its level of compliance with Part C (Proposed Contract). Refer section 7.2, Part A (Conditions of Tender) for further instructions.

**Note: No response is required in respect of a particular clause of the Proposed Contract where a Tenderer will comply with that clause.**

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

## 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.

<p>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.</p>	
<p>Outline the processes you have in place to handle any future conflict of interest (actual or perceived).</p>	



Whether 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 complying with section 19 (2A) of the Audit Act, if requested by the Parliament.	
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<b>Costings</b>	
(a) Pricing schedule (fixed fee).	
(b) Provide details of other costs associated with this contract.	

<b>Environmental Sustainability</b>	
<p>Minimising the environmental impacts of these processes and quantifying the results are key Government priorities. Tenderers may be asked to demonstrate their commitment to improving the sustainability of their operations.</p> <p>All goods and services have some impact on the environment through their production and provision or from their interface with the environment.</p> <p>An environmental management assessment of a Tenderer may be conducted by or on behalf of the Parliament.</p>	
<b>Sub Criteria</b>	<b>Tenderer's Response</b>
1 Do you have an environmental 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?	

## Ethical Purchasing Policy

It is a condition of tendering for purchases of goods or services valued at \$100,000 or more or where the tenderer participates in a high risk industry that shortlisted tenderers are required to complete an Ethical Employment Statement (RFT Part E) demonstrating that they satisfy the ethical employment standard set out in the Victorian Government Ethical Purchasing Policy ([www.procurement.vic.gov.au](http://www.procurement.vic.gov.au)). Shortlisted Tenderers who do not comply with a request to provide Part E within the timeframes specified by the Parliament will be disqualified from the Tendering Process. The names of Tenderers who submit an Ethical Employment Statement and are assessed by the Parliament as not satisfying the Ethical Employment Standard will be placed on the Ethical Employment Reference Register.

**Response required:** Understood and agreed.

## Any other matters

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

## Disclosure of Contract Information

The Conditions of Tender include a provision for disclosure of contract information (refer Attachment A to this Part D). Identify any information in your Tender 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 Tendering include a provision for the disclosure of contract information (refer section in Part A of the RFT dealing with “Use of Tenders”).

The provisions of the Proposed Contract in regard to confidentiality and disclosure 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.

### **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.

# RFT PART E – ETHICAL EMPLOYMENT RESPONSE

## Note to Tenderers:

Only complete and submit this Part E if you have been expressly requested to do so by the Parliament.

The information sought in this RFT Part E relates to clause 11 of RFT Part A (Conditions of Tendering) and is subject to the warranties contained in clause 14 of that document.

<b>Name of the Tenderer:</b>	
<b>ABN of the Tenderer:</b>	
<b>The Parliament's Contact Details:</b>	
<b>RFT Number:</b>	
<b>Description of the RFT:</b>	
<b>Date of submission of this RFT Part E:</b>	

## Ethical Purchasing Policy

For a Tendering process to which the Ethical Purchasing Policy applies, shortlisted Tenderers are required to complete an Ethical Employment Statement.

the Ethical Purchasing Policy provides that the State will not enter into a contract to which the policy applies with any Tenderer that cannot satisfy the ethical employment standard.

the ethical employment standard is the requirement for persons that supply or propose to supply goods and services to the Victorian Government to demonstrate to the reasonable satisfaction of the Parliament, and in accordance with the requirements of the Ethical Purchasing Policy, that the relevant contracting or Tendering entity meets its obligations to its employees under Applicable Industrial Instruments and Legislation at the time a contract is awarded and continues to meet such obligations during the term of that contract.

Details of Applicable Industrial Instruments and Legislation are set out in the Ethical Purchasing Policy located at [www.procurement.vic.gov.au](http://www.procurement.vic.gov.au).

When notified by the Parliament, shortlisted Tenderers are required to complete sections 1 to 5 of this RFT Part E within the timeframe specified by the Parliament.

The Parliament will assess whether a Tenderer satisfies the ethical employment standard in accordance with the Process Guidelines for Government Buyers. The assessment will be based on:

- any findings against the Tenderer by a court, tribunal, commission or board of a breach of an applicable industrial instrument (award or agreement binding on the Tenderer), including a finding of a breach of a non-confidential consent order, in the preceding 24 months;

- any convictions under applicable legislation (detailed in the Ethical Purchasing Policy) in the preceding 24 months;
- any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation;
- remedial measures implemented to ensure future compliance with Applicable Industrial Instruments and legislation.
- the seriousness of breaches or offences which are the subject of an adverse finding or conviction;
- the number of adverse findings or convictions;
- whether there is a pattern of continued breaches or convictions (including, for the purposes of determining a pattern of continued breaches only, whether there are any current proceedings or prosecutions before a court, tribunal, commission or board);
- whether remedial measures are commensurate with the breach or offence and in the reasonable opinion of the Parliament, can be reasonably expected to prevent such breach or offence from recurring.

The name of the disqualified Tenderer will be placed on a register maintained by the Department of Treasury and Finance (the **Ethical Employment Reference Register**) for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process.

The information in a Tenderer's Ethical Employment Statement will be used to assess whether the Tenderer satisfies the ethical employment standard. the Parliament may request further details about the information provided by the Tenderer in this Ethical Employment Statement.

The Parliament will not enter into contracts with Tenderers who do not satisfy the ethical employment standard. Such Tenderers will be disqualified from the Tendering Process and their names will be placed on the Ethical Employment Reference Register for a period of 24 months from the date the Tenderer is disqualified from the Tendering Process. Victorian Government departments may access the Ethical Employment Reference Register for the purpose of determining whether the Tenderer has not met the ethical employment standard for other Tendering Processes, i.e. has not satisfied the standard in the past.

**A Tenderer whose name is on the Ethical Employment Reference Register will not be excluded from other government business opportunities solely on the basis that its name appears on that register.**

The Tenderer will be informed if, in the assessment by the Parliament, it has failed to satisfy the ethical employment standard before disqualification occurs. the Tenderer will have an opportunity to provide additional information at that time.

## Definitions

For the purposes of sections 1 to 5 of this Ethical Employment Statement:

**Full Details** means details of:

- the nature of the breach or offence or alleged breach or offence;
- any conviction recorded or adverse finding made in respect of the breach or offence;
- any penalty or orders imposed by a court, tribunal, commission or board in respect of the breach or offence and the maximum penalty that could have been imposed under the Applicable Industrial Instruments and legislation;
- the name of the court, tribunal, commission or board, the state or territory in which the proceeding or prosecution is brought, the date on which the proceeding or prosecution was commenced and the number or description assigned to the proceeding or prosecution by the court, tribunal, commission or board;
- the name of the entity against which the finding or conviction was made or the proceeding or prosecution was initiated;
- this contract; and
- further information about any of the above, if required by the Parliament.

**Tendering Entity** means the legal entity (individual) that would (if successful) enter into a contract with the state at the end of the Tendering Process. Partnerships, unincorporated joint ventures or consortia planning to enter into a contract with the State will need to complete an Ethical Employment Statement for each entity forming part of the bidding team.

<b>1</b> Provide details of any industrial instrument (award or agreement) that specifically applies to the employees of the Tendering Entity and is binding on it (applicable industrial instruments).	
<b>2</b> Provide Full Details of any findings against the Tendering Entity by a court, tribunal, commission or board of a breach of an applicable industrial instrument, including a finding of a breach in a non-confidential consent order, in the preceding 24 months.	

<p><b>3</b> Provide Full Details of any convictions under the following legislation (applicable legislation) in the preceding 24 months:</p> <ul style="list-style-type: none"> <li>• <i>Dangerous Goods Act 1985</i> (Vic)</li> <li>• <i>Equipment (Public Safety) Act 1994</i> (Vic)</li> <li>• <i>Federal Awards (Uniform System) Act 2003</i> (Vic)</li> <li>• <i>Long Service Leave Act 1992</i> (Vic)</li> <li>• <i>Occupational Health and Safety Act 2004</i> (Vic)</li> <li>• <i>Outworkers (Improved Protection) Act 2003</i> (Vic)</li> <li>• <i>Workplace Relations Act 1996</i> (Cth)</li> <li>• Any other legislation designated by the Victorian Government as applicable legislation under the Ethical Purchasing Policy from time to time.</li> </ul>	
<p><b>4</b> Provide Full Details of any current proceedings or prosecutions in respect of a breach of an applicable industrial instrument or an offence under applicable legislation.</p>	
<p><b>5</b> Provide details of remedial measures implemented to ensure future compliance with applicable industrial instruments and applicable legislation.</p>	

