



PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

**Financial Audit of the Victorian
Auditor-General's Office**

Tender Brief

5 April 2012

Financial Audit

Background and Objective

The *Audit Act 1994*, as amended, requires that an independent financial auditor be appointed by the Parliament of Victoria for a period of three years to conduct annual financial audits of the Victorian Auditor-General's Office (VAGO). 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 financial audit.

Section 17 of the *Audit Act 1994* provides in part that:

- (1) *A person may be appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Public Accounts and Estimates Committee of the Parliament, as an independent auditor of the Victorian Auditor-General's Office.*
- (2) *An appointment –*
 - a) *must not be made for a period exceeding 3 years, but may be renewed; and*
 - b) *may provide for the payment of remuneration.*
- (3) *Remuneration payable under the appointment shall be paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.*
- (4) *The function of the independent auditor is to carry out audits of the Victorian Auditor-General's Office in accordance with this Part.*

Section 18 of the *Audit Act 1994* relates to the report that the independent auditor may choose to make to Parliament. Such a report may include recommendations for the more effective, efficient and economic operation of VAGO.

Section 18 requires that any such report of the independent auditor must be reported to Parliament after statutory consultation with the Auditor-General. This requirement may be read as applicable to any material matters arising from the financial audit other than the expression of an audit opinion on VAGO's annual financial statements.

In addition to section 18 relating to a possible report to Parliament on material matters, the Committee requires the independent auditor to provide the Committee with a report covering the work undertaken by the independent auditor including interaction and meetings with the Auditor-General and VAGO and auditing issues dealt with during the audit.

While sections 17 and 18 do not explicitly state what the audit comprises, the *Audit Act 1994* defines an audit as including 'an examination and inspection'. The audit is therefore intended to comprise an audit of VAGO's annual financial statements and the expression of independent professional opinions on these statements, attesting to their fair presentation in line with professional reporting standards and processes.

The Committee's objective is to recommend to the Parliament the appointment of a suitably qualified person as financial auditor during the present session of the Victorian Parliament. The duly appointed independent financial auditor is required to conduct a financial audit in accordance with directions contained within the terms of reference, over the next three years. The required reports and timelines are stated on page 3 of this tender brief.

Terms of Reference

The Committee wishes to direct the successful tenderer to conduct the financial audit in accordance with the following legislative context and terms of reference.

The independent financial auditor's role is to:

- conduct an audit of VAGO's financial statements for the next three years beginning with the year ending 30 June 2012;
- form an opinion as to whether the financial statements of VAGO present fairly the financial position of VAGO as at the end of each financial year and its financial performance and cash flows for each financial year in accordance with applicable Accounting Standards and other mandatory professional reporting requirements; verify that such statements comply with the financial reporting requirements of the *Financial Management Act 1994*, as amended, and relevant provisions of any successor legislation to that Act;
- form an opinion on the processes used by VAGO in the preparation of its accounts;
- conduct the audit in compliance with the *Audit Act 1994*, Australian Auditing Standards and professional reporting requirements;
- prepare an appropriate methodology for each year's audit which may include risk-based principles, controls-based testing, analytical reviews, adequacy of financial reporting systems and other procedures to ensure a professional audit is undertaken in compliance with Australian auditing standards;
- meet on a regular basis with the VAGO Audit Committee to discuss, clarify and resolve issues and findings;
- consult as the independent auditor thinks fit with the Chair of the Committee and/or the Audit Sub-Committee of the Committee;
- evaluate the progress, adequacy and effectiveness of measures implemented by VAGO to address issues and recommendations that accompanied the previous financial year's audit opinion;
- prepare a management letter and/or operations letter to VAGO;
- prepare as the auditor thinks fit, a report to Parliament that may include such information and such recommendations for the more effective, efficient and economic operation of VAGO; and
- submit to the Committee a report on the conduct of the independent financial audit including details of meetings with the Auditor-General and VAGO and auditing issues dealt with during the audit.

Reports to the Committee and Parliament

The provision of the following reports are required by the Committee for audits for the financial years ending 30 June 2012, 30 June 2013 and 30 June 2014:

- a. Prior to the commencement of each audit, the auditor should provide an audit plan and methodology to the Committee for comment.
- b. The auditor should provide a progress report to the Committee within five weeks of the commencement of the audit.
- c. Following the conduct of the audit, the auditor may, if the auditor thinks fit, under section 18 of the *Audit Act 1994*, make a report on the audit, including recommendations for the more effective, efficient and economic operation of VAGO, for transmission to Parliament.
- d. In relation to the audit for the financial year ended 30 June 2012, the auditor's preliminary report and audit opinion including a copy of a proposed management letter and/or operations letter should be provided to the Committee and Auditor-General by 31 July 2012.
- e. The auditor's finalised report and audit opinion including a copy of the final management letter and/or operations letter should be provided to the Committee as soon as completed and prior to the inclusion of the audit opinion in the Auditor-General's annual report to the Parliament.
- f. The auditor should also submit to the Committee a report on the conduct of the independent financial audit including details of meetings with the Auditor-General and VAGO and auditing issues dealt with during the audit together with the auditor's final report, audit opinion and management and/or operations letter outlined in paragraph 'e' above.
- g. In relation to the audit for the financial year ended 30 June 2012, the final audit opinion is to be transmitted to Parliament via its inclusion within the Auditor-General's 2011-12 Annual Report when the Auditor General tables the report in Parliament.

The timeframes for the following two financial years, proposed audit plans and methodologies for each year will be agreed with the Committee prior to the commencement of the audits for each of those two years.

Selection criteria

The auditor should:

- be a member of a leading Australian, Australasian or international professional organisation in the field of accounting and financial auditing;
- have an extensive knowledge and appreciation of the role of the Auditor-General's Office;
- be able to demonstrate deep-seated experience in the practice of auditing;
- have a general knowledge and understanding of the Victorian public sector's system of financial administration;
- along with his/her related or associated corporations or businesses not have been an audit service provider to VAGO in the period 1 July 2010 to 30 June 2014;
- have sufficiently and appropriately skilled, qualified and experienced staff to assist with the audit; and
- be bound by and comply with the proposed terms and conditions and remuneration of the appointment contained in Appendix One of this brief.

The Committee plans to recommend to the Parliament the appointment of the financial auditor during the present session of the Victorian Parliament prior to the end of the 2011/2012 financial year.

Submissions

Submissions should:

- address all the above selection criteria;
- include details of key proposed personnel;
- detail a fixed price total professional service fees (exclusive of GST but inclusive of all other taxes and charges) for audits to be conducted each financial year ending 30 June 2012, 30 June 2013 and 30 June 2014. The total fixed price fees to be quoted for each year are for executing all directions in this tender brief to a required professional high standard of care, including all meeting attendances, 'on-site' and 'off-site' work. Submissions should also state a total upper monetary limit for travel expenses and disbursements such as telephone, printing and photocopying costs that will not be exceeded;
- identify with supporting detail as a component of the total fixed price fees for each year, a reasonable allowance for contingencies which could be experienced during the course of each audit; and
- include an estimated break-up of time by task and team member, a proposed schedule of work, appropriate audit methodologies that will be employed, performance milestones and key outputs for this engagement.

Other rules of tendering

No binding contract (including a process contract) or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of services will exist between the Parliament of Victoria and any tenderer unless and until the Parliament of Victoria has signed a formal written contract.

While all due care has been taken in connection with the preparation of this tender brief, the Parliament of Victoria makes no representation or warranties that the content in this tender brief or any information communicated to or provided to tenderers during the tendering process is, or will be, accurate, current or complete.

All persons obtaining or receiving this tender brief and any other information in connection with this tender brief or the tendering process must keep the contents of the tender brief and such other information confidential and not disclose or use that information except as required for the purpose of developing a tender response.

Without limiting the Parliament of Victoria's rights in the tender process, the Parliament of Victoria may at any time during the tender process choose to: shortlist one or more tenderers, commence or continue discussions with all or some tenderers without shortlisting any tenderers; or accept one or more of the tenders.

The Parliament of Victoria is not in any way bound to, shortlist, to select as successful, or to accept the tender offering the lowest price.

Shortlisted tenderers may be invited by the Parliament of Victoria to submit a best and final offer.

Without limiting any other provision, the Parliament of Victoria 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 request for tender or the tendering process;
- (c) vary or extend any time or date specified in this request for tender 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 deadline of 4:00pm Australian Eastern Standard Time (AEST), 20 April 2012;

Questions on this tender brief

All questions on this tender brief must be submitted in writing by 5:00pm Australian Eastern Standard Time (AEST), Tuesday, 24 April 2012, to:

paec@parliament.vic.gov.au

No further questions will be accepted beyond 5:00pm AEST, Tuesday, 24 April, 2012.

For probity reasons, no verbal discussions with prospective tenderers will be entered into by the Committee, its members or its Secretariat staff in relation to this tender brief.

Answers to all written questions in relation to this tender brief will be posted on the Committee's website for public access on:

<http://www.parliament.vic.gov.au/paec/inquiries/article/1780>

All tenderers will be notified in writing of the outcome of the tender process. Following this, feedback will be offered to unsuccessful tenderers.

The Committee's recommendation and the Parliament of Victoria's decision will be final.

Tender delivery details

Please ensure tender documents are delivered by 4:00pm AEST, Friday, 27 April 2012 to the tender box located next to the security desk on the ground floor, 55 St Andrews Place, East Melbourne 3002.

Tenders may also be emailed to paec@parliament.vic.gov.au by 4:00pm AEST, Friday, 27 April 2012, however, all risks entailed with timely email delivery and receipt will reside with the tenderer.

Tenders are to be addressed to:

**Mr Philip R. Davis MP
Chairman
Public Accounts and Estimates Committee
Parliament House
Spring Street
EAST MELBOURNE VIC 3002**

Tenders close at 4.00pm AEST, Friday, 27 April 2012. No time extensions will be granted. Tenders received after this time will be disqualified.

PLEASE CLEARLY MARK THE TENDER AS:

**Confidential
Tender document – Financial Audit
Victorian Auditor-General's Office
c/- PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE**

Appendix One

**TERMS AND CONDITIONS AND
REMUNERATION OF A PERSON
APPOINTED BY THE PARLIAMENT
OF VICTORIA PURSUANT TO
SECTION 17 OF THE
*AUDIT ACT 1994***

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TERMS AND CONDITIONS AND REMUNERATION OF A PERSON APPOINTED BY THE PARLIAMENT OF VICTORIA PURSUANT TO SECTION 17 OF THE AUDIT ACT 1994

Date 2012

Parties

The Parliament of Victoria ('the Purchaser')

..... of [address] ('Service Provider')

Whereas

- A. A financial audit shall be conducted of the Victorian Auditor-General's Office ('Auditee') to determine whether the Auditee is achieving its operations and objectives effectively, efficiently and economically in compliance with the Audit Act 1994, as amended.
- B. (Name of successful tenderer) is appointed as Service Provider by resolution of the Legislative Council and the Legislative Assembly (together constitute '**the Parliament of Victoria**' and '**the Purchaser**'), on the recommendation of the Public Accounts and Estimates Committee of the Parliament ('**Purchaser's Representative**'), to conduct the financial audit.
- C. This Agreement applies to financial audits to be conducted by the Service Provider for the financial years ended 30 June 2012, 30 June 2013 and 30 June 2014.
- D. This Agreement records the agreed terms and conditions of appointment and remuneration of a person appointed pursuant to section 17 of the Audit Act.

Agreed Terms and Conditions

1. **Interpretation**

1.1 **Definitions**

In this Agreement unless otherwise specified or unless the context otherwise requires:

'**Agreement**' means this agreement and includes the Schedules and any Annexures to it or documents incorporated by reference.

'**Annexure**' means an annexure to this Agreement.

'**Audit**' means a financial audit as described in section 17 of the Audit Act, as amended.

'**Audit Act**' means the *Audit Act 1994* (Vic).

'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**.

'Confidential Information' means any technical, scientific, commercial, financial or other information or any information designated by the Purchaser's Representative 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 to the Purchaser's Representative under this Agreement.

'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.

'Deed of Confidentiality' means a deed that is in or substantially in the form set out in **Annexure C**.

'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 as set out in **Schedule 2**.

'Information Privacy Principles' means the information privacy principles set out in the *Information Privacy Act 2000 (Vic)*.

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

'Laws' means:

- (a) the law in force in the State of Victoria and the Commonwealth of Australia, including common law and legislation; and
- (b) ordinances, regulations and by-laws of relevant government, semi-government or local authorities.

'Liaison Officer' means the Executive Officer of the Purchaser's Representative, as described in **Item 6 of Schedule 1**.

'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 Fees payable by the Purchaser to the Service Provider for the provision of the Services, as set out in **Schedule 2**.

'Public Sector Body' has the same meaning as defined in section 4 of the *Public Administration Act 2004* (Vic).

'Schedule' means a schedule to this Agreement.

'Service Levels' means the service levels the Service Provider must comply with in performing its obligations under this Agreement, as specified in **Schedule 3**.

'Service Provider's Representative' means the person specified in described in **Item 6 of Schedule 1**

'Services' means the Services to be provided by the Service Provider specified in **Schedule 2 and Annexure A**.

'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).

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

'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 Purchaser's Representative, as set out in **Annexure B**.

'Term' means the term of this Agreement determined in accordance with **clause 4**.

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; and
 - (v) '\$', 'dollars' or 'AUD' is a reference to the lawful currency of the Commonwealth of Australia; 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.

3. **Headings**

Headings do not affect the interpretation of this Agreement.

4. **Term**

This Agreement commences on the Commencement Date and, unless terminated earlier under **clause 18** or extended by agreement of the Purchaser's Representative and the Service Provider, will end on the Expiry Date.

5. Timetable for Reports

- (a) Subject to **clause 5(d)**, for financial audits conducted for the financial years ending 30 June 2012, 30 June 2013 and 30 June 2014, the Service Provider shall deliver to the Liaison Officer for the Purchaser Representative's feedback:
- (i) a proposed audit plan by 31 May for each applicable financial year, unless this date is varied by prior mutual agreement between the Service Provider and the Purchaser's Representative;
 - (ii) a progress report, including details of the Service Provider's performance against the Service Levels, within five weeks of the commencement of each financial audit;
 - (iii) if the Service Provider thinks fit, following the conduct of each audit, under section 18 of the Audit Act to prepare a report on the audit, including recommendations for the more effective, efficient and economic operation of the Auditee, a preliminary report and draft audit opinion including a copy of a proposed management letter and/or operations letter at least three weeks before transmission to Parliament; and
 - (iv) a final report and audit opinion including a copy of the final management letter and/or operations letter to be provided to the Purchaser's Representative as soon as completed and prior to the inclusion of the audit opinion in the Auditor-General's annual report to the Parliament.
- (b) The Service Provider shall present the preliminary report referred to in **clause 5(a)(iii)** to the Auditee for review at least 10 Business Days prior to making its final audit report and may consider any submissions or comments from the Auditee in accordance with section 18 (3) of the Audit Act.
- (c) A report on the conduct of the independent financial audit including details of meetings with the Auditor-General and the Auditee and auditing issues dealt with during the audit must be provided to the Purchaser's Representative simultaneously with the auditor's final report, audit opinion and management and/or operations letter outlined in **clause 5(a)(iv)**.
- (d) In relation to the audit for the financial year ended 30 June 2012:
- (i) the Service Provider's preliminary report referred to in **clause 5(a)(iii)** and draft audit opinion including a copy of a proposed management letter and/or operations letter, must be provided to the Purchaser's Representative and Auditor-General by 31 July 2012, unless this date is varied by prior mutual agreement between the Service Provider and the Purchaser's Representative; and
 - (ii) the Service Provider must transmit the final audit opinion to Parliament by 15 August 2012 (unless this date is varied by prior mutual agreement between the Service Provider and the Purchaser's Representative), via its inclusion within the Auditor-General's 2011-12 Annual Report when the Auditor General tables the report in Parliament.

- (e) The Service Provider acknowledges that specific timeframes for reports for the following two financial years ended 30 June 2013 and 30 June 2014, proposed audit plans and methodologies for each year will be agreed and confirmed with the Purchaser's Representative prior to the commencement of the audits for each of those two years.
- (f) In relation to any audit report and recommendations made under Section 18 of the Audit Act, the Service Provider will transmit the final report to Parliament as required under section 18(4) of the Audit Act.

6. Performance of Services

6.1 Services to be performed in accordance with Service Levels

The Service Provider must provide the Services to a standard that reaches or exceeds the Service Levels. The Parties acknowledge and agree that the purpose of the Service Levels is to ensure a minimum level of performance by the Service Provider. In addition, the Service Provider must:

- (a) provide the Services in accordance with the terms of this Agreement;
- (b) provide the Services in a proper, timely and efficient manner using the standard of care, skill, diligence, prudence and foresight that would reasonably be expected from a prudent, professional and experienced provider of services that are similar to the Services;
- (c) ensure the highest quality of work and the delivery of the Services with the utmost efficiency;
- (d) act in good faith and in the best interests of the Purchaser;
- (e) comply with all statements or representations as to its performance or the provision of the Services set out in the Tender Documentation;
- (f) keep the Purchaser's Representative 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 Purchaser's Representative; and
- (g) carry out its obligations and duties and complete the provision of the Services to the reasonable satisfaction of and in accordance with the requirements of the Purchaser's Representative.

6.2 Service Provider to provide equipment

The Service Provider must provide any and all equipment (including computer hardware and software and any ancillary support) necessary for the performance of the Services.

6.3 Inability to provide services

If at any time during the Term the Service Provider is unable or is likely to become unable, for whatever reason, to provide any or all of the Services, the Service Provider must immediately notify the Purchaser's Representative of that fact.

6.4 Time of the essence

Time will be of the essence in the performance of the Services.

7. Service Provider's Staff

7.1 Service Provider's Staff

- (a) The Services must be performed by the persons specified in **Item 5 of Schedule 1**.
- (b) If the persons identified in **Item 5 of Schedule 1** or any of them are unavailable or otherwise unable to provide the Services, the Service Provider must promptly notify the Purchaser's Representative of that fact and provide details of alternate, suitably qualified and experienced staff to replace the persons specified in **Item 5 of Schedule 1 (Replacement Staff)**.
- (c) The Purchaser's Representative must notify the Service Provider in writing within five Business Days as to whether or not it accepts the Replacement Staff proposed by the Service Provider pursuant to **clause 7.1(b)**.
- (d) The Service Provider acknowledges and agrees that the Purchaser's Representative will be under no obligation to accept any person proposed by the Service Provider if the Purchaser's Representative is not satisfied as to the qualifications and experience of such person. In such case, the Purchaser may terminate this Agreement in accordance with **clause 18(b)(iv)**.

7.2 Service Provider

The parties acknowledge and agree that for the purposes of this Agreement:

- (a) the Service Provider is deemed to include all persons involved in the provision of the Services (including the persons specified in **Item 5 of Schedule 1** and any Replacement Staff); and
- (b) the acts and omissions of such persons are deemed to be the acts and omissions of the Service Provider.

8. **Price for the Services**

- (a) The Fee according to which the Service Provider will charge the Purchaser for Services is set out in **Schedule 2**. The Fee is fixed for the Term.
- (b) Expenses or other disbursements may only be charged by the Service Provider in accordance with **Schedule 2**.

9. **Invoicing and Payment**

9.1 **Invoicing**

- (a) For each financial year during the Term, the Service Provider must submit to the Purchaser's Representative:
 - (i) after submission of the draft preliminary audit report, draft audit opinion and draft management/operations letter if made as described in **clause 5(a)(iii)**, a first tax invoice for 50% of the Fee for the financial year audit that is the subject of the report;
 - (ii) after submission of the final audit report as described in **clause 5(a)(iv)**, a second and final tax invoice for the remaining 50% of the Fee for the financial year audit that is the subject of the report.
- (b) No advance payments will be made for Services not yet provided.
- (c) A tax invoice submitted for payment pursuant to **clause 9.1(a)** must contain each of the matters specified in **Item 2 of Schedule 1** and be sent to the address specified in **Item 2 of Schedule 1**.

9.2 **Payment of invoice**

- (a) Subject to the remainder of this **clause 9.2**, the Purchaser will pay the invoiced amount to the Service Provider within 30 days of receipt of the invoice.
- (b) An invoice will not be paid until such time as the invoice is certified for payment by the Purchaser's Representative. An invoice will not be certified for payment unless the Purchaser's Representative is satisfied that it is correctly calculated with respect to the Services and that the Services have been delivered in accordance with this Agreement.
- (c) If the Purchaser's Representative disputes the invoiced amount (whether in whole or in part) for any reason, the Purchaser must pay the undisputed amount of such invoice (if any), and the Purchaser's Representative must notify the Service Provider of the amount the Purchaser's Representative believes is due for payment. If the Purchaser's Representative 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 24**.

- (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.

9.3 **Fair payment**

- (a) The Purchaser 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 9.3(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.

10. **Contract management and liaison**

10.1 **Purchaser's Representative**

The Service Provider acknowledges that the Service Provider must comply with directions as to the Services given by the Purchaser's Representative.

10.2 **Parties' Representatives**

- (a) All queries or issues of a day-to-day operational nature including in connection with this Agreement, the delivery of Services and the invoicing and payment will be dealt with in good faith by the Service Provider's Representative and the Liaison Officer (**Representatives**).
- (b) During the period of the Services, the Liaison Officer shall make him or herself available as reasonably required.

- (c) The Service Provider's Representative must make him or herself available at all times during business hours on reasonable notice by the Liaison Officer to meet with the Liaison Officer and discuss any queries, progress, concerns, issues or disputes arising under or in connection with this Agreement.
- (d) The Service Provider will have regard to all requirements of the Liaison Officer and will comply with all reasonable directions of the Liaison Officer.
- (e) Both the Purchaser's Representative and the Service Provider 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.

11. *Access to records and documents*

11.1 **Service Provider to retain records**

The Service Provider must, for a period of seven years after the Expiry Date (or, if the Agreement is extended in accordance with **clause 4**, seven years after the date on which such extension of the term concludes) keep true and particular accounts and records of:

- (a) all Services supplied under this Agreement; and
- (b) all associated records including:
 - (i) records of purchase of Services by the Service Provider; and
 - (ii) all supporting materials used to generate and substantiate invoices submitted in respect of Services supplied under this Agreement.

11.2 **Document property**

- (a) All documents (other than working papers) prepared pursuant to the Services and all documents supplied to the Service Provider for the purpose of the Services (excluding those documents returned to the originating source) shall be and remain the property of the Parliament of Victoria and shall be delivered by the Service Provider to the Purchaser's Representative on the completion of the Services.
- (b) All working papers are to be made available to future persons appointed under the Audit Act, as amended.
- (c) The documents supplied to the Service Provider pursuant to the Services shall not without the prior approval of the Purchaser's Representative be used, copied or reproduced for any purpose other than for the execution of the Services.

- (d) The Service Provider shall ensure that its working papers including electronic versions and draft and final reports are secure from any third party preview and interference.

12. **Intellectual Property Rights**

12.1 **Warranty and indemnity by Service Provider**

- (a) The Service Provider warrants to the Purchaser 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 under this Agreement.
- (b) The Service Provider indemnifies and will at all times keep the Purchaser indemnified against any loss, damage, claim, action or expense (including reasonable legal expenses) arising out of or otherwise in connection with any breach or alleged breach by the Service Provider of the Intellectual Property Rights of any third person, relating to the provision of the Services under this Agreement or relating to the Purchaser's use of the Services.

12.2 **Ownership of Contract Intellectual Property**

- (a) Subject to **clause 12.3**, as between the parties, all Contract Intellectual Property vests in and is the property of the Purchaser from the time of its creation.
- (b) Subject to **clause 12.3**, the Service Provider hereby irrevocably and unconditionally assigns to the Purchaser, 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 ensure 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 12.2(a) and (b)** and a written consent from all individuals involved in the creation of any Contract Intellectual Property irrevocably consenting to the Purchaser 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.
- (d) If requested, the Purchaser may in its absolute discretion grant the Service Provider a licence to use Contract Intellectual Property owned by the Purchaser on terms acceptable to the Purchaser.

12.3 Ownership of Pre-Existing Intellectual Property

All Pre-Existing Intellectual Property used by the Service Provider in connection with the provision of Services under this Agreement or the creation of Contract Intellectual Property remains the property of the Service Provider or its licensors.

12.4 Licence of Pre-Existing Intellectual Property

- (a) Subject to **clause 12.4(b)**, the Service Provider hereby irrevocably and unconditionally grants to the Purchaser, 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 under this Agreement or the creation of Contract Intellectual Property.
- (b) The licence granted in **clause 12.4(a)** is limited to use of the relevant Pre-Existing Intellectual Property by the Purchaser for the purposes of the Purchaser and for no other purpose.

13. Failure to perform

- (a) Without limiting any other clause of this Agreement, or any other remedy the Purchaser may have, if the Service Provider fails to provide or perform any of the Services in accordance with the requirements of this Agreement, and the applicable Services Levels, the Purchaser will not be required to pay for those Services and the Purchaser's Representative 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 Purchaser's Representative, then the Purchaser will pay the applicable 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 13(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 Purchaser 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 Purchaser in doing so.

14. ***Liability***

- (a) The Service Provider must indemnify the Purchaser and each of its respective officers, employees and agents (**Indemnified Party**) against any loss, damage, claim, action or expense (including reasonable legal expenses) 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; or
 - (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 Purchaser, its employees or agents.
- (b) If any indemnity payment is made by the Service Provider under this **clause 14**, 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.

15. ***Warranties***

The Service Provider warrants to the Purchaser that:

- (a) the provision of the Services will be carried out with all due care and skill and in accordance with all applicable standards, principles and practices;
- (b) the Service Provider has the accreditation or membership of professional or other bodies in relation to the provision of the Services as set out in the Tender Documentation for the provision of the Services and that it will use its best endeavours to maintain such accreditation or membership during the Term;
- (c) it and its employees, agents and contractors are appropriately qualified and have the requisite knowledge, skill and expertise to provide the Services in accordance with the Service Levels;

- (d) whilst on premises owned or controlled by the Auditee, the Service Provider and its employees, agents and contractors will at all times comply with the Auditee'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 Purchaser 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, without limitation, any intellectual property right) or any Laws;
- (g) all representations made by the Service Provider in or in connection with the Tender Documentation were and remain accurate; and
- (h) the information contained in the Tender Documentation as to the structure, viability, reliability, insurance cover, capacity, experience and expertise of the Service Provider, its employees and contractors is correct.

16. *Conflict of Interest*

- (a) The Service Provider warrants to the Purchaser 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 Purchaser's Representative of any matter which may give rise to an actual or potential conflict of interest at any time during the Term, including but not limited to any relevant application of the Code of Ethics for Professional Accountants issued by the Accounting Professional and Ethical Standards Board.
- (c) The Service Provider acknowledges and agrees that failure to comply with this **clause 16** will constitute a breach of a fundamental term of this Agreement.

17. *Change in Control*

- (a) The Service Provider must notify the Purchaser's Representative in writing of any proposed or impending change in Control of the Service Provider or the ultimate holding company of the Service Provider of which it becomes aware.
- (b) In determining whether or not to provide its consent to a change in Control, the Purchaser may consider such information as it considers relevant or necessary. If the Purchaser 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 Purchaser 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.

18. **Termination**

- (a) By resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Purchaser's Representative, the Purchaser at any time without cause by giving written notice to the Service Provider of its intention so to do may abrogate or constrict the Services or any part of or further part thereof and upon such notice being given the Service Provider shall cease or reduce the provision of the Services according to the notice and shall forthwith do everything possible to mitigate the losses consequent thereto.
- (b) The Purchaser may terminate this Agreement immediately by notice in writing to the Service Provider if:
 - (i) the Service Provider consistently fails to provide the Services in accordance with the Service Levels or otherwise in accordance with the requirements of this Agreement;
 - (ii) the Service Provider fails to remedy, to the satisfaction of the Purchaser's Representative, any breach of this Agreement (which in the reasonable opinion of the Purchaser's Representative is able to be remedied) within 14 days after the date on which the Purchaser's Representative issues the Service Provider a written notice requiring the Service Provider to remedy the breach;
 - (iii) the Service Provider breaches any material provision of this Agreement and in the reasonable opinion of the Purchaser's Representative such breach cannot be remedied;
 - (iv) the Replacement Staff proposed by Service Provider under **clause 7.1(b)** are unacceptable to the Purchaser's Representative;
 - (v) the Service Provider or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct;
 - (vi) the Service Provider commits any act or does any thing 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 Purchaser's Representative believes that its continued association with the Service Provider will be prejudicial or otherwise detrimental to the reputation of the State; or
 - (vii) if the Service Provider becomes bankrupt or enters into a scheme or arrangement with creditors.

19. **Consequences of termination or expiry**

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).

- (b) **Clauses 11, 12, 14, 17, 19, 23 and 24** of this Agreement survive the termination or expiry of this Agreement or the completion of the Services and may be enforced at an time.

20. ***Transitional assistance***

The Service Provider acknowledges and agrees that on termination or expiry of this Agreement the Service Provider will provide all such transitional assistance as may be reasonably necessary or requested by the Purchaser to facilitate the smooth transition of any relevant information, knowledge, systems or assets from the Service Provider to the Purchaser (or to a third party nominated by the Purchaser) to enable the Purchaser to continue to obtain the benefit of such information, knowledge, systems or assets for the business purposes of the Purchaser, following the termination or expiry of this Agreement. The Purchaser will pay fair compensation to the Service Provider in respect of any physical assets which have not been provided to the Purchaser under this **clause 20**.

21. ***Insurance***

21.1 **Service Provider to maintain insurance**

- (a) The Service Provider must (must ensure that any sub-contractors appointed by it under **clause 26**) obtain and maintain for the Term (and for the obligations that survive expiry or termination of the Agreement) the insurances specified in **Item 3 of Schedule 1**.
- (b) The Service Provider must provide the Purchaser's Representative with evidence of the currency of any insurance it is required to obtain on or prior to the Commencement Date, and otherwise on request by the Purchaser's Representative at any time during the Term.
- (c) If the Purchaser's Representative acting reasonably so requires, any insurance obtained pursuant to **clause 21.1(a)** must be on terms (including any excess) and with an insurer which are acceptable to the Purchaser's Representative.
- (d) The Service Provider will immediately advise the Purchaser's Representative if at any time the Service Provider becomes aware or reasonably believes that it ceases to have the benefit of an insurance policy as required in **clause 21.1**, whether through cancellation, lapse or otherwise.

22. ***Accident compensation***

The Service Provider must ensure that, in respect of its employees and sub-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 Purchaser's Representative on request any certificates or like documentation required by the *Accident Compensation Act 1985* (Vic).

23. **Confidentiality and privacy**

23.1 **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:
 - (A) personnel who have a need to know the information to enable the Service Provider to perform its obligations under this Agreement; or
 - (B) in the event that legal advice is required in respect of this Agreement, the Service Provider's legal advisers; or
 - (C) in the event of a dispute or a potential claim relating to this Agreement, the Service Provider's insurers under the relevant contract of insurance.
- (b) If it is necessary to disclose Confidential Information to a third party, other than for a purpose within **clause 23.1(a)(ii)**, the Service Provider will (and will ensure that its employees, agents and advisers will) obtain the written consent of the Purchaser's Representative.
- (c) All Confidential Information will remain the property of the Purchaser's Representative and upon termination or expiry of the Agreement or upon completion of the Services, the Service Provider will, subject to **clause 23.1(d)**:
 - (i) deliver all copies or other records containing the Confidential Information (or any part of it) to the Purchaser's Representative; and
 - (ii) delete, erase, or otherwise destroy all Confidential Information contained in computer memory, magnetic, optical, laser, electronic or other media in its possession or control which is not capable of delivery to the Purchaser's Representative.
- (d) The Service Provider may retain one copy of information (including Confidential Information) that it reasonably wishes to retain for legitimate internal audit or quality assurance purposes. Retention of information pursuant to this **clause 23.1(d)** does not release the Service Provider from its confidentiality obligations under this Agreement.

- (e) The Service Provider acknowledges that the Purchaser 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 or non-compliance by the Service Provider of this **clause 23** and without the need on the part of the Purchaser to prove any special damage.
- (f) The Service Provider will ensure that its employees, agents and advisers will, if requested by the Purchaser's Representative, execute a Deed of Confidentiality.

23.2 **Disclosure of Service Provider's Information**

- (a) Subject to **clause 23.2(b)**, the Purchaser 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, excepting for this Agreement which will be tabled in Parliament.
- (b) The Service Provider hereby acknowledges and/or consents to the Purchaser publishing, whether on the internet or otherwise, all such information as is necessary to comply with the *Freedom of Information Act 1982* (Vic), any other relevant Laws and Parliamentary procedures.

23.3 **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 State or the Purchaser would have been bound had it been directly done or engaged in by the Purchaser.

24. **Disputes**

24.1 **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 Liaison Officer appointed by the Purchaser's Representative within 14 days, the Chair of the Purchaser's Representative and the nominated senior executive of the Service Provider will promptly meet and discuss in good faith with a view to resolving such Dispute.

24.2 **Mediation**

- (a) If any Dispute is unable to be resolved in accordance with **clause 24.1** 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 by this Agreement.

24.3 Arbitration or litigation

- (a) If the parties fail to settle any Dispute in accordance with **clause 24.2**, 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 24.3(a)**, either party may submit the Dispute for resolution to the exclusive jurisdiction of the Courts of Victoria, Australia.

24.4 Performance during Dispute resolution

The parties to a Dispute will continue to perform their respective obligations under this Agreement, pending the resolution of a Dispute under this **clause 24**.

24.5 Interlocutory relief

Nothing in this **clause 24** is to be taken as preventing any party to a Dispute from seeking interlocutory relief in respect of such dispute.

25. 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. Without limitation to the foregoing, the Service Provider must comply with the provisions set out in **Schedule 4**.

26. 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 Purchaser's Representative, which consent may be given or be withheld by the Purchaser's Representative 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.

27. **Access and Safety**

27.1 **Access to premises**

If the Service Provider requires access to the premises of the Auditee in connection with the provision of the Services, the Purchaser's Representative will liaise with the Auditor-General of Victoria and use best endeavours, subject to relevant security and other requirements, to facilitate a permit for the Service Provider for reasonable access to the premises at such times as may be reasonably necessary to enable the Service Provider to provide the Services.

27.2 **Obligations**

When the Service Provider enters the premises of the Auditee pursuant to **clause 27.1** 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; and
- (c) act in a safe and lawful manner and comply with the safety standards policies and terms and conditions of the Auditee (as may be notified to the Service Provider).

27.3 **No occupier's liability**

- (a) The Purchaser, Auditee and their respective officers, employees, agents and invitees will not be responsible for any damage done to the Service Provider's property or to that of any of the Service Provider's officers, employees, agents or sub-contractors or for any personal injury sustained by any of the Service Provider's employees, agents or sub-contractors occurring on the premises of the Auditee:
 - (i) as a result of the negligence or recklessness of such employee, agent or sub-contractors; or
 - (ii) if such employee, agent or sub-contractor has failed to comply with the occupational health and safety and security policies of the Auditee (as may be notified to the Service Provider).
- (b) The Service Provider unconditionally and irrevocably releases the Purchaser, the Auditee and their respective employees, agents and invitees from all such responsibility and agrees to indemnify the Purchaser, the Auditee, their officers, employees, agents and invitees (each an **Indemnified Party**) against any loss that the Indemnified Party may suffer as a result of any third party bringing an action against the Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party's negligence.

28. **GST**

28.1 **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)*.

28.2 **Consideration is exclusive 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 exclusive of GST.

28.3 **Recipient to pay an additional amount**

If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Agreement.

28.4 **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.

29. **Staff Costs**

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

30. **Notices**

30.1 **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 Purchaser: at the address of the Purchaser's Representative which is set out in **Item 4 of Schedule 1**;
- (b) to the Service Provider: at the address which is set out in **Item 4 of Schedule 1**.

30.2 **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), when acknowledgement of receipt is recorded on the sender's computer.

30.3 **After hours communications**

If any notice or document is delivered or deemed to be delivered:

- (a) after 5.00pm 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.

31. **General**

31.1 **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.

31.2 **Amendment**

This Agreement may only be varied or replaced by a document executed by the Purchaser's Representative and the Service Provider.

31.3 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.

31.4 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.

31.5 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.

31.6 Set off

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

31.7 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 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.

31.8 Assignment of rights

- (a) The Service Provider may assign any right under this Agreement with the prior written consent of the Purchaser.
- (b) The Service Provider will not, as a result of any assignment pursuant to **clause 31.8(a)**, be relieved from the performance of any obligation under this Agreement, and will be responsible for acts and omissions of any assignee.

31.9 Counterparts

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

31.10 Entire Understanding

- (a) This Agreement, together with its Schedules and Annexures contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Except as otherwise provided in **clause 31.10(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.

31.11 Relationship of parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties.

31.12 Application of Act

Pursuant to section 17 of the Audit Act, sections 11, 12 and 14 of the Act apply to the Service Provider as if references in those sections to the Auditor-General were references to the person.

Schedule 1 Contract Variables (to be completed before execution by parties)

Item 1: Term (Clause 4)

Commencement date: XX XX 2012

Expiry date: XX XX 2015

Item 2: Invoicing (Clause 9)

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 1994* (Cth).

Address for invoice:

All invoices must be sent to: The Executive Officer
Public Accounts and Estimates Committee
Parliament House
Spring Street
East Melbourne Vic 3002

Item 3: Insurance (Clause 21.1)

The Service Provider is required to obtain and maintain during the Term:

| Type of coverage | Amount (AUD) |
|----------------------------------|---------------------|
| Professional indemnity insurance | \$5 million |
| Public liability insurance | \$10 million |

Item 4: Notice particulars (Clause 30)

The Purchaser: Purchaser's Representative – the Public Accounts and Estimates Committee

Address: Parliament House, Spring Street, East Melbourne, Vic 3002

Fax: 03 8682 2898

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Email: paec@parliament.vic.gov.au

Addressee: Valerie Cheong
Executive Officer

Service Provider:

Address:

Fax:

Email:

Addressee:

Item 5: Service Provider's staff (Clause 7)

Key Personnel:

Partner or equivalent:

Senior Associate/Director or equivalent:

Other Nominated:

Item 6: Liaison Officer and Service Provider's Representative (Clause 10)

Liaison Officer

Name:

Address:

Telephone:

Fax:

Email:

Service Provider's Representative

Name:

Address:

Telephone:

Fax:

Email:

Schedule 2 Professional services and price schedule (to be completed before execution by parties)

Services required by the Purchaser's Representative to be provided by the Service Provider are those detailed in the tender brief in **Annexure A**.

For the audit for the financial year ended 30 June 2012, total fixed Fees (**exclusive** of GST but including all other taxes and charges) will not exceed \$.....

Included within this total fixed fee is an allowance of \$..... for contingencies, the amount of which will not be exceeded.

For the audit for the financial year ended 30 June 2013, total fixed Fees (**exclusive** of GST but including all other taxes and charges) will not exceed \$.....

Included within this total fixed fee is an allowance of \$..... for contingencies, the amount of which will not be exceeded.

For the audit for the financial year ended 30 June 2014, total fixed Fees (**exclusive** of GST but including all other taxes and charges) will not exceed \$.....

Included within this total fixed fee is an allowance of \$..... for contingencies, the amount of which will not be exceeded.

Total maximum costs for travel, disbursements and expenses \$ for the year ended 30 June 2012, \$ for the year ended 30 June 2013, \$ for the year ended 30 June 2014.

Schedule 3 Service Levels

The Service Provider must maintain the requisite capacity, capability, experience and depth of resources to ensure that the Services provided to the Parliament of Victoria:

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

Generally, the performance of 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;
- services conducted to industry professional standards/best practice in the field;
- ability to meet engagement deliverables and any key performance indicators specified in this Agreement; and
- responsive and pro-active project management.

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

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| Key Performance Indicator | Measure |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Purchaser's Representative satisfaction with the Services | A specific review of the Service Provider's reports in clause 5 by the Purchaser's Representative. |
| Quality and impartiality of analysis, findings and recommendations. | That the advice facilitates delivery of the primary objectives of the tender brief in Annexure A of this Agreement. That the advice provided is sufficiently clear, precise and documented to allow the Purchaser's Representative and the Parliament of Victoria to make informed decisions in relation to the audit findings and recommendations. That the advice provided has regard to applicable legislative objectives and constraints. |
| Timeliness of advice received | That the timelines for reporting and tabling in Parliament as set out in this Agreement are met by the Service Provider. That the Purchaser's Representative is satisfied with the quality and timeliness of the advice provided. |
| Retention of key personnel | That the Service Provider's key personnel remains substantially unchanged during the performance of the Services, or if key personnel vary, that the Service Provider can continue to meet the engagement requirements. |
| No adverse feedback on the Preliminary Report | The Purchaser's Representative provides no adverse feedback related to the outcomes of the preliminary report provided by the Service Provider. |

Schedule 4 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 shall 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 rates of pay and conditions on which that employee is engaged shall be no less beneficial to the employee than the rates and conditions under that award.

Executed as an agreement.

Signed by **Hon Ken Smith, MP**)
)
Speaker, Legislative Assembly)
)
for and on behalf of the)
)
Parliament of Victoria in the)
)
presence of:)

.....
Witness

.....
Name of Witness (print)

Signed by **Hon Bruce Atkinson, MLA**)
)
President, Legislative Council)
)
for and on behalf of the)
)
Parliament of Victoria in the)
)
presence of:)

.....
Witness

.....
Name of Witness (print)

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The Service Provider :

Signed for [*Insert*] by its duly authorised representative, in the presence of:

)
).....

.....
Name of Authorised Representative (print)

.....
Witness

.....
Name of Witness (print)

Annexure A

Tender Brief dated 5 April 2012.

Annexure B

Tender Documentation submitted by the Service Provider dated XX XX 2012.

(Commercial-in-confidence)

Annexure C

Deed Poll of Confidentiality

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

in favour of

The PARLIAMENT OF VICTORIA ('the Purchaser')

Date:

Recitals

- A. The Purchaser has entered into an Agreement with [insert name of Service Provider] ("the Service Provider") for the provision of Financial Auditing Services dated [insert date] ("the Agreement") for the supply of professional services as outlined in the Tender Brief (**Annexure A**).
- 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 Parliament of Victoria and the State of Victoria in the possession of the Victorian Auditor-General's Office may be inadvertently provided to or otherwise become known to the Confidant. The Confidant agrees to keep information confidential pursuant to the following terms and conditions.

Operative Provisions

1. Interpretation

1.1 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 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.

“Purchaser’s Representative” is the Public Accounts and Estimates Committee of the Parliament of Victoria.

2. When Deed does not apply

2.1 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 State or any instrumentality of the State;
- (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 Purchaser’s Representative for the purpose of obtaining advice from professional advisers in connection with any such dispute or difference.

3. Duty to project information

3.1 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.

4. Limitations on distribution, disclosure and use

4.1 Except as otherwise provided in this Deed or to the extent permitted under **clause 23.1** of the Agreement, the Confidant will not –

- (a) distribute Information or cause or allow it to be available to any person;
- (b) 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
- (c) use the Information for her own purposes, or for the purposes of any other person.

4.2 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.

4.3 The Confidant will not –

- (a) copy or reproduce;
- (b) make available any reproductions of; or
- (c) 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 Purchaser's Representative.

5. Limitations on retention

5.1 Upon request by the Purchaser's Representative, the Confidant will immediately –

- (a) deliver to the State all Information in [*his/her*] possession that is capable of being delivered; and
- (b) 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 State and certify by way of statutory declaration to the State that such Information has been deleted, erased or otherwise destroyed.

5.2 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 –

- (a) will not retain in any form any note, report, summary, memorandum or other document containing or referring to Information; and
- (b) 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.

6. Non Derogation

6.1 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.

7. Damages not Sufficient

7.1 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 Purchaser 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 Purchaser, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which the Purchaser may be entitled at law or in equity.

8. No Waiver

8.1 The Confidant acknowledges that no failure on the part of the Purchaser to enforce at any time any of the provisions of this Deed shall be construed as a waiver of any of the rights of the Parliament of Victoria under this Deed nor shall any failure affect the validity of any of the provisions of this deed or otherwise prejudice the State in any manner whatsoever.

9. Duration of Deed

9.1 The terms, undertakings and agreements in this Deed commence on the date of this Deed and continue so long as they are relevant indefinitely during and after the completion of the Services.

10. Deed binds successors in law

10.1 The provisions of this Deed bind, to the fullest extent permitted by law, every executor, administrator, successor and assignee of the Confidant.

11. Severability

11.1 If any provision of this Deed is held invalid, unenforceable or illegal for any reason, this Deed shall remain otherwise in full force apart from such provision which shall be deemed deleted.

12. Governing law

12.1 This Deed is governed by the laws of the State of Victoria.

12.2 The Confidant irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Victoria.

EXECUTED as a Deed

SIGNED SEALED AND DELIVERED)
)
by)
(Confidant)) (Signature of Confidant)
)
in the presence of:)
Print Name:) (Signature of Witness)
)
)